

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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 May 25 2023)

May 19, 2023

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TO: **The Service List**

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NOTICE OF MOTION

Steven Silver, the former CEO of the Respondents, Kew Media Group Inc. and Kew Media International (Canada) Inc. (together, “KMG”), and a defendant in the Class Action (as defined below), will make a motion to the Court at 10:00am on May 25, 2023, or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is (on consent, unopposed or made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at a Zoom link to be provided by the Court.

THE MOTION IS FOR

1. an Order approving the Appointment and Consent to Defence of Class Action (the “**Appointment**”) proposed to be executed by FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all the undertaking, property and assets of KMG acquired for, or used in relation to a business carried on by KMG;
2. An Order authorising Steven Silver to:
 - (a) on behalf of KMG, conduct the defence of the shareholder class action commenced against KMG, together with certain of KMG’s former directors and officers, bearing Court File Number CV-20-00644200CP (the “**Class Action**”) and to represent KMG in the Class Action and in any other related litigation;
 - (b) to instruct Goodmans LLP (“**Goodmans**”), or such other counsel as Mr. Silver may appoint, on behalf of KMG with respect to the conduct of the Class Action and any other related litigation;
 - (c) to undertake and perform all such acts and things and to execute and deliver all such deeds, instruments and agreements as may be necessary, desirable or expedient under or in connection with the defence of the Class Action and any related litigation on behalf of KMG; and
 - (d) to represent KMG, before any competent court, tribunal, legal or public authority or at any out-of-court proceedings, meetings or settlement discussions, including

discussions that might involve compromising or settling any claims made against KMG related to the Class Action or any related litigation.

3. An Order confirming that, subject to further Order of the Court, Mr. Silver will not have any personal liability for any obligations of KMG simply by accepting and exercising the authority given to him in paragraph 2 above and by the Appointment;
4. An Order that Mr. Silver shall not be entitled to any payment or other compensation for accepting, exercising or undertaking the foregoing role and activities;
5. An Order and declaration that: (i) neither the Receiver nor FTI shall have any obligations or liability in respect of the Appointment, Mr. Silver's exercise of the powers and authority granted in paragraph 2 hereof, the Class Action or any related litigation, and neither the Receiver nor FTI shall be required to participate in any way, directly or indirectly, in the defence of the Class Action or any related litigation, or to incur any costs in respect thereof, whether prior to or after the Receiver's discharge, and Mr. Silver shall not request or seek to compel any such participation or incurrence of costs by the Receiver or FTI; and (ii) nothing in such Order or in Mr. Silver's exercise of the powers and authorizations granted in paragraph 2 hereof shall affect or delay the Receiver's discharge or the termination of the receivership proceedings; and,
6. Such further and other ancillary relief as counsel may advise, and the Court may permit.

THE GROUNDS FOR THE MOTION ARE

A. The Class Action

1. The Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings and properties of KMG and Kew Media International (Canada) Inc. by Order of Justice Koehnen dated February 28, 2020 (the “**Receivership Order**”);
2. Alex Kan and Stuart Rath (collectively, the “**Plaintiffs**”) commenced the Class Action on behalf of shareholders of KMG against KMG, together with certain of KMG’s former directors and officers (collectively, the “**D&O Defendants**” and together with KMG, the “**Defendants**”). The Class Action focuses on allegations that the Defendants are liable under the *Securities Act* (Ontario) and at common law for misrepresentations made in the secondary market;
3. By Order of Justice Koehnen dated July 14, 2020 (the “**First Lift Stay Order**”), the Court lifted the stay of proceedings imposed pursuant to the Receivership Order for the limited purpose of:
 - (a) granting the Plaintiffs leave to issue and file with the court and serve the Statement of Claim in the Class Action;
 - (b) granting the Plaintiffs leave to file with the court the Plaintiff’s Motion for Certification and for Leave pursuant to the *Securities Act*;
 - (c) allowing the Plaintiffs to serve (as necessary), file with the court and advance to a determination any motion(s) related to the service of the Statement of Claim or third party adverse costs indemnity and disbursements funding agreements.

4. Pursuant to the First Lift Stay Order, the Receiver was not required to participate in or defend the Class Action;
5. The Statement of Claim in the Class Action was issued July 20, 2020;
6. The Plaintiffs and the D&O Defendants entered into a Standstill and Tolling Agreement dated May 10, 2021 in order to streamline the Class Action by reducing the number of defendants and set out the terms of the D&O Defendants' consent to the Plaintiffs' motions for leave under Part XXIII.1 of the *Securities Act* and certification under the *Class Proceedings Act*;
7. Pursuant to the Standstill and Tolling Agreement, the Plaintiffs agreed to serve an Amended Statement of Claim (the "**Amended Claim**") naming only Steven Silver (KMG's former Chief Executive Officer), Geoffrey Webb (KMG's former Chief Financial Officer) and KMG as defendants. The Plaintiffs discontinued the action against the balance of the D&O Defendants (the "**Standstill Defendants**"). The parties to the Standstill Agreement also agreed:
 - (a) The running of all limitation periods in respect of the misrepresentations pleaded in the Amended Claim are suspended as against the Standstill Defendants. This standstill can be terminated by written notice or by a Court Order disposing of the Class Action and the exhaustion of appeal rights.
 - (b) The Plaintiffs reserved their right to seek relief in respect of any additional misrepresentations and impugned documents that may be revealed in the course of the Plaintiffs' ongoing investigation, documentary production and discovery. The

Defendants similarly reserved their rights, including their right to assert the expiry of applicable limitation periods to object to any effort to introduce additional misrepresentations and impugned documents.

- (c) The Plaintiffs may, on 30 days written notice to counsel to the D&O Defendants, add any or all of the Standstill Defendants back to the Class Action. In the event the Plaintiffs seek to do so, the Standstill Defendant or Standstill Defendants shall have all of the rights and defences which may be available to them, including to oppose the Plaintiffs' motion for leave.
 - (d) Mr. Silver and Mr. Webb consented to an Order granting leave to issue the Amended Claim and proceed with the statutory claims for misrepresentation under the *Securities Act*, certifying the Class Action as a class proceeding pursuant to the *Class Proceedings Act* and appointing the Plaintiffs as representative Plaintiffs.
8. By Orders of Justice Morgan dated September 27, 2021, the Court approved the Standstill and Tolling Agreement and granted leave to issue and serve the Amended Claim. The Amended Claim was issued September 27, 2021;
9. By Order of Justice McEwen dated October 7, 2021 (the “**Second Lift Stay Order**”), the Stay of Proceedings was lifted to allow the Class Action to proceed against KMG in the ordinary course provided that the claims in the Class Action, if established, would only be sought to be enforced against: (i) any insurers of KMG under any relevant insurance policies issued to KMG and/or the other defendants in the Class Action; and, (ii) the other

defendants in the Class Action other than KMG, but not against the Receiver or any present or future property, assets or undertaking of KMG;

10. Pursuant to the Second Lift Stay Order, the Receiver was not required to participate in or defend the Class Action;

B. The Receiver's Discharge

11. The Receiver has reported that it has substantially completed all of its activities in respect of the Debtors, and has reported that KMG's secured lenders (the "Secured Lenders") will suffer a significant shortfall. The Receiver has also reported that unsecured creditors will not receive any distributions;
12. The Receiver has served a motion for an Order discharging it and terminating the receivership proceedings once certain administrative steps have been completed;
13. KMG holds certain insurance policies, which are the only remaining assets of KMG, that may respond to pay the indemnity claims of the D&O Defendants and the claims made by shareholders in the Class Action. The insurers who issued those policies have taken the position that it is a condition precedent to coverage under the insurance policies that KMG have a representative to provide instructions and defend the Class Action.
14. Accordingly, these insurance policies and the insurer(s) require a representative of KMG to provide instructions and defend the Class Action or the policies may not be available to respond to any claims.

15. The Plaintiffs and the D&O Defendants may be prejudiced if KMG does not defend the Class Action. However, because KMG does not have any officers or directors who can direct the defence, there could be an issue accessing the insurance policies after the Receiver is discharged;
16. Steven Silver was KMG's CEO until his resignation on or about February 28, 2019. He is a D&O Defendant. Since the Standstill and Tolling Agreement was executed, Mr. Silver has been the primary party responsible for instructing defence counsel;
17. Goodmans is currently counsel to Mr. Silver and all but one of the D&O Defendants. The remaining D&O Defendant, Mr. Webb, has separate counsel;
18. The Receiver has reported that, following its appointment, it took possession of 154 boxes of records together with various electronic storage media containing KMG records. The parties to the Class Action, wish to ensure that certain of the Debtors' books and records related to the Class Action are preserved. The Receiver and Goodmans (in its capacity as counsel to the D&O Defendants) agreed that, subject to court approval, certain records and electronic storage media would be transferred to Goodmans prior to or concurrently with the Receiver's discharge and the termination of the receivership proceedings in connection with KMG's intended defence of the Class Action;
19. The Plaintiffs, Mr. Webb, the Receiver and KMG's insurers support Mr. Silver having responsibility for conducting KMG's defence and asserting any necessary or appropriate claims for contribution and indemnity. This will provide a practical solution to the problem

arising from the Receiver's discharge and will protect the interests of the various KMG stakeholders involved in the Class Action;

20. Any settlement of the Class Action will require court approval pursuant to the *Class Proceedings Act*;
21. Sections 97 and 101 of the *Courts of Justice Act*;
22. Section 192(1) of the *Bankruptcy and Insolvency Act*;

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

23. The Fifth Report of the Receiver;
24. The affidavit of Luke Devine, to be sworn;
25. The affidavit of Steven Silver, to be sworn;
26. Such further evidence as counsel may advise and the Court may permit.

May 19, 2023

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Lawyers for the Respondents

TO: **The Service List**

TRUIST BANK, AS AGENT - and -
KEW MEDIA GROUP INC. AND KEW
MEDIA INTERNATIONAL (CANADA)
INC.

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

Applicant Respondents

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

Proceeding commenced at Toronto

NOTICE OF MOTION

GOODMANS LLP

Barristers & Solicitors

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

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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- and -

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(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

I, Luke Devine, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer employed by the firm Goodmans LLP (“**Goodmans**”), counsel to Steven Silver, the former Chief Executive Officer of the Respondents. I have been involved in the defence of the claims made against Steven Silver in a shareholder class action seeking damages for misrepresentations in secondary markets and bearing Court File Number CV-20-00644200CP (the “**Class Action**”).

2. As a result, I have knowledge of the matters addressed in this Affidavit. Where the information below is not within my personal knowledge, I have specified the source of the information. In each such case, I believe it to be true.
3. The Appointment and Consent to Defence of Class Action (the “**Appointment**”) negotiated between Goodmans and counsel to FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all the undertaking, property and assets of Kew Media Group Inc. and Kew Media International (Canada) Inc. (together, “**KMG**”), acquired for, or used in relation to a business carried on by KMG, is attached to my Affidavit as **Exhibit “A”**. I am advised by David Conklin, the partner at Goodmans with overall carriage of this matter, that Receiver has approved this form of the Appointment. Mr. Silver has confirmed that it is also acceptable to him.
4. The Standstill and Tolling Agreement dated May 10, 2021 entered into with respect of the Class Action is attached to my Affidavit as **Exhibit “B”**.
5. The Amended Statement of Claim issued September 27, 2021 is attached to my Affidavit as **Exhibit “C”**.

Sworn remotely by Luke Devine, in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 19th day of May, 2023 in accordance with O/ Reg. 431/20, *Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits Name: Carlie Fox



Name: Luke Devine

May 19, 2023

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Lawyers for the Respondents

TO: **The Service List**

A

This is Exhibit "A" to the Affidavit
of LUKE DEVINE sworn this
19th day of May, 2023.

A handwritten signature in black ink, appearing to read "G. Fox". The signature is written in a cursive style with a large initial "G" and a stylized "Fox".

A commissioner, etc.

CONSENT TO DEFENCE OF CLASS ACTION

THIS CONSENT is made on this _____ day of May 2023, by **FTI Consulting Canada Inc. (“FTI”)**, in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all the undertaking, property and assets of Kew Media Group Inc. (“**KMG**”).

WHEREAS Alex Kan and Stuart Rath (collectively, the “**Plaintiffs**”) commenced a securities class action on behalf of shareholders of KMG against KMG, together with certain of KMG’s former directors and officers (collectively, the “**D&O Defendants**”) recognising the action has been discontinued against some of the original D&O Defendants, and together with KMG, the “**Defendants**”), bearing Court File Number CV-20-00644200-00CP (the “**Class Action**”), which focuses on allegations that the Defendants are liable under the *Securities Act* (Ontario) and at common law for misrepresentations made in the secondary market;

AND WHEREAS the Plaintiffs – as equity claimants – will not recover on any claims they allege to have in the receivership proceedings due to insufficient assets and proceeds with which to pay the admitted secured claims against KMG and any unsecured claims against KMG, but do wish to pursue the Defendants’ for recoveries that would be subject to coverage being available and would be payable by insurers (the “**Defendants’ Insurers**”) under applicable insurance policies;

AND WHEREAS the Receiver has: (i) not defended the Class Action on behalf of KMG to date; and (ii) is in the process of completing its administration of KMG’s receivership proceedings and is preparing to seek its discharge;

AND WHEREAS the Plaintiffs and the D&O Defendants wish to see the Class Action defended by KMG for purposes unrelated to the receivership; namely, because the Defendants’ Insurers require a defence of the Class Action by KMG as a condition precedent to any potential recovery under the applicable insurance policies;

AND WHEREAS Steven Silver is a D&O Defendant and was formerly an officer and director of KMG until his resignation on or about February 28, 2019 ;

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AND WHEREAS the Toronto law firm Goodmans LLP (“**Goodmans**”) was previously retained by KMG as its corporate counsel prior to and for some time during the receivership, and is currently counsel to Mr. Silver and all but one of the D&O Defendants;

AND WHEREAS the Plaintiffs, the D&O Defendants, and the Defendants’ Insurers have consented to Mr. Silver directing Goodmans on behalf of KMG in KMG’s defence of the Class Action, and Goodmans has consented to act as counsel in respect of same;

AND WHEREAS in light of the prospective discharge of the Receiver in the near term, the Plaintiffs, the D&O Defendants, the Defendants’ Insurers, and Goodmans have requested that the Receiver authorise and consent to Mr. Silver acting, directing and instructing Goodmans on behalf of KMG in KMG’s defence of the Class Action following the discharge of the Receiver and the termination of KMG’s receivership proceedings;

1. The Receiver hereby authorises and consents to Mr. Silver directing and instructing Goodmans on behalf of KMG in KMG’s defence of the Class Action from and after the discharge of the Receiver and the termination of the KMG receivership proceedings.
2. For greater certainty, the Receiver consents to Mr. Silver having the authority to:
 - (a) Conduct the defence of the Class Action on behalf of KMG in all respects and to represent KMG in the Class Action and in any other related litigation.;
 - (b) Without limiting the generality of the foregoing, instruct Goodmans on behalf of KMG with respect to the conduct of the Class Action and any other related litigation, and in this regard, it is acknowledged that Goodmans shall continue to represent the D&O Defendants for whom it currently acts with respect to the defence of the Class Action and any related litigation;
 - (c) Undertake and perform all such acts and things and to execute and deliver all such deeds, instruments and agreements as may be necessary, desirable or expedient under or in connection with the defence of the Class Action and any related litigation on behalf of KMG; and

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- (d) Appear in the name of KMG and in its stead, and represent KMG, before any competent court, tribunal, legal or public authority or at any out-of-court proceedings, meetings or settlement discussions, including discussions that might involve compromising or settling any claims made against KMG related to the Class Action or any related litigation.
3. Mr. Silver shall not be entitled to any payment or other compensation for undertaking the foregoing role and activities.
4. Neither the Receiver nor FTI shall have any obligations or liability in respect of this authorization and consent, the Class Action or any related litigation, and shall not be required to participate in any way, directly or indirectly, in the defence of the Class Action or any related litigation, or to incur any costs in respect thereof, whether prior to or after the Receiver's discharge, and Mr. Silver shall not request or seek to compel any such participation or incurrence of costs by the Receiver or FTI.
5. Nothing herein shall affect or delay the Receiver's motion for its discharge and the termination of the receivership proceedings.

EFFECTIVE this ___ day of May, 2023.

**KEW MEDIA GROUP INC., by FTI
Consulting Canada Inc., in its capacity as
Court-appointed receiver and manager, and not
in its personal capacity**

Per: _____

Name: **Nigel Meakin**

I have authority to bind the Receiver

B

This is Exhibit "B" to the Affidavit
of LUKE DEVINE sworn this
19th day of May, 2023.

A handwritten signature in black ink, appearing to read "C. Fox", written above a horizontal line.

A commissioner, etc.

Court File No. CV-20-00644200-00CP

**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

STANDSTILL AND TOLLING AGREEMENT

1. This Standstill and Tolling Agreement (the “**Agreement**”) is made and entered into effective as of May 3, 2021 (the “**Effective Date**”), by and between Alex Kan and Stuart Rath (the “**Plaintiffs**”), and Steven Silver, Geoffrey Webb, David Fleck, Maurice Kagan, Patrice Merrin, Peter Sussman and Erick Kwak (the “**Individual Defendants**”), in Toronto, Ontario Superior Court of Justice Court File No. CV-20-00644200-00CP (the “**Action**”).
2. The Plaintiffs in the Action are members of the proposed class of persons or entities who acquired securities offered by Kew Media Group Inc. (“**Kew**”) (the “**Proposed Class**”) between March 28, 2017 and January 17, 2020 (the “**Proposed Class Period**”). They intend to represent the interests of the Proposed Class and to seek certification of the Action as a class proceeding under the Ontario *Class Proceedings Act* (the “**CPA**”) and leave under Part XXIII.1 of the Ontario *Securities Act* (the “**Securities Act**”).

3. The Individual Defendants were directors and/or officers of Kew through all or part of the Proposed Class Period.
4. The Plaintiffs and Individual Defendants are the only parties to this Agreement (the “**Parties**”).
5. Kew is not a party to this Agreement.
6. The purpose of the Agreement is to streamline the Action by reducing the number of defendants and setting out terms of the Individual Defendants’ consent to the Plaintiffs’ motions for leave under Part XXIII.1 of the *Securities Act* and certification under the *CPA*.
7. The Parties each confirm he or she will receive more than sufficient consideration for the exchange of promises and covenants being made in this Agreement.

TOLLING AND SUSPENSION OF LIMITATION PERIODS

8. The running of all limitation periods in respect of the pleaded misrepresentations in the impugned documents listed in Schedule “A” shall be interrupted, suspended and deemed to have been tolled for the period beginning on the Effective Date (the “**Tolling Period**”) as against the Standstill Defendants.
9. The Tolling Period shall continue until it is terminated on the earliest of either 30 days written notice being given by counsel for the Plaintiffs to the Individual Defendants or the date a Court makes an order finally disposing of the Action and all rights of appeal are exhausted (the “**Termination Date**”).

10. The Standstill Defendants shall not assert or rely on the passage of time comprising the Tolling Period as a legal, equitable, or other claim or defence in connection with the Action.

THE AMENDED STATEMENT OF CLAIM AND DISCONTINUANCE AGAINST FLECK, KAGAN, MERRIN, SUSSMAN AND KWAK

11. The Plaintiffs will serve an Amended Statement of Claim (the “**Amended Claim**”) naming only Steven Silver, Geoffrey Webb and Kew as defendants (the “**Continuing Defendants**”). The Action will continue against them only.
12. The Amended Claim will seek relief based on the pleaded misrepresentations in the impugned documents as set out in Schedule “A”.
13. The Plaintiffs will discontinue, with leave of the Court, the Action against David Fleck, Maurice Kagan, Patrice Merrin, Peter Sussman and Erick Kwak (the “**Standstill Defendants**”).
14. The Plaintiffs reserve rights to seek relief in respect of any additional misrepresentations and impugned documents that may be revealed to them in the course of the Plaintiffs’ ongoing investigation, documentary production and discovery. The Continuing Defendants and the Standstill Defendants similarly reserve their rights, including their right to assert the expiry of applicable limitation periods, to object to any effort to introduce additional misrepresentations and impugned documents to the Amended Claim.
15. The discontinuances against the Standstill Defendants are without costs and without prejudice to any claim members of the Proposed Class (including the Plaintiffs) may have against the Standstill Defendants.

16. The Plaintiffs may, on 30 days written notice to counsel for the Individual Defendants, add any or all of the Standstill Defendants back into the Action. In the event the Plaintiffs seek to do so, the Standstill Defendant or Standstill Defendants to be added to the Action shall have all rights and defences which may be available to them, including to oppose the Plaintiffs' motion for leave under the *Securities Act*. After this Agreement terminates on the Termination Date, defences available to the Standstill Defendants shall include the expiry of any limitation periods.
17. The discontinuances are not and shall not be construed as a release of any causes of action that are or may be asserted in the Action.
18. Consistent with the rights reserved by the Plaintiffs and the Individual Defendants, this agreement shall be without prejudice to and shall not compromise the applicable liability limits as defined in s. 138.1 of the *Securities Act* (the "Liability Limits") which have been claimed by the Plaintiffs in respect of the Standstill Defendants. The Plaintiffs and Defendants agree to convene and revisit the issue of the applicable Liability Limits in advance of trial in the event that any of the Standstill Defendants have not been added to the Action as Defendants.

LEAVE AND CERTIFICATION

19. The Plaintiffs, Silver and Webb will consent to orders in the form attached as Schedule "B" approving the discontinuance, granting leave to issue the Amended Claim and proceed with the statutory claims for misrepresentation under Part XXIII. 1 of the *Securities Act*, certifying the Action as a class proceeding under the *CPA* and appointing the Plaintiffs as representative Plaintiffs (the "Orders for Discontinuances, Leave and Certification").

20. The costs of the leave and certification motions shall be awarded on a partial indemnity basis, in the cause.

DISCOVERY IN THE ACTION

21. The Parties shall produce documents in their power, possession and control that are relevant to the Action and required by a discovery plan they agree to or that is set by the Court (the “**Discovery Plan**”) that ensures production is efficient, proportionate and not unduly burdensome. The Discovery Plan shall be agreed to or set by the Court within 30 days of the certification and leave order, attached as Schedule B, being granted. The Standstill Defendants shall not, however, have any obligation to produce documents that have been or will be produced by the Continuing Defendants. For greater clarity, the Standstill Defendants shall produce documents in accordance with the *Rules of Civil Procedure* as if they are parties to the Action and leave to proceed under Part XXIII.1 has been granted as against them.
22. The Plaintiffs may examine any or each of Fleck, Kagan, Merrin, Sussman, and Kwak, for discovery as non-parties to the Action. These examinations shall be provided for in accordance with any timetable agreed to by the Parties and set in the Action for examinations for discovery.
23. Any transcripts of evidence taken pursuant to this paragraph shall be subject to the limitations set out in Rule 31.10(5) of the *Rules of Civil Procedure*.

IMPLEMENTATION OF THE AGREEMENT

24. The Plaintiffs shall bring a motion(s), with the consent of the Individual Defendants, to obtain the Orders for Discontinuances, Leave and Certification attached as Schedule “B”.

MODIFICATION OR AMENDMENT

25. This Agreement, including any dates contained herein, may only be modified, altered or amended by written agreement, signed by all Parties and approved by the Court.

NO ADMISSION

26. By executing this Agreement, none of the Parties intends to be or shall be deemed to admit or indicate any assessment of the strength or weakness of the merits of the claims asserted or that may be asserted in the Action.
27. This Agreement shall not be offered or received into evidence in any proceeding, except as necessary to obtain the orders in Schedule “B” and to enforce its terms.

REPRESENTATIONS OF THE PARTIES

28. The Plaintiffs and Individual Defendants represent and confirm that this Agreement constitutes a final and binding obligation on each of them.
29. The Parties represent and confirm that they have each reviewed this Agreement and have been provided with sufficient opportunity to review it with their respective counsel.

ENTIRE AGREEMENT

30. This Agreement constitutes the entire agreement by and among the Parties and upon execution, shall supersede any previous agreement and understandings between the Parties with respect to the subject matter of this Agreement.

HEADINGS

31. The headings of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

SEVERABILITY

32. If any provision of this Agreement is held to be void or invalid, that determination shall not affect any other provision. The remainder of the Agreement shall be effective as though the void or invalid provision had not been contained in this Agreement.

NO PARTY IS THE DRAFTER OF THIS AGREEMENT

33. None of the Parties to this Agreement shall be considered to be the drafter of this Agreement, any provision or any modification to it for the purpose of any rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

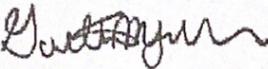
CHANGE OF NAME/SUCCESSOR COMPANIES

34. The Parties agree that this Agreement shall apply to any successor representative Plaintiff and any reference in this Agreement will be amended to reflect such successor representative Plaintiff.

COUNTERPARTS

35. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Signatures by facsimile or electronic transmission (e-mail) shall be effective as original signatures.

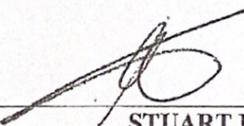
DATED: May 5th, 2021

Witness: 



ALEX KAN

Witness: 



STUART RATH

Witness:

STEVEN SILVER

Witness:

PETER SUSSMAN

Witness:

MAURICE KAGAN

COUNTERPARTS

35. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Signatures by facsimile or electronic transmission (e-mail) shall be effective as original signatures.

DATED: May 10, 2021

Witness:

ALEX KAN

Witness:

STUART RATH

Witness:



Brynie Lacob



STEVEN SILVER

Witness:

PETER SUSSMAN

Witness:

MAURICE KAGAN

COUNTERPARTS

35. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Signatures by facsimile or electronic transmission (e-mail) shall be effective as original signatures.

DATED: May 10 , 2021

Witness:

ALEX KAN

Witness:

STUART RATH

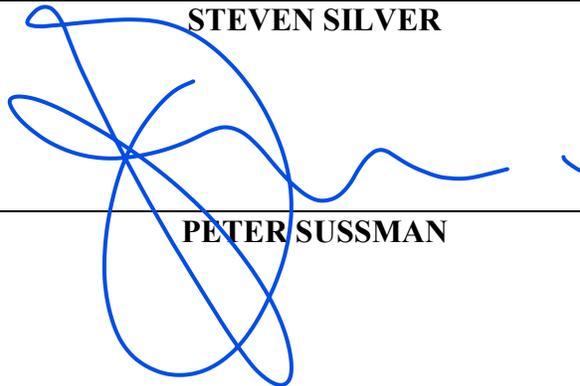
Witness:

STEVEN SILVER



Witness:

PETER SUSSMAN



Witness:

MAURICE KAGAN

COUNTERPARTS

35. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Signatures by facsimile or electronic transmission (e-mail) shall be effective as original signatures.

DATED: May 10 , 2021

Witness:

ALEX KAN

Witness:

STUART RATH

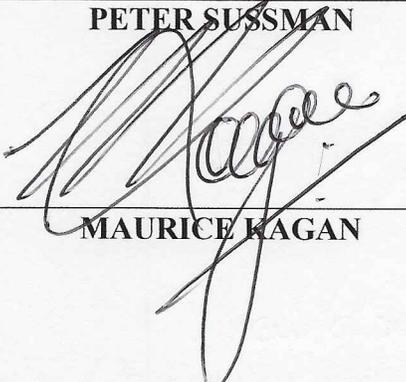
Witness:

STEVEN SILVER

Witness:

PETER SUSSMAN

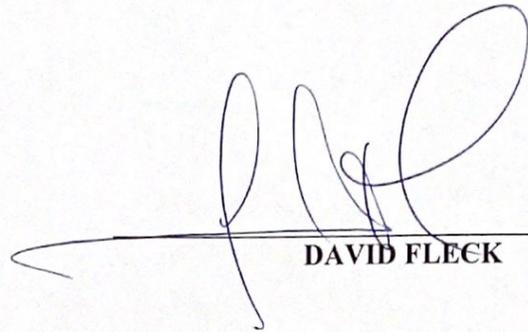

Witness:



MAURICE KAGAN

David Fleck

Witness:



DAVID FLECK

Witness:

PATRICE MERRIN

Witness:

ERICK KWAK

Witness:

GEOFFREY WEBB

Witness:

B. Best
Bridget Best
Witness:

DAVID FLECK

Patrice Merrin

PATRICE MERRIN

Witness:

ERICK KWAK

Witness:

GEOFFREY WEBB

Witness:

DAVID FLECK

Witness:

PATRICE MERRIN

Witness:


Nicole Kwak



ERICK KWAK

Witness:

GEOFFREY WEBB

Witness:

DAVID FLECK

Witness:

PATRICE MERRIN

Witness:

ERICK KWAK

Witness:

*Geoffrey Webb
18 Kinnor Gardens
London W2 8HTA
Hobart*



GEOFFREY WEBB

Schedule “A” – Alleged Misrepresentations and Impugned Documents

Alleged Misrepresentations - The plaintiffs allege that KEW released documents containing misrepresentations including but not limited to:		
Date(s)	Alleged Misrepresentation	Impugned Document(s)
Mar. 28, 2017 – Nov. 14, 2019	KEW reported inaccurate financial results and figures relating to its working capital.	All financial statements and MD&As
Mar. 28, 2017	“[...] the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these internal controls and procedures was effective in order to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with IFRS [...]”	Q4 2016 MD&A
Mar. 28, 2017	“[...] the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these disclosure controls and procedures were effective and that material information relating to the Corporation was made known to them and was recorded, processed, summarized and reported within the time periods specified under applicable securities legislation.”	Q4 2016 MD&A
Mar. 28, 2017 – Nov. 14, 2019	“The Financial Statements have been prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”).”	All MD&As from Q4 2016 – Q3 2019
Mar. 28, 2017 – Nov. 14, 2019	<p>Certifications under NI 52-109:</p> <p>(a) the interim and annual filings do not contain any untrue statement of material fact or 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;</p> <p>(b) the interim and annual filings fairly present in all material respects the financial condition, financial performance and cash flows of KEW;</p> <p>(c) they have designed or caused to be designed under their supervision DC&P to provide reasonable assurance that:</p> <ol style="list-style-type: none"> 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; <p>(d) they have designed or caused to be designed under their supervision ICFR to provide reasonable assurance</p>	All NI 52-109 certificates filed during the class period, including as amended

	<p>regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the KEW's GAAP;</p> <p>(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</p> <p>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.</p>	
May 15, 2017	“[...] cash flow from operations and the proposed credit facilities will provide the company with sufficient financial resources to fund its operations for the next 12 months.”	Q1 2017 MD&A
May 15, 2017	“[...] it will be a revolving facility subject to normal industry borrowing base criteria that establishes the availability under the facility [...]”	Q1 2017 Financial Statements
May 15, 2017	“[...] the Corporation's Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) have designed disclosure controls and procedures and established processes to ensure that they are provided with sufficient knowledge to support the representations made in the interim certificates required to be filed under National Instrument 52-109.”	Q1 2017 MD&A
May 15, 2017 – Nov. 14, 2019	“Taking account of the expected closing of the SunTrust Facility, Management believes that cash flow from operations and the proposed credit facilities will provide the Company with sufficient financial resources to fund its operations for the next 12 months.”	All MD&A's from Q1 2017 – Q3 2019
May 15, 2017 – Nov. 14, 2019	“These interim consolidated financial statements (the “financial statements”) of the Corporation have been prepared in accordance with International Accounting Standard 34.”	All interim financial statements from Q1 2017 – Q3 2019
May 15, 2017 – Nov. 14, 2019	“[KEW's] CEO and CFO have assessed [...] the design effectiveness of the Corporation's ICFR as at [] using the framework and criteria established in Internal Control – Integrated Framework (“COSO Framework”) [...] and have not identified any material weaknesses relating to the design of the Corporation's ICFR framework.”	All MD&As from Q1 2017– Q3 2019
Aug. 10, 2017 – Nov. 14, 2019	“[...] [KEW's] Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) have concluded that the design of these controls and procedures 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 National Instrument 52-109.”	All MD&As from Q2 2017– Q3 2019
May 15, 2017 – May 14, 2019	“[KEW] was in compliance with all loan covenants.” “[...] Kew met all of the covenants set out in the credit facility.”	All MD&A's from Q1 2017 to Q1 2019
Nov. 9, 2017 – Aug. 13, 2019	“[...] Kew met all covenants.” “[...] Kew met all of these covenants.”	All financial statements from Q3 2017 to Q2 2019

Nov. 9, 2017 – Nov 14, 2019	“[...] the corporation had approximately [X] available under its loan facilities [...]”	All MD&A’s from Q3 2017 – Q3 2019
Nov. 9, 2017 – Nov 14, 2019	“[...] the amount available at any point in time is based on a borrowing base calculation and as at [date], the calculation had availability of approximately [X] beyond the borrowings [...]”	All Financial Statements from Q3 2017 – Q3 2019
May 11, 2018 and Apr. 4, 2019	“As of the date of this Circular, there have been no material violations of the Code of Business Conduct and Ethics.”	Management Information Circular dated May 11, 2018
Nov. 14, 2019	“[...] the covenants in the Facility continue to be met.”	MD&A and interim financial statement Q3 2019

Omissions – The plaintiffs allege that KEW released documents containing omissions including but not limited to:
In the process of renegotiating the terms of KEW’s Credit Facility to delete its leverage coverage ratio, Kew utilized inaccurate information, including in respect of Kew’s cash flow and working capital.
There were deficiencies underlying KEW’s base borrowing certificates.
KEW provided reports to its lenders containing inaccurate information about working capital.
KEW provided inaccurate information to its auditor, Grant Thornton.
KEW improperly used cash from its subsidiaries to fund ongoing operations and to remedy KEW’s cash flow and working capital deficiencies.
There was a material risk that the revelation of these omissions would lead to regulatory action, including the cease trading of KEW’s shares.
There was a material uncertainty as to KEW’s ability to continue as a going concern.

Impugned Documents

“**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;
- (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;
- (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;
- (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;

- (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;

Schedule “B” – Draft Orders for Discontinuances, Certification and Leave

Court File No. CV-20-00644200-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
) of _____, 2021

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

ORDER

**Discontinuance as Against David Fleck, Maurice Kagan,
 Patrice Merrin, Peter Sussman and Erick Kwak**

THIS MOTION, made by the Plaintiffs for an Order that: (i) the within proceeding be discontinued, without prejudice and without costs, as against the Defendants David Fleck, Maurice Kagan, Patrice Merrin, Peter Sussman and Erick Kwak (the “**Standstill Defendants**”) in accordance with the Tolling and Standstill Agreement reached between the Plaintiffs, the Standstill Defendants, Steven Silver and Geoffrey Webb, dated April 19, 2021; (ii) the Title of Proceedings be modified to remove the Standstill Defendants; and (iii) notice under section 19 and/or 29 of the *Class Proceedings Act*, 1992 is not required, was heard this day in Toronto, Ontario, by way of judicial video conference via Zoom.

ON READING the materials filed and on hearing the submissions of the lawyers for the Plaintiffs, the Standstill Defendants, Steven Silver and Geoffrey Webb;

AND ON BEING ADVISED that the Standstill Defendants, Steven Silver and Geoffrey Webb all consent to: (i) the relief sought; and (ii) the leave and certification orders that are to be taken out in concert and contemporaneously with this Order:

1. **THIS COURT ORDERS** that the action is hereby discontinued, without prejudice and without costs, as against David Fleck, Maurice Kagan, Patrice Merrin, Peter Sussman and Erick Kwak pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
2. **THIS COURT ORDERS** that the Title of Proceedings for the action shall be modified in the form set out below on all documents to be issued or filed with this Court:

Court File No. CV-20-00644200-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ALEX KAN and STUART RATH

Plaintiffs

- and -

KEW MEDIA GROUP INC., STEVEN SILVER, and
GEOFFREY WEBB

Defendants

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

3. **THIS COURT ORDERS** that notice under sections 19 and 29 of the *Class Proceedings Act, 1992*, S.O., is not required.

THE HONOURABLE

ALEX KAN and STUART RATH

v. KEW MEDIA GROUP INC., et al.

Court File No. CV-20-00644200-00CP

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

Discontinuance as Against David Fleck, Maurice Kagan, Patrice Merrin, Peter Sussman and Erick Kwak

KALLOGHLIAN MYERS LLP
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Toronto, ON M5H 3E5

**FOREMAN & COMPANY
PROFESSIONAL CORPORATION**
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sbowden@foremancompany.com
alegategolfe@foremancompany.com

Lawyers for the Plaintiffs

Court File No. CV-20-00644200-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE

_____, THE _____
DAY OF _____, 2021

BETWEEN:

ALEX KAN and STUART RATH

Plaintiffs

- and -

**KEW MEDIA GROUP INC., STEVEN SILVER and
GEOFFREY WEBB**

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**ORDER
(Certification)**

THIS MOTION made by the Plaintiffs for an order certifying this action as a class proceeding as against the Defendants Geoffrey Webb (“**Webb**”) and Steven Silver (collectively, the “**Individual Defendants**”) was heard this day.

UPON READING the Plaintiffs’ motion record and factum,

AND ON HEARING the submissions of counsel for the Plaintiffs in this action,

AND UPON READING the consent of the Individual Defendants to this motion and
Order,

Certification

1. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Individual Defendants, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.

Class and Class Period

2. **THIS COURT ORDERS** that the Class (the “**Class**”) is defined as:

All persons or entities who acquired securities issued by Kew Media Group Inc. (“**Kew**”) in the secondary market between March 28, 2017 and January 16, 2020 inclusive (the “**Class Period**”) other than Kew and its directors and officers.

Common Issues for Statutory Claims under Part XXIII.1 of the Ontario *Securities Act* (the “*OSA*”) and, if necessary, the concordant provisions of the comparable securities legislation of other provinces and territories of Canada (the “Other Securities Legislation**”)**

3. **THIS COURT ORDERS** that the common issues with respect to claims made under Part XXIII.1 of the *OSA* and, if necessary, the Other Securities Legislation (all references being made to the *OSA*) are as follows:

- (i) Did all or any of the representations (the “**Representations**”) made in the impugned documents (the “**Impugned Documents**”) as listed in **Schedule “A”** attached to this Order constitute misrepresentations within the meaning of s. 138.3 of the *OSA*?
- (ii) If any of the Representations constituted misrepresentations within the meaning of s. 138.3 of the *OSA* (“**Misrepresentations**”), did Webb authorize, permit or acquiesce in the release of the Impugned Documents within the meaning of s. 138.3 of the *OSA*?
- (iii) Are the certifications signed by each of the Individual Defendants for the filing of Kew’s interim and annual financial statements non-core documents? If they are non-core documents, did the Individual Defendants, or either of them:
 - (a) know at the time that these Impugned Documents were released, that these Impugned Documents contained Misrepresentations;

- (b) at or before the time that these Impugned Documents were released, deliberately avoid acquiring knowledge that these Impugned Documents contained Misrepresentations; or
- (c) through action or failure to act, guilty of gross misconduct in connection with the release of these Impugned Documents?
- (iv) In respect of s. 138.4(6) and (7) of the *OSA*, did the Individual Defendants or either of them:
 - (a) conduct or cause to be conducted a reasonable investigation; or
 - (b) have no reasonable grounds, at the time the Impugned Documents were released, for believing that the Impugned Documents contained Misrepresentations?
- (v) Are the Individual Defendants, or any of them liable to the Class?
- (vi) In respect of s. 138.7(2), did the Individual Defendants, or either of them, authorize, permit or acquiesce to the making of the Misrepresentations while knowing that they were misrepresentations?
- (vii) Do the Individual Defendants, or either of them, have any other defences available to any of the Plaintiffs' claims?
- (viii) If the Individual Defendants or either of them are liable to the Class pursuant to s. 138.3 of the *OSA*, what is the appropriate method of calculating the damages?
- (ix) If damages can be assessed on an aggregate basis for the Class or any group of them pursuant to sections 24 and 25 of the *Class Proceedings Act*, 1992 or otherwise in respect of Part XXIII.1 of the *OSA*, what is the quantum of damages to be assessed in favour of the Class or any group of them?
- (x) What limits on damages, if any, apply to each Individual Defendant pursuant to section 138.1 and 138.7 of the *OSA*?
- (xi) What is the proportionate liability of each Individual Defendant under s. 138.6 of the *OSA*?

Common Issues for Common Law Claims of Negligent Misrepresentation

4. **THIS COURT ORDERS** that the common issues with respect to the common law claims of negligent misrepresentation are:
- (i) Did either of the Individual Defendants owe a duty of care to the Class Members for the Representations in the Impugned Documents?

- (ii) Did either of the Individual Defendants make any of the Representations in the Impugned Documents?
- (iii) Were any of the Representations in the Impugned Documents untrue, inaccurate or misleading?
- (iv) Did either of the Individual Defendants make the Representations negligently?
- (v) Did either of the Individual Defendants intend that Class Members rely upon the Representations made?

Common Issues for Punitive Damages

5. **THIS COURT ORDERS** that the common issues with respect to punitive damages are:
- (i) Are the Individual Defendants or either of them liable for punitive damages?
 - (ii) If the Individual Defendants, or either of them, are liable for punitive damages, what is the quantum of punitive damages for which the liable Individual Defendant(s) is liable?

Common Issue for Costs of Administration and Distribution

6. **THIS COURT ORDERS** that the common issue with respect to costs of administration and distribution is:
- (i) Should the Individual Defendants or either of them pay the cost of administering and distributing recovery to the Class?

The Representative Plaintiff and Class Counsel

7. **THIS COURT ORDERS** that Alex Kan and Stuart Rath are appointed as representative Plaintiffs for the Class.
8. **THIS COURT ORDERS** that Kalloghlian Myers LLP and Foreman & Company are appointed as counsel to the Class.

No Other Actions

9. **THIS COURT ORDERS** that any other proceeding based on the facts giving rise to this class proceeding is hereby stayed.
10. **THIS COURT ORDERS** that no other proceeding based upon the facts giving rise to this class proceeding may be commenced without leave of the court.

Notice of Certification and Opt Out Rights

11. **THIS COURT ORDERS** that Class members shall be notified that this proceeding has been certified as a class proceeding as follows:
 - (i) by posting a copy of the notice attached hereto as **Schedule “B”** on the Kalloghlian Myers LLP and Foreman & Company websites;
 - (ii) by sending copies of the notice to all individuals and entities who have contacted class counsel;
 - (iii) by sending a copy of the notice to anyone who requests it;
 - (iv) by sending a copy of the notice to the service list in Kew Media Group Inc.’s insolvency proceeding; and
 - (v) by issuing the notice as a press release.(the “**Notice Plan**”).
12. **THIS COURT ORDERS** that the opt out period shall expire ninety (90) days from the date of this Order (the “**Opt Out Deadline**”).
13. **THIS COURT ORDERS** that Class members may opt out of this class proceeding by delivering a signed opt out form, a copy of which is attached hereto as **Schedule “C”**, postmarked or emailed by the Opt Out Deadline.

14. **THIS COURT ORDERS** that [opt out administrator] is appointed as the administrator to receive opt out forms (the “**Opt Out Administrator**”).
15. **THIS COURT ORDERS** that the Individual Defendants shall pay the costs of the Notice Plan and of the Opt Out Administrator.

Costs of the Motion

16. **THIS COURT ORDERS** that costs for this motion shall be awarded in the cause, on a partial indemnity basis, as agreed between the parties or as determined by further Order of the court.
-

SCHEDULE “A”
IMPUGNED DOCUMENTS

Alleged Misrepresentations - The plaintiffs allege that KEW released documents containing misrepresentations including but not limited to:		
Date(s)	Alleged Misrepresentation	Impugned Document(s)
Mar. 28, 2017 – Nov. 14, 2019	KEW reported inaccurate financial results and figures relating to its working capital.	All financial statements and MD&As
Mar. 28, 2017	“[...] the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these internal controls and procedures was effective in order to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with IFRS [...].”	Q4 2016 MD&A
Mar. 28, 2017	“[...] the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these disclosure controls and procedures were effective and that material information relating to the Corporation was made known to them and was recorded, processed, summarized and reported within the time periods specified under applicable securities legislation.”	Q4 2016 MD&A
Mar. 28, 2017 – Nov. 14, 2019	“The Financial Statements have been prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”).”	All MD&As from Q4 2016 – Q3 2019
Mar. 28, 2017 – Nov. 14, 2019	<p>Certifications under NI 52-109:</p> <p>(a) the interim and annual filings do not contain any untrue statement of material fact or 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;</p> <p>(b) the interim and annual filings fairly present in all material respects the financial condition, financial performance and cash flows of KEW;</p> <p>(c) they have designed or caused to be designed under their supervision DC&P to provide reasonable assurance that:</p> <p style="margin-left: 40px;">i. material information relating to KEW is made known to them by others; and</p> <p style="margin-left: 40px;">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</p>	All NI 52-109 certificates filed during the class period, including as amended

	<p>within the time periods specified in securities legislation;</p> <p>(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;</p> <p>(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</p> <p>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.</p>	
May 15, 2017	“[...] cash flow from operations and the proposed credit facilities will provide the company with sufficient financial resources to fund its operations for the next 12 months.”	Q1 2017 MD&A
May 15, 2017	“[...] it will be a revolving facility subject to normal industry borrowing base criteria that establishes the availability under the facility [...].”	Q1 2017 Financial Statements
May 15, 2017	“[...] the Corporation's Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) have designed disclosure controls and procedures and established processes to ensure that they are provided with sufficient knowledge to support the representations made in the interim certificates required to be filed under National Instrument 52-109.”	Q1 2017 MD&A
May 15, 2017 – Nov. 14, 2019	“Taking account of the expected closing of the SunTrust Facility, Management believes that cash flow from operations and the proposed credit facilities will provide the Company with sufficient financial resources to fund its operations for the next 12 months.”	All MD&A's from Q1 2017 – Q3 2019
May 15, 2017 – Nov. 14, 2019	“These interim consolidated financial statements (the “financial statements”) of the Corporation have been prepared in accordance with International Accounting Standard 34.”	All interim financial statements from Q1 2017 – Q3 2019
May 15, 2017 – Nov. 14, 2019	“[KEW's] CEO and CFO have assessed [...] the design effectiveness of the Corporation's ICFR as at [] using the framework and criteria established in Internal Control – Integrated Framework (“COSO Framework”) [...] and have not identified any material weaknesses relating to the design of the Corporation's ICFR framework.”	All MD&As from Q1 2017– Q3 2019
Aug. 10, 2017 – Nov. 14, 2019	“[...] [KEW's] Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) have concluded that the design of these controls and procedures 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 National Instrument 52-109.”	All MD&As from Q2 2017– Q3 2019

May 15, 2017 – May 14, 2019	“[KEW] was in compliance with all loan covenants.” “[...] Kew met all of the covenants set out in the credit facility.”	All MD&A’s from Q1 2017 to Q1 2019
Nov. 9, 2017 – Aug. 13, 2019	“[...] Kew met all covenants.” “[...] Kew met all of these covenants.”	All financial statements from Q3 2017 to Q2 2019
Nov. 9, 2017 – Nov 14, 2019	“[...] the corporation had approximately [X] available under its loan facilities [...].”	All MD&A’s from Q3 2017 – Q3 2019
Nov. 9, 2017 – Nov 14, 2019	“[...] the amount available at any point in time is based on a borrowing base calculation and as at [date], the calculation had availability of approximately [X] beyond the borrowings [...].”	All Financial Statements from Q3 2017 – Q3 2019
May 11, 2018 and Apr. 4, 2019	“As of the date of this Circular, there have been no material violations of the Code of Business Conduct and Ethics.”	Management Information Circular dated May 11, 2018
Nov. 14, 2019	“[...] the covenants in the Facility continue to be met.”	MD&A and interim financial statement Q3 2019

Omissions – The plaintiffs allege that KEW released documents containing omissions including but not limited to:
In the process of renegotiating the terms of KEW’s Credit Facility to delete its leverage coverage ratio, Kew utilized inaccurate information, including in respect of Kew’s cash flow and working capital.
There were deficiencies underlying KEW’s base borrowing certificates.
KEW provided reports to its lenders containing inaccurate information about working capital.
KEW provided inaccurate information to its auditor, Grant Thornton.
KEW improperly used cash from its subsidiaries to fund ongoing operations and to remedy KEW’s cash flow and working capital deficiencies.
There was a material risk that the revelation of these omissions would lead to regulatory action, including the cease trading of KEW’s shares.
There was a material uncertainty as to KEW’s ability to continue as a going concern.

Impugned Documents

“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;
- (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;
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- (xxvii) Management Information Circular dated May 11, 2018, filed on **SEDAR** on May 16, 2018;
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- (xxix) **MD&A** for the three months ended June 30, 2018, filed on **SEDAR** on August 14, 2018;
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- (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;
- (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;
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- (xxxviii) **AIF** for the year ended December 31, 2018 filed on **SEDAR** on April 1, 2019;
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 - (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;
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 - (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;
- (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;

SCHEDULE “B”

KEW MEDIA GROUP INC. CLASS ACTION NOTICE OF OPT OUT

TO: All persons or entities who acquired securities issued by Kew Media Group Inc. in the secondary market March 28, 2017 to January 16, 2020, inclusive, other than Kew Media Group Inc. and its directors and officers.

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.
YOU MAY NEED TO TAKE PROMPT ACTION**

IMPORTANT DEADLINE:

Opt-Out Deadline (for individuals and entities that wish to exclude themselves from the Class Action. See page __for more details.):



Opt-Out Forms will not be accepted after this deadline. As a result, it is necessary that you act without delay.

CERTIFICATION OF THIS ACTION AS A CLASS PROCEEDING

On July 20, 2020, an action was commenced in the Ontario Superior Court of Justice against Kew Media Group Inc., Steven Silver, Geoffrey Webb, David Fleck, Maurice Kagan, Patrice Merrin, Peter Sussman and Erick Kwak. The action alleges that the public filings of Kew Media Group Inc. contained false and misleading statements. The action seeks damages arising from a decline in the value of Kew Media Group Inc.’s securities.

The Court has not decided whether the Plaintiffs or the Defendants are right. The lawyers for the Plaintiffs will have to prove their claims in Court.

On ●, 2021, the Ontario Superior Court of Justice certified this action as a class action as against the individual defendants, Geoffrey Webb and Steven Silver. This means that the lawsuit meets the requirements for a class action and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against Kew Media Group Inc. on your behalf are correct. This notice explains all of these things.

WHO IS BOUND BY THE CLASS ACTION?

The Ontario Superior Court of Justice certified the class action on behalf of the following group (the “Class”):

All persons or entities who acquired securities issued by Kew Media Group Inc. in the secondary market between March 28, 2017 to

January 16, 2020 inclusive, other than Kew Media Group Inc., and its directors and officers.

REQUESTING EXCLUSION FROM THE CLASS

You are automatically part of the Class unless you “opt out” of (exclude yourself from) the action.

If you want to stay in the Class, you do not have to do anything. You will not be able to make or maintain any other claims or legal proceeding in relation to the matters alleged in this action. There will not be any financial consequences to you if the action is not successful.

If you do not want to be bound by the class action, you must opt out. If you wish to opt out, you may do so by completing an “Opt Out Form”. If you opt out, you will exclude yourself from the class action. If the class action obtains money or other benefits you will not be able to share in them. In order to successfully opt out, you must include all of the information requested by the Opt-Out Form.

If you wish to opt out, you must submit your fully completed Opt-Out Form to the Opt-Out Administrator at the applicable above-noted address, no later than •.

The Opt-Out Forms are available by contacting the Opt-Out Administrator.

THE LAWYERS THAT REPRESENT THE CLASS MEMBERS

The law firms of Kalloghlian Myers LLP and Foreman & Company (“Class Counsel”) jointly represent the Class in the Proceedings. Class Counsel will only be paid if they win a trial or if there is a settlement. The Plaintiffs have agreed with Class Counsel that Class Counsel may seek legal fees totalling up to 33% of any judgment or settlement, plus repayment of disbursements. The Court must approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the defendant. Class Counsel can be reached by mail, email, or by telephone, as provided below:

[addresses]

**DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO
SUPERIOR COURT OF JUSTICE**

Number of Securities

Date of Sale

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You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Kew Media Group Inc. common shares in the Class Period.

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Kew Media Group Inc. securities and am the above identified Class Member. I am signing this form to exclude myself from the participation in the Kew Media Group Inc. Class Action.

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY THE CLASS ACTION AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE DEFENDANTS.

Signature _____

Date Signed: _____

Please mail your Opt Out Form to:

[address]

Alex Kan et al. - and - Kew Media Group Inc. et al.
 Plaintiffs Defendants

Court File No. CV-20-00644200-00CP

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

**ORDER
 (Certification)**

KALLOGHLIAN MYERS LLP
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 Suite 200
 Toronto, ON M5H 3E5

Paul Guy
 (LSO#: 49794K)
Serge Kalloghlian
 (LSO#: 55557F)
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Lawyers for the Plaintiffs

Court File No. CV-20-00644200-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

_____, THE _____
DAY OF _____, 2021

JUSTICE

B E T W E E N :

ALEX KAN and STUART RATH

Plaintiffs

- and -

**KEW MEDIA GROUP INC., STEVEN SILVER and
GEOFFREY WEBB**

Defendants

Proceedings under the *Class Proceedings Act, 1992*

ORDER
(Leave Under for Part XXIII.1 of the *Securities Act*)

THIS MOTION made by the Plaintiffs for an order granting leave to pursue the statutory right of action under Part XXIII.1 of the *Securities Act* (the “**OSA**”) and, if necessary, the concordant provisions of comparable securities legislation of other provinces and territories in Canada (the “**Other Securities Legislation**”), as against the Defendants Geoffrey Webb and Steven Silver (collectively, the “**Individual Defendants**”) was heard this day.

UPON READING the Plaintiffs’ motion record and factum,

AND ON HEARING the submissions of counsel for the Plaintiffs in this action,

AND UPON READING the consents of the Individual Defendants to this motion and Order,

1. **THIS COURT ORDERS** that the Plaintiffs are granted leave to commence an action as against the Individual Defendants under section 138.3 of the *OSA* and, if necessary, the Other Securities Legislation in respect of the representations made in the impugned documents as listed in **Schedule “A”** attached to this Order.
 2. **THIS COURT ORDERS** that costs for this motion shall be awarded in the cause, on a partial indemnity basis, as agreed between the parties or as determined by further Order of this Court.
-

SCHEDULE “A”
IMPUGNED DOCUMENTS

Alleged Misrepresentations - The plaintiffs allege that KEW released documents containing misrepresentations including but not limited to:		
Date(s)	Alleged Misrepresentation	Impugned Document(s)
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	<p>(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;</p> <p>(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</p> <p>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.</p>	
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May 15, 2017 – May 14, 2019	“[KEW] was in compliance with all loan covenants.” “[...] Kew met all of the covenants set out in the credit facility.”	All MD&A's from Q1 2017 to Q1 2019

Nov. 9, 2017 – Aug. 13, 2019	“[...] Kew met all covenants.” “[...] Kew met all of these covenants.”	All financial statements from Q3 2017 to Q2 2019
Nov. 9, 2017 – Nov 14, 2019	“[...] the corporation had approximately [X] available under its loan facilities [...].”	All MD&A’s from Q3 2017 – Q3 2019
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- (xxxvii) **MD&A** for the year ended December 31, 2018, filed on **SEDAR** on April 1, 2019;
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 - (l) Form 52-109F2R Certification of Refiled Interim Filings (CEO), filed on **SEDAR** on August 16, 2019;

- (li) Form 52-109F2R Certification of Refiled Interim Filings (CFO), filed on **SEDAR** on August 16, 2019;
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- (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;

Alex Kan et al.
Plaintiffs

and

Kew Media Group Inc. et al.
Defendants

Court File No. CV-20-00644200-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Leave Under for Part XXIII.1 of the *Securities Act*)**

KALLOGHLIAN MYERS LLP
250 University Avenue,
Suite 200
Toronto, ON M5H 3E5

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sbowden@foremancompany.com
alegatewolfe@foremancompany.com

Lawyers for the Plaintiffs

C

This is Exhibit "C" to the Affidavit
of LUKE DEVINE sworn this
19th day of May, 2023.

A handwritten signature in black ink, appearing to read "G. Fox", written over a horizontal line.

A commissioner, etc.

AMENDED THIS Oct-6, 2021 PURSUANT TO
 MODIFIÉ CE _____ CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (_____)

THE ORDER OF The Honourable Judge Mogan
 L'ORDONNANCE DE _____

DATED / FAIT LE Sept. 27, 2021

Court File No.: CV-20-00644200-00CP

REGISTRAR
 SUPERIOR COURT OF JUSTICE

GREFFIER
 COUR SUPÉRIEURE DE JUSTICE

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 and
 GEOFFREY WEBB**

Defendants

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

FRESH AS AMENDED 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.

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

- 2 -

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 ²⁰ ~~13~~, 2020

Issued by "CIVIL E-FILED"
Local Registrar

Address of court office 361 University Ave.
Toronto, ON
M5G 1T3

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: **Goodmans**
Attn: David Conklin
Bay Adelaide Centre – West Tower
333 Bay Street, Suite 3400
Toronto, ON
M5H 2S7
Counsel for the Defendant, Steven Silver

AND TO: **Fasken**
Attn: David Hausman & Jonathan Wansbrough
Bay Adelaide Centre -
333 Bay Street, Suite 2400
Toronto, ON
M5H 2T6

Counsel for the Defendant, Geoffrey Webb

I. RELIEF SOUGHT

1. The Plaintiffs claim:
 - (a) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs for the Class;
 - (b) 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;
 - (c) a declaration that the Defendants made misrepresentations contrary to section 138.3 of the *OSA*, and, if necessary, the corresponding provisions of the Other Securities Legislation;
 - (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 and damages under Part XXIII.1 of the *OSA* and, if necessary, the corresponding provisions of the Other Securities Legislation, 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:
 - (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) “**GAAP**” means generally accepted accounting principles;
- (n) “**IAS**” means International Accounting Standard;
- (o) “**ICFR**” means internal controls over financial reporting, as defined in section 1(1) of NI 52-109;
- (p) “**IFRS**” means International Financial Reporting Standards;
- (q) “**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;
 - (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;
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- (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;
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- (xx) **AIF** for the year ended December 31, 2017 filed on **SEDAR** on April 3, 2018;
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- (xlii) Interim Financial Statements for the three months ended March 31, 2019, filed on **SEDAR** on May 14, 2019;
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 - (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;

- (r) **“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;

- (s) “**Individual Defendants**” means **Silver** and **Webb** collectively;
- (t) “**KEW**” means the defendant, KEW Media Group Inc.;
- (u) “**Lenders**” means a syndicate of SunTrust Bank (now Truist Bank), SunTrust Robinson Humphrey, Inc., The Toronto-Dominion Bank and Bank of Montreal;
- (v) “**MD&A**” means Management’s Discussion and Analysis;
- (w) “**NI 52-109**” means CSA National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings*;
- (x) “**OSA**” means the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended;
- (y) “**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;
- (z) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval, which is a filing system developed for the CSA;
- (aa) “**Silver**” means the defendant, Steven Silver, who was **KEW**’s **CEO** and a director of **KEW** during the **Class Period**;
- (bb) “**TSX**” means the Toronto Stock Exchange; and
- (cc) “**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 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;

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- (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;
- (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.

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. 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.

16. 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

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

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

19. 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 \$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.

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

28. 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;
- (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.

29. As set out below and as particularized in Schedule “A”, 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

30. 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.

31. 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

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

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

34. 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.

35. Each of KEW's quarterly or annual financial statements and MD&A issued between Q1 2017 and the end of the Class Period stated that KEW met all the lending covenants in its Credit Facility with the Lenders.

36. 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.

37. 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.

38. 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.

C. Misrepresentation Relating to Availability of Sufficient Financial Resources

39. During the Class Period, the KEW and the Individual 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. KEW and the Individual 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.

40. 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

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

42. 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.

43. 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.

44. 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.

45. The company'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.

46. 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

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

48. 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.

49. 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.

50. 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 Silver and Webb:

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- (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.

51. 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*.

52. Specifically, Silver and Webb certified that:

- (a) the interim and annual filings do not contain any untrue statement of material fact or 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;
- (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

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- (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.

53. 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;
- (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.

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

55. 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

56. 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 conform to applicable legal, accounting and auditing requirements."

57. 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.

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

59. As set out above, KEW and the Individual 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. Omissions During the Class Period

60. KEW and the Individual Defendants failed to disclose in the Impugned Disclosure that KEW had, *inter alia*:

- (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.

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

VII. THE TRUTH IS DISCLOSED

62. 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.

63. 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.

64. 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.

65. 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.

66. 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.

67. 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;
- (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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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. CAUSES OF ACTION

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

74. The Plaintiffs plead on behalf of themselves and the Class the cause of action in Part XXIII.1 of the *OSA* and, if necessary, the equivalent provisions of the Other Securities Legislation against the Individual Defendants and KEW.

75. The Plaintiffs and the Class Members are deemed to have relied upon the misrepresentations contained within the Impugned Documents filed during the Class Period, pursuant to s. 138.3(1) of the *OSA* and the corresponding provisions of the Other Securities Legislation.

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

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

78. 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.

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

80. 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.

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

82. 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.

83. Accordingly, KEW and the Individual 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) and the corollary provisions of the Other Securities Legislation.

B. Common Law Claim: Negligent Misrepresentation

84. 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.

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

86. 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.

87. 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.

88. 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.

89. 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.

90. 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

91. 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.

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

93. 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.

94. 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.

95. 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.

96. 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.

97. 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

98. 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.

99. 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.

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

XI. VICARIOUS LIABILITY

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

102. 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.

103. 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

104. 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.

XIII. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

105. 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

106. 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.

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

July ²⁰~~13~~th, 2020

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Schedule “A” – Alleged Misrepresentations and Impugned Documents

Alleged Misrepresentations - The plaintiffs allege that KEW released documents containing misrepresentations including but not limited to:		
Date(s)	Alleged Misrepresentation	Impugned Document(s)
Mar. 28, 2017 – Nov. 14, 2019	KEW reported inaccurate financial results and figures relating to its working capital.	All financial statements and MD&As
Mar. 28, 2017	“[...] the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these internal controls and procedures was effective in order to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with IFRS [...].”	Q4 2016 MD&A
Mar. 28, 2017	“[...] the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these disclosure controls and procedures were effective and that material information relating to the Corporation was made known to them and was recorded, processed, summarized and reported within the time periods specified under applicable securities legislation.”	Q4 2016 MD&A
Mar. 28, 2017 – Nov. 14, 2019	“The Financial Statements have been prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”).”	All MD&As from Q4 2016 – Q3 2019
Mar. 28, 2017 – Nov. 14, 2019	<p>Certifications under NI 52-109:</p> <p>the interim and annual filings do not contain any untrue statement of material fact or 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;</p> <p>the interim and annual filings fairly present in all material respects the financial condition, financial performance and cash flows of KEW;</p> <p>they have designed or caused to be designed under their supervision DC&P to provide reasonable assurance that:</p> <ol style="list-style-type: none"> 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, 	All NI 52-109 certificates filed during the class period, including as amended

	<p>summarized and reported within the time periods specified in securities legislation;</p> <p>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;</p> <p>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</p> <p>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.</p>	
May 15, 2017	“[...] cash flow from operations and the proposed credit facilities will provide the company with sufficient financial resources to fund its operations for the next 12 months.”	Q1 2017 MD&A
May 15, 2017	“[...] it will be a revolving facility subject to normal industry borrowing base criteria that establishes the availability under the facility [...].”	Q1 2017 Financial Statements
May 15, 2017	“[...] the Corporation's Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) have designed disclosure controls and procedures and established processes to ensure that they are provided with sufficient knowledge to support the representations made in the interim certificates required to be filed under National Instrument 52-109.”	Q1 2017 MD&A
May 15, 2017 – Nov. 14, 2019	“Taking account of the expected closing of the SunTrust Facility, Management believes that cash flow from operations and the proposed credit facilities will provide the Company with sufficient financial resources to fund its operations for the next 12 months.”	All MD&A's from Q1 2017 – Q3 2019
May 15, 2017 – Nov. 14, 2019	“These interim consolidated financial statements (the “financial statements”) of the Corporation have been prepared in accordance with International Accounting Standard 34.”	All interim financial statements from Q1 2017 – Q3 2019
May 15, 2017 – Nov. 14, 2019	“[KEW's] CEO and CFO have assessed [...] the design effectiveness of the Corporation's ICFR as at [] using the framework and criteria established in Internal Control – Integrated Framework (“COSO Framework”) [...] and have not identified any material weaknesses relating to the design of the Corporation's ICFR framework.”	All MD&As from Q1 2017– Q3 2019

Aug. 10, 2017 – Nov. 14, 2019	“[...] [KEW’s] Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) have concluded that the design of these controls and procedures 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 National Instrument 52-109.”	All MD&As from Q2 2017– Q3 2019
May 15, 2017 – May 14, 2019	“[KEW] was in compliance with all loan covenants.” “[...] Kew met all of the covenants set out in the credit facility.”	All MD&A’s from Q1 2017 to Q1 2019
Nov. 9, 2017 – Aug. 13, 2019	“ [...] Kew met all covenants.” “[...] Kew met all of these covenants.”	All financial statements from Q3 2017 to Q2 2019
Nov. 9, 2017 – Nov 14, 2019	“[...] the corporation had approximately [X] available under its loan facilities [...].”	All MD&A’s from Q3 2017 – Q3 2019
Nov. 9, 2017 – Nov 14, 2019	“[...] the amount available at any point in time is based on a borrowing base calculation and as at [date], the calculation had availability of approximately [X] beyond the borrowings [...].”	All Financial Statements from Q3 2017 – Q3 2019
May 11, 2018 and Apr. 4, 2019	“As of the date of this Circular, there have been no material violations of the Code of Business Conduct and Ethics.”	Management Information Circular dated May 11, 2018
Nov. 14, 2019	“[...] the covenants in the Facility continue to be met.”	MD&A and interim financial statement Q3 2019

Omissions – The plaintiffs allege that KEW released documents containing omissions including but not limited to:

In the process of renegotiating the terms of KEW’s Credit Facility to delete its leverage coverage ratio, Kew utilized inaccurate information, including in respect of Kew’s cash flow and working capital.

There were deficiencies underlying KEW’s base borrowing certificates.

KEW provided reports to its lenders containing inaccurate information about working capital.

KEW provided inaccurate information to its auditor, Grant Thornton.

KEW improperly used cash from its subsidiaries to fund ongoing operations and to remedy KEW's cash flow and working capital deficiencies.
There was a material risk that the revelation of these omissions would lead to regulatory action, including the cease trading of KEW's shares.
There was a material uncertainty as to KEW's ability to continue as a going concern.

Alex Kan et al.
Plaintiffs

and

KEW Media Group Inc. et al.
Defendant

Court File No.: CV-20-00644200-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

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Respondents

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

Applicant

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

Proceeding commenced at Toronto

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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 STEVEN SILVER

I, Steven Silver, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am the former Chief Executive Officer of the Respondents, Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc., and a defendant in a shareholder class action seeking damages for misrepresentations in secondary markets bearing Court File Number CV-20-00644200CP (the “**Class Action**”).
2. I have reviewed the following documents:
 - (a) the Appointment and Consent to Defence of Class Action (the “**Appointment**”), attached as **Exhibit “A”**; and

(b) an order approving and authorizing the Appointment substantially in the form attached as **Exhibit “B”**.

3. If the Court grants the Order, and approves the Appointment, I am prepared to fulfill my role in accordance with the terms of the Order and Appointment.

4. I am advised by Mark Dunn, one of the lawyers at Goodmans LLP that represents me in this matter, that any negotiated resolution of the Class Action must be approved by the Court.

Sworn remotely by Steven Silver stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 19th day of May, 2023 in accordance with O/ Reg. 431/20, *Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits
Name:



Name: Steven Silver

This is **Exhibit “A”** referred to in
the Affidavit of **Steven Silver** sworn remotely
this 19th day of May 2023

A handwritten signature in black ink, appearing to be the initials 'MS' or similar, written in a cursive style.

A Commissioner for Taking Affidavits

CONSENT TO DEFENCE OF CLASS ACTION

THIS CONSENT is made on this _____ day of May 2023, by **FTI Consulting Canada Inc. (“FTI”)**, in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all the undertaking, property and assets of Kew Media Group Inc. (“**KMG**”).

WHEREAS Alex Kan and Stuart Rath (collectively, the “**Plaintiffs**”) commenced a securities class action on behalf of shareholders of KMG against KMG, together with certain of KMG’s former directors and officers (collectively, the “**D&O Defendants**”) recognising the action has been discontinued against some of the original D&O Defendants, and together with KMG, the “**Defendants**”), bearing Court File Number CV-20-00644200-00CP (the “**Class Action**”), which focuses on allegations that the Defendants are liable under the *Securities Act* (Ontario) and at common law for misrepresentations made in the secondary market;

AND WHEREAS the Plaintiffs – as equity claimants – will not recover on any claims they allege to have in the receivership proceedings due to insufficient assets and proceeds with which to pay the admitted secured claims against KMG and any unsecured claims against KMG, but do wish to pursue the Defendants’ for recoveries that would be subject to coverage being available and would be payable by insurers (the “**Defendants’ Insurers**”) under applicable insurance policies;

AND WHEREAS the Receiver has: (i) not defended the Class Action on behalf of KMG to date; and (ii) is in the process of completing its administration of KMG’s receivership proceedings and is preparing to seek its discharge;

AND WHEREAS the Plaintiffs and the D&O Defendants wish to see the Class Action defended by KMG for purposes unrelated to the receivership; namely, because the Defendants’ Insurers require a defence of the Class Action by KMG as a condition precedent to any potential recovery under the applicable insurance policies;

AND WHEREAS Steven Silver is a D&O Defendant and was formerly an officer and director of KMG until his resignation on or about February 28, 2019 ;

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AND WHEREAS the Toronto law firm Goodmans LLP (“**Goodmans**”) was previously retained by KMG as its corporate counsel prior to and for some time during the receivership, and is currently counsel to Mr. Silver and all but one of the D&O Defendants;

AND WHEREAS the Plaintiffs, the D&O Defendants, and the Defendants’ Insurers have consented to Mr. Silver directing Goodmans on behalf of KMG in KMG’s defence of the Class Action, and Goodmans has consented to act as counsel in respect of same;

AND WHEREAS in light of the prospective discharge of the Receiver in the near term, the Plaintiffs, the D&O Defendants, the Defendants’ Insurers, and Goodmans have requested that the Receiver authorise and consent to Mr. Silver acting, directing and instructing Goodmans on behalf of KMG in KMG’s defence of the Class Action following the discharge of the Receiver and the termination of KMG’s receivership proceedings;

1. The Receiver hereby authorises and consents to Mr. Silver directing and instructing Goodmans on behalf of KMG in KMG’s defence of the Class Action from and after the discharge of the Receiver and the termination of the KMG receivership proceedings.
2. For greater certainty, the Receiver consents to Mr. Silver having the authority to:
 - (a) Conduct the defence of the Class Action on behalf of KMG in all respects and to represent KMG in the Class Action and in any other related litigation.;
 - (b) Without limiting the generality of the foregoing, instruct Goodmans on behalf of KMG with respect to the conduct of the Class Action and any other related litigation, and in this regard, it is acknowledged that Goodmans shall continue to represent the D&O Defendants for whom it currently acts with respect to the defence of the Class Action and any related litigation;
 - (c) Undertake and perform all such acts and things and to execute and deliver all such deeds, instruments and agreements as may be necessary, desirable or expedient under or in connection with the defence of the Class Action and any related litigation on behalf of KMG; and

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- (d) Appear in the name of KMG and in its stead, and represent KMG, before any competent court, tribunal, legal or public authority or at any out-of-court proceedings, meetings or settlement discussions, including discussions that might involve compromising or settling any claims made against KMG related to the Class Action or any related litigation.
3. Mr. Silver shall not be entitled to any payment or other compensation for undertaking the foregoing role and activities.
4. Neither the Receiver nor FTI shall have any obligations or liability in respect of this authorization and consent, the Class Action or any related litigation, and shall not be required to participate in any way, directly or indirectly, in the defence of the Class Action or any related litigation, or to incur any costs in respect thereof, whether prior to or after the Receiver's discharge, and Mr. Silver shall not request or seek to compel any such participation or incurrence of costs by the Receiver or FTI.
5. Nothing herein shall affect or delay the Receiver's motion for its discharge and the termination of the receivership proceedings.

EFFECTIVE this ___ day of May, 2023.

**KEW MEDIA GROUP INC., by FTI
Consulting Canada Inc., in its capacity as
Court-appointed receiver and manager, and not
in its personal capacity**

Per:

Name: **Nigel Meakin**

I have authority to bind the Receiver

This is **Exhibit “B”** referred to in
the Affidavit of **Steven Silver** sworn remotely
this 19th day of May 2023

A handwritten signature in black ink, appearing to be the initials 'MS' or similar, enclosed within a circular flourish.

A Commissioner for Taking Affidavits

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
)
JUSTICE) DAY OF, 2023

B E T W E E N:

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

ORDER

THIS MOTION, made by Steven Silver, the former CEO of the Respondents, Kew Media Group Inc. and Kew Media International (Canada) Inc. (together, “**KMG**”), and a defendant in the Class Action (as defined below), for an Order, *inter alia*, approving and authorizing the execution of the Appointment and Consent to Defence of Class Action (the “**Appointment**”, as defined in the Notice of Motion) including the terms thereof, to be executed by FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all the undertaking, property and assets of KMG acquired for, or used in relation to a business carried on by the Kew Media Group.

ON READING the Notice of Motion, the Appointment, the Fifth Report of the Receiver, and the affidavits of Luke Devine and Steven Silver, and on hearing the submissions of counsel for Mr. Silver and the Receiver.

1. **THIS COURT ORDERS** that the Appointment is hereby approved, and the Receiver's execution of the Appointment is hereby authorized and approved, with such minor amendments as may be deemed necessary or appropriate by the Receiver.
2. **THIS COURT ORDERS** that, in accordance with the terms of the Appointment, Steven Silver is hereby empowered and authorized without limitation to:
 - (a) on behalf of KMG, conduct the defence of the shareholder class action commenced against KMG, together with certain of KMG's former directors and officers, bearing Court File Number CV-20-00644200CP (the "**Class Action**") in all respects and to represent KMG in the Class Action and in any other related litigation;
 - (b) Without limiting the generality of the foregoing, to instruct Goodmans LLP, or such other counsel as Mr. Silver may appoint, on behalf of KMG with respect to the conduct of the Class Action and in any other related litigation;
 - (c) Undertake and perform all such acts and things and to execute and deliver all such deeds, instruments and agreements as may be necessary, desirable or expedient under or in connection with the defence of the Class Action and any related litigation on behalf of KMG; and

- (d) Appear in the name of KMG and in its stead, and represent KMG, before any competent court, tribunal, legal or public authority or at any out-of-court proceedings, meetings or settlement discussions, including discussions that might involve compromising or settling any claims made against KMG related to the Class Action or any related litigation.
3. **THIS COURT ORDERS AND DECLARES** subject to further Order of the Court, Mr. Silver will not have any personal liability for any obligations of KMG as a result of his acceptance and exercise of the authority given to him in paragraph 2 above and by the Appointment.
4. **THIS COURT ORDERS AND DECLARES** that Mr. Silver shall not be entitled to any payment or other compensation for undertaking the foregoing role and activities.
5. **THIS COURT ORDERS AND DECLARES** that if Mr. Silver is no longer willing or able to act pursuant to the Appointment, a motion may be made by the Defendants to the case management judge in the Class Action to appoint a suitable replacement.
6. **THIS COURT ORDERS AND DECLARES** that neither the Receiver nor FTI shall have any obligations or liability in respect of the Appointment, the exercise by Mr. Silver of the powers and authorizations granted to him hereunder, the Class Action or any related litigation, and neither the Receiver nor FTI shall be required to participate in any way, directly or indirectly, in the defence of the Class Action or any related litigation, or to incur any costs in respect thereof, whether prior to or after the Receiver's discharge, and Mr. Silver shall not request or seek to compel any such participation or incurrence of costs by the Receiver or FTI. Nothing in this Order or in Mr. Silver's exercise of the powers and

authorizations granted to him hereunder shall affect or delay the Receiver's discharge or the termination of the receivership proceedings.

TRUIST BANK, AS AGENT - and -
KEW MEDIA GROUP INC. AND KEW
MEDIA INTERNATIONAL (CANADA)
INC.

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

Applicant

Respondents

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

Proceeding commenced at Toronto

AFFIDAVIT OF STEVEN SILVER

GOODMANS LLP

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Lawyers for the Respondents

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ON READING the Notice of Motion, the Appointment, the Fifth Report of the Receiver, and the affidavits of Luke Devine and Steven Silver, and on hearing the submissions of counsel for Mr. Silver and the Receiver.

1. **THIS COURT ORDERS** that the Appointment is hereby approved, and the Receiver's execution of the Appointment is hereby authorized and approved, with such minor amendments as may be deemed necessary or appropriate by the Receiver.
2. **THIS COURT ORDERS** that, in accordance with the terms of the Appointment, Steven Silver is hereby empowered and authorized without limitation to:
 - (a) on behalf of KMG, conduct the defence of the shareholder class action commenced against KMG, together with certain of KMG's former directors and officers, bearing Court File Number CV-20-00644200CP (the "**Class Action**") in all respects and to represent KMG in the Class Action and in any other related litigation;
 - (b) Without limiting the generality of the foregoing, to instruct Goodmans LLP, or such other counsel as Mr. Silver may appoint, on behalf of KMG with respect to the conduct of the Class Action and in any other related litigation;
 - (c) Undertake and perform all such acts and things and to execute and deliver all such deeds, instruments and agreements as may be necessary, desirable or expedient under or in connection with the defence of the Class Action and any related litigation on behalf of KMG; and

- (d) Appear in the name of KMG and in its stead, and represent KMG, before any competent court, tribunal, legal or public authority or at any out-of-court proceedings, meetings or settlement discussions, including discussions that might involve compromising or settling any claims made against KMG related to the Class Action or any related litigation.
3. **THIS COURT ORDERS AND DECLARES** subject to further Order of the Court, Mr. Silver will not have any personal liability for any obligations of KMG as a result of his acceptance and exercise of the authority given to him in paragraph 2 above and by the Appointment.
4. **THIS COURT ORDERS AND DECLARES** that Mr. Silver shall not be entitled to any payment or other compensation for undertaking the foregoing role and activities.
5. **THIS COURT ORDERS AND DECLARES** that if Mr. Silver is no longer willing or able to act pursuant to the Appointment, a motion may be made by the Defendants to the case management judge in the Class Action to appoint a suitable replacement.
6. **THIS COURT ORDERS AND DECLARES** that neither the Receiver nor FTI shall have any obligations or liability in respect of the Appointment, the exercise by Mr. Silver of the powers and authorizations granted to him hereunder, the Class Action or any related litigation, and neither the Receiver nor FTI shall be required to participate in any way, directly or indirectly, in the defence of the Class Action or any related litigation, or to incur any costs in respect thereof, whether prior to or after the Receiver's discharge, and Mr. Silver shall not request or seek to compel any such participation or incurrence of costs by the Receiver or FTI. Nothing in this Order or in Mr. Silver's exercise of the powers and

authorizations granted to him hereunder shall affect or delay the Receiver's discharge or the termination of the receivership proceedings.

Applicant Respondents

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

Proceeding commenced at Toronto

ORDER

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Respondents

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

Applicant

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

Proceeding commenced at Toronto

NOTICE OF MOTION
(motion returnable May 25, 2023)

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