

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

B E T W E E N:

**PRODUCTIVITY MEDIA INCOME FUND I LP, by its general partner,
PRODUCTIVITY MEDIA INC., by its court-appointed receiver and manager,
KSV RESTRUCTURING INC.**

Plaintiff

and

**WILLIAM GREGORY SANTOR, SONJA SANTOR also known as SONJA
NISTELBERGER, RADIANT FILMS INTERNATIONAL INC., DARK STAR
PICTURES (CANADA) INC., CONCOURSE MEDIA INC., JOKER FILMS
PRODUCTIONS INC., 8397830 CANADA INC., PRODUCTIVITY MEDIA
RELEASING INC., PRODUCTIVITY MEDIA RENTALS INC., PRODUCTIVITY
MEDIA PRODUCTIONS (CAYMAN) LTD., PROSAPIA CAPITAL
MANAGEMENT CORP., PROSAPIA HOLDINGS INC., PROSAPIA PROPERTY
MANAGEMENT INC., PROSAPIA WEALTH MANAGEMENT LTD.,
ERBSCHAFT CAPITAL CORP., STREAM.TV (CAYMAN) LTD., STARK
INDUSTRIES LIMITED, JOHN DOE, MARY DOE, and ABC COMPANY**

Defendants

FACTUM OF THE MOVING PARTY

(Ex Parte Motion for Mareva Injunction and Norwich Order)

DLA PIPER (CANADA) LLP
Barristers & Solicitors
Suite 5100, Bay Adelaide – West Tower
333 Bay Street
Toronto, ON M5H 2R2

Jordan R.M. Deering LSO# 86337A

Tel: 416-365-3515
Fax: 403-213-4479
jordan.deering@dlapiper.com

Regan Christensen LSA #24319

Tel: 403-698-8760
regan.christensen@dlapiper.com

Cristina Fulop LSO #82224H

Tel: 416-862-3389
cristina.fulop@dlapiper.com

Lawyers for the Plaintiff / Moving Party

TO: EX PARTE

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Defendants

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PART I – OVERVIEW

1. The Plaintiff, Productivity Media Income Fund I LP (the **Fund**), by its general partner Productivity Media Inc. (**PMI**), by its receiver and manager KSV Restructuring Inc. (**KSV**), seeks urgent injunctive relief in the form of a worldwide *Mareva* injunction over the assets of William Santor (**Mr. Santor**), his wife Sonja Santor, and the corporate Defendants except the Prosapia defendants (collectively, the **Mareva Defendants**), and a *Norwich* Order compelling the Financial Institutions and Corporate Records Offices (the **Third Parties**) to provide information that may assist the Plaintiff in acquiring redress against the Mareva Defendants.

2. While the Plaintiff's investigation is still ongoing, and the full magnitude of its losses are not yet known, approximately \$44,448,871 was misappropriated by Mr. Santor from the Fund. Starting in 2016, Mr. Santor engaged in a fraudulent scheme to perpetrate and conceal the diversion of the gross amount of almost \$100,000,000 from the Fund to various Ontario corporations he created and controlled.

3. The Plaintiff will suffer irreparable harm if the relief sought in this motion is not granted. Both the balance of convenience and the interests of justice favour the granting of this relief.

PART II – FACTUAL BACKGROUND

4. The following facts were uncovered a result of the investigation undertaken by the Plaintiff through PricewaterhouseCoopers LLP (**PwC**) (the **Investigation**) following the receipt of an anonymous whistleblower report on August 20, 2024 (**the Whistleblower Report**), that contained various allegations of misconduct in respect of PMI and the Fund.

5. Detailed information regarding PMI's business and operations, as well as the conduct of Mr. Santor revealed through the Investigation, is contained in the Affidavit of Andrew Chang-Sang sworn November 20, 2024¹ and the Affidavit of Krista Mooney of PwC affirmed November 20, 2024.² All capitalized terms used but not defined herein have the meanings ascribed to them in these affidavits, where appropriate. In addition, we refer the Court to the "Glossary" and "Cast of Characters" attached as Schedules D and E hereto, which explain the defined terms and the key persons and corporations involved in this matter.

¹ Tab 4, Plaintiff's Motion Record, Vol 2 [Chang-Sang Affidavit].

² Tab 5, Plaintiff's Motion Record, Vol 3 [PwC Affidavit].

A. The Parties

The Plaintiff and Mr. Santor

6. PMI is an Ontario corporation, incorporated January 17, 2012. The Fund is a limited partnership formed February 29, 2012. The day-to-day affairs of the Fund are managed by PMI.³ PMI and the Fund provide senior secured debt financing for film and television productions in Canada and abroad (**Media Projects**).⁴

7. PMI and the Fund had three co-founders (the **Co-Founders**)⁵, which also comprised PMI's investment committee (the **Investment Committee**).⁶

a. The defendant, Mr. Santor, previously served as PMI's Chief Executive Officer. He currently holds 50% of the voting shares in PMI. Mr. Santor is a Canadian citizen, but he has resided full-time in the Cayman Islands with his wife, Sonja Santor, since 2019. As a result of the Investigation, Mr. Santor was placed on a temporary leave of absence from his duties as PMI's CEO in August 2024.⁷

b. John Hills (**Mr. Hills**) holds the title of Founder, Executive for PMI. He previously served as PMI's Chief Operating Officer. He holds 25% of the voting shares of PMI.

c. Andrew Chang-Sang is PMI's President and Chief Financial Officer. He holds the remaining 25% of the voting shares of PMI.

8. The Co-Founders are the only shareholders and directors of PMI.⁸ Shara Lerman, who has served as PMI's General Counsel since November 2021, is an officer of PMI.⁹

9. On November 19, 2024, KSV was appointed as receiver over the business and affairs of PMI and the Fund.¹⁰

The Mareva Defendants

10. Mr. Santor is married to Sonja Santor (**Ms. Santor**), and together they are the registered co-owners of various real property.¹¹

³ Chang-Sang Affidavit at paras 2-3; PwC Affidavit at paras 10, 14.

⁴ Chang-Sang Affidavit at para 20.

⁵ Chang-Sang Affidavit at para 6.

⁶ Chang-Sang Affidavit at para 7.

⁷ Chang-Sang Affidavit at para 75.

⁸ PwC Affidavit at para 11.

⁹ Chang-Sang Affidavit at para 7.

¹⁰ Chang-Sang Affidavit at para 12, Exhibit 9.

¹¹ PwC Affidavit at paras 16, 248, 264.

11. Mr. Santor wholly owns and/or controls Prosapia Capital Management Corp., Prosapia Holdings Inc., Prosapia Property Management Inc., and Prosapia Wealth Management Ltd. (the **Prosapia Group**).¹²

12. Mr. Santor also wholly owns and/or controls the following corporate entities: 839 Canada, PM Releasing, PM Rentals, PM Cayman, Erbschaft, Stream.TV Cayman, and Stark Industries, as well as Radiant Canada, Dark Star Canada, Concourse Canada, and Joker Films¹³ (together with the Prosapia Group, the **Corporate Defendants**).

13. Mr. Santor, Ms. Santor, and the Corporate Defendants other than the Prosapia Group are hereinafter referred to collectively as the **Mareva Defendants**.

B. Business of PMI and the Fund

14. Mr. Santor approached Mr. Hills and Mr. Chang-Sang about creating PMI and the Fund in early 2012. Mr. Santor represented that he had prior work experience in the entertainment industry and that he would leverage his industry knowledge and his connections in Hollywood and throughout the international film industry for this venture.¹⁴

15. Mr. Santor served as the CEO and public face of PMI. He primarily handled interactions with producers, directors, sales agents, distributors, and other members of the entertainment industry. Mr. Santor was also primarily responsible for evaluating the sales projections provided by sales agents and distributors as well as the commercial viability of the Media Projects.¹⁵

16. Mr. Hills and Mr. Chang-Sang handled PMI and the Fund's internal operations as neither had any prior experience in the entertainment industry.¹⁶ Mr. Hills and Mr. Chang-Sang reviewed the high-level financial projections and business rationale behind proposed Media Project loans before approving (or not approving) them. However, they relied upon Mr. Santor's assessment of a Media Project's financial viability in determining whether to authorize loan advances respecting approved Media Projects.¹⁷

¹² PwC Affidavit at paras 21-24.

¹³ PwC Affidavit at paras 17-20, 25-28, 30, 32, 34.

¹⁴ Chang-Sang Affidavit at paras 13-18.

¹⁵ Chang-Sang Affidavit at paras 18-20.

¹⁶ Chang-Sang Affidavit at para 17-19.

¹⁷ Chang-Sang Affidavit at para 20.

17. PMI and the Fund offer production financing, which involves loans to production companies that are secured against (i) government tax credits, (ii) pre-sales and/or minimum guarantees from sales agents and/or distributors, and (iii) revenues from sales in unsold territories.

18. PMI and the Fund also offer loans to sales agents and distribution companies for the purpose of allowing them to provide minimum guarantees to film production companies (**MG Loans**).¹⁸ A minimum guarantee is a commitment by the sales agent or distributor to pay a certain minimum amount to the production company for a Media Project, regardless of the actual sales generated by that Media Project. MG Loans are secured against the borrower's assets. The Fraudulent Scheme involved MG Loans.

19. From 2016 to 2024, PMI dealt with a number of legitimate and reputable sales agents and distributors who were involved on Media Projects where PMI provided financing to the production company. These included Radiant US, Dark Star US, Concourse US, and Joker Films.¹⁹

C. The Fraudulent Scheme

20. Mr. Santor appears to have selected Radiant US, Dark Star US, Concourse US, and Joker Films (each a **Target Corporation**) as vehicles through which to perpetrate the Fraudulent Scheme because they had legitimate business dealings with PMI, they were familiar to the Investment Committee, and they would plausibly require MG Loans on new Media Projects.²⁰

21. For each Target Corporation, Mr. Santor either incorporated a similarly named corporation that he controlled—Radiant Canada, Dark Star Canada, and Concourse Canada (each an **Imposter Corporation**)—or represented in the loan documentation that Mr. Santor's company, 839 Canada, was operating as "Joker Media," which was understood to be Joker Films.²¹

22. Mr. Santor opened bank accounts at National Bank of Canada (**National Bank**) in each of the Impostor Corporations' names, over which he had sole control.²²

¹⁸ Chang-Sang Affidavit at paras 21-22.

¹⁹ Chang-Sang Affidavit at para 28, Exhibits 11-14.

²⁰ PwC Affidavit at para 37.

²¹ PwC Affidavit at paras 38, 55, 93, Exhibits 20, 24, 27, 72; Chang-Sang Affidavit at paras 29-30, 115-117, Exhibits 15-18.

²² PwC Affidavit at paras 39, 56-58, 94-95, 150-152.

23. For each Imposter Corporation, Mr. Santor registered a fake domain name (an **Imposter Domain Name**) similar to and which imitated the legitimate domain name of its corresponding Target Corporation.²³ Mr. Santor then used the Imposter Domain Names to create fake email accounts (**Imposter Email Accounts**) similar to the legitimate email accounts used by the principals of the Target Corporations.²⁴

24. For each Imposter Corporation (except Concourse Canada) and 839 Canada d/b/a Joker Media, Mr. Santor prepared and presented a fraudulent deal memo to the Investment Committee, which set out the rationale and terms for a proposed deal Mr. Santor falsely represented he had negotiated with the Target Corporation, based on which terms Mr. Santor proposed the Fund should provide the Target Corporation with a multi-project revolving credit facility.²⁵

25. For each MG Loan, Mr. Santor identified a Media Project (a **Target Media Project**) that was either currently or had previously been under development, and that was either currently or had at some point been connected with one of the Target Corporations.²⁶

26. After selecting a Target Media Project, Mr. Santor appears to have prepared and presented to the Investment Committee for approval²⁷ an Advance Request Package for the approval of an MG Loan, which contained:²⁸

- a. a fraudulent Advance Request Certificate or Borrowing Certificate, which identified the Imposter Corporation's or 839 Canada's bank account as the account into which the MG Loan would be deposited;
- b. a fraudulent distribution agreement or sales agency agreement between the Target Corporation and the owner of the Target Media Project; and
- c. purported loan calculations for the Target Media Project, which included the loan approved amount, closing fees, interest rate, income for the Fund, amount advanced and associated costs.

²³ PwC Affidavit at para 40, 85, 87, 139, 142, 179, 181, Exhibits 46, 101, 150.

²⁴ PwC Affidavit at para 41-42, 86-87, 140, 142, 180-181, 229-230, Exhibit 214.

²⁵ PwC Affidavit at paras 43, 60-62, Exhibit 32 (regarding "Radiant"), paras 97-99, Exhibit 77 (regarding "Dark Star").

²⁶ PwC Affidavit at para 45.

²⁷ Chang-Sang Affidavit at paras 82, 84, 88, 118, Exhibits 45-46.

²⁸ PwC Affidavit at paras 66-67, 69-70, 72, 74, 76-77, Exhibits 35, 38, 40, 43 (regarding "Radiant"), paras 104, 107, 110, 113, 116, 118, 121, 124, 127, 129, 132, 134, Exhibits 79, 83, 87-88, 91, 95, 98 (regarding "Dark Star"), paras 156-157, 160, 162, 165, 167, 171, 174, Exhibits 135, 138, 142, 146 (regarding "Concourse"), paras 203-204, 210-211, 217-219, Exhibits 191, 198, 204 (regarding "Joker Films").

27. Once the MG Loan was approved by the Investment Committee, Mr. Santor, Mr. Chang-Sang or Mr. Hills directed Apex Group Ltd. (**Apex**), the Fund's administrator, to wire the requested MG Loan amount, less PMI and the Fund's closing fees, to the Imposter Corporation's or 839 Canada's bank account as identified in the Advance Request Certificate.²⁹

28. From March 2016 to November 2021, Mr. Santor caused approximately \$98,214,094 CAD to be improperly diverted from the Fund to accounts at National Bank held by the Impostor Corporations and 839 Canada.³⁰ In particular, the Fund made five advances totaling \$17,998,750 CAD to Radiant Canada,³¹ six advances totaling \$17,707,500 CAD to Dark Star Canada,³² seven loans totaling \$28,005,000 CAD to Concourse Canada,³³ and thirteen loans totaling \$27,300,000 CAD and \$5,640,000 USD to 839 Canada d/b/a Joker Films³⁴.

29. Upon review of the applicable loan documentation in connection with each of these advances as part of the Investigation, PwC noted:³⁵

- a. The beneficiary named in the Advance Request Certificates or Borrowing Certificates was an Imposter Corporation with either a Toronto or a Vancouver address. The bank account into which the funds were to be disbursed was at National Bank;
- b. The corresponding Sales Agent Agreement or Short Form Term Sheet indicated that the "agent" or "distributor" was a Target Corporation, which conflicted with the information in the Advance Request Certificates and/or Borrowing Certificates; and
- c. The Advance Request Certificates and/or Borrowing Certificates and the Sales Agent Agreements and/or Short Form Term Sheets were electronically signed, purportedly by the principals of each of the Target Corporations.

30. Once an MG Loan was deposited into an Imposter Corporation's or 839 Canada's bank account, the funds were not held in a Growth Account or otherwise used to support the minimum

²⁹ PwC Affidavit at paras 66, 69, 72, 76, Exhibits 35, 38, 40, 43 (regarding "Radiant"), paras 106, 112, 117, 123, 128, 133, Exhibit 81, 85, 89, 93, 99 (regarding "Dark Star"), paras 156, 161, 166, 173, Exhibits 135, 139, 143, 148 (regarding "Concourse"), paras 200, 210, 217, Exhibits 186, 198, 204 (regarding "Joker Films").

³⁰ PwC Affidavit, Schedule 1.

³¹ PwC Affidavit at para 83.

³² PwC Affidavit at para 137.

³³ PwC Affidavit at para 177.

³⁴ PwC Affidavit at paras 197, 228.

³⁵ PwC Affidavit at paras 67, 70, 74, 77, 107, 113, 118, 124, 129, 134, 157, 162, 167, 174, 204, 211, 219, Exhibits 35, 38, 40, 43, 81, 85, 89, 93, 96, 99, 135, 139, 143, 148, 191, 198, 205.

guarantee for a Target Media Project as Mr. Santor represented. Instead, Mr. Santor used the funds for other purposes.³⁶

31. From 2017 to 2023, Mr. Santor arranged for occasional repayments to the Fund of earlier MG Loans using what appears to be money from later MG Loans in an apparent attempt to conceal the Fraudulent Scheme. These repayments total \$53,765,223 CAD.³⁷

32. Accordingly, the Fund has incurred a net loss of approximately \$44,448,870 CAD. This amount is subject to change as the Investigation continues.

D. Concealment of the Fraudulent Scheme

33. To conceal the Fraudulent Scheme, Mr. Santor impersonated the principals of the Target Corporations using the Imposter Email Accounts, including to send and receive audit confirmation letters (**Audit Confirmation Letters**) required by MNP LLP Chartered Professional Accountants (**MNP**), the Fund's auditor, to verify the accuracy of the MG Loans, including as recently as May 2024.³⁸

34. On numerous occasions, Mr. Santor:³⁹

- a. used his PMI email address to email the Audit Confirmation Letters to the relevant Imposter Email Address, copying MNP and Mr. Chang-Sang;
- b. electronically signed the Audit Confirmation Letters as the principal of the Target Corporation, misrepresenting that the Target Corporation had received the MG Loans that Mr. Santor had induced the Fund to make on false pretenses; and
- c. used the Imposter Email Accounts to send the fraudulently signed Audit Confirmation Letters back to his own PMI email address, copying Mr. Chang-Sang and MNP.

35. Mr. Santor also provided false explanations to Mr. Chang-Sang and others in an effort to conceal the Fraudulent Scheme. In the spring of 2022, while PMI was exploring the possibility of

³⁶ PwC Affidavit at para 49.

³⁷ PwC Affidavit at paras 52, 103, 137, 155, 177, 197, 228, and Schedule I.

³⁸ PwC Affidavit at para 50.

³⁹ PwC Affidavit at paras 88, 91 (regarding "Radiant"), paras 143-147 (regarding "Dark Star"), paras 182-186 (regarding "Concourse"), paras 231-234 (regarding "Joker Films").

obtaining financing from MidCap, issues arose respecting the 2021 Audit Confirmation Letters for Radiant US and Concourse US.⁴⁰

36. In particular, Doug Murray (**Mr. Murray**), PMI's entertainment counsel, asked Ms. Steinbauer about the MG Loans to Radiant US. She initially denied receiving such loans, but on March 25, 2022, she provided a signed 2021 Audit Confirmation Letter stating that Radiant US received the MG Loans. A week later, Ms. Steinbauer verbally confirmed this to Mr. Murray, and she directed him to speak with Mr. Santor about the MG Loans. Mr. Chang-Sang and Mr. Murray separately raised these mixed messages from Ms. Steinbauer with Mr. Santor. He confidently reassured Mr. Chang-Sang and Mr. Murray that Radiant US had received MG Loans, and that Ms. Steinbauer was confusing the MG Loans with another potential loan to Radiant US.⁴¹

37. Mr. Chang-Sang also spoke with Mr. Santor about the 2021 Audit Confirmation Letter for Concourse US, which was purportedly signed by Andrew Felts using an unfamiliar email address. Mr. Chang-Sang questioned why Mr. Felts signed, considering he had transferred his interest in Concourse US to Matthew Shreder nearly three years prior, and pointed out the email address discrepancy. Mr. Santor confidently explained that Mr. Felts and Mr. Shreder were splitting up, and that Mr. Felts was now associated with a new distribution arm for Concourse US and had a new email address.⁴² At the time, Mr. Chang-Sang was reassured by Mr. Santor's explanation.

38. As a result of the Investigation, it is now clear Mr. Santor's explanations in response to the concerns raised by Mr. Chang-Sang and Mr. Murray in 2022 were false. His explanations were no doubt provided to conceal the Fraudulent Scheme.

39. Mr. Santor also arranged for repayment earlier MG Loans using funds suspected to have come from the later MG Loans.⁴³ These repayments provided legitimacy to the MG Loans and concealed the Fraudulent Scheme.

40. In recent years, Mr. Santor blamed the delays in repayment of the MG Loans on the unprecedented impact of the COVID-19 pandemic and the Writer's Guild of America and SAG-AFTRA strikes in 2023 on the film industry.⁴⁴

⁴⁰ Chang-Sang Affidavit at para 33.

⁴¹ Chang-Sang Affidavit at paras 33-52.

⁴² Chang-Sang Affidavit at paras 56-58.

⁴³ PwC Affidavit at paras 52-53, Schedule I.

⁴⁴ Chang-Sang Affidavit at paras 119-122.

E. Discovery of the Fraudulent Scheme

41. In April 2024, Shara Lerman, PMI's General Counsel, spoke with Ms. Steinbauer, who described an instance in 2022 where Mr. Santor asked her to sign an Audit Confirmation Letter on behalf of Radiant US for loans that did not exist, and that she felt forced to sign by Mr. Santor. Ms. Steinbauer advised that Mr. Santor made the same request in 2023, but she refused.⁴⁵

42. Ms. Lerman and Ms. Steinbauer spoke again a few days later. Ms. Steinbauer confirmed that Radiant US never had a Canadian entity, and she denied having any email address other than "mimi@radiant-films.com." Based on her discussion with Ms. Steinbauer, Ms. Lerman determined that none of the films listed in the Radiant Audit Confirmation Letters were actually produced.⁴⁶ Ms. Lerman relayed this information to Mr. Chang-Sang.

43. Mr. Chang-Sang contacted Mr. Santor and advised that Ms. Steinbauer denied signing the Audit Confirmation Letters and that "mimi@radiant-ent.com" was not her email address. Mr. Santor advised he did not know why Ms. Steinbauer said that, but that he would speak with her.⁴⁷ Shortly thereafter, as a result of Ms. Lerman's discussions with Ms. Steinbauer, PMI commenced an internal investigation into the Radiant MG Loans.

44. On August 20, 2024, PMI received the Whistleblower Report that alleged, among other things, over \$100M in "fraudulent movie films". PMI, through its counsel, engaged PwC to conduct a forensic investigation, and the scope of the inquiry expanded from the Radiant MG Loans to other MG Loans with Concourse Canada, Dark Star Canada, and 839 Canada d/b/a Joker Films.⁴⁸

F. The Mareva Defendants' Assets

45. According to a net worth statement dated March 12, 2019 (the **Net Worth Statement**), Mr. Santor owns numerous real and personal assets valued at \$52,000,000 CAD.⁴⁹ These include jewelry valued at \$300,000 CAD, wine valued at \$250,000 CAD, watches valued at \$400,000 CAD, and luxury vehicles valued at over \$500,000 CAD. Mr. Santor and the Mareva Defendants hold accounts and investments with various financial institutions in Canada and the Cayman

⁴⁵ Chang-Sang Affidavit at para 59.

⁴⁶ Chang-Sang Affidavit at para 64.

⁴⁷ Chang-Sang Affidavit at para 65.

⁴⁸ Chang-Sang Affidavit at paras 69, 78.

⁴⁹ PwC Affidavit at para 235, Exhibit 245.

Islands.⁵⁰ The Plaintiff expects to learn of further assets, accounts and investments held by Mr. Santor and the Mareva Defendants as the Investigation continues.

46. Mr. Santor acquired at least three real properties during the known time frame of the Fraudulent Scheme:

- a. A condominium in Studio City, California, USA (the **Studio City Property**), purchased February 27, 2018 for \$1,150,000 USD;⁵¹
- b. A six-acre plot of development land on Grand Cayman (the **20 North Property**) purchased for \$3,537,000 USD using funds wired to 839 Canada by the Plaintiff on November 25, 2021 (described in further detail below), which Mr. Santor sold in February 2023 for \$4,000,000 USD, plus one of the two-bedroom condominium units being built on the development land, worth an estimated \$816,075 CAD;⁵² and
- c. A 9,400 sq. ft. luxury home built on a 21,780 sq. ft. canal-side lot in the gated community of Vista Del Mar, Grand Cayman (the **Vista Del Mar Property**). Mr. Santor purchased the land in February 2019 for \$1,461,313 CAD. From May 2020 to September 2023, Mr. Santor paid numerous instalments for the construction of the home totaling \$9,341,214 CAD.⁵³

47. The Investigation revealed numerous transactions for the period from December 2018 to October 2023 that appear related to Vista Del Mar Property. The total net payments from the Fund to the Imposter Corporations during this time period was \$18,346,063.90 CAD.⁵⁴

48. In September 2023, as part of an application for a secured loan from CIBC First Caribbean, Mr. Santor obtained a formal valuation of the Vista Del Mar Property. The appraiser determined the Vista Del Mar Property was then worth \$8,241,000 USD and would have an estimated market value of \$10,041,000 USD once construction was completed. For unknown reasons, the loan process was not completed.

49. On July 30, 2024, Mr. and Ms. Santor took out a non-purchase mortgage of \$975,000 USD on the Studio City Property.⁵⁵

⁵⁰ PwC Affidavit at paras 236-243.

⁵¹ PwC Affidavit at paras 246, 248, Exhibits 245, 262.

⁵² PwC Affidavit at paras 246, 255-262, Exhibits 267-271.

⁵³ PwC Affidavit at paras 246, 263-271, Exhibits 272-277.

⁵⁴ PwC Affidavit at para 268, Schedule II.

⁵⁵ PwC Affidavit at paras 248-249, Exhibits 262-263.

50. On August 20, 2024, around the time PMI's principals, including Mr. Santor, received the Whistleblower Report,⁵⁶ Mr. Santor emailed CIBC First Caribbean asking what it would take to re-activate his September 2023 application for a loan secured against the Vista Del Mar Property.⁵⁷

51. It recently came to Mr. Chang-Sang's attention that Mr. Santor was making inquiries to sell film equipment and other inventory owned by PM Rentals and currently stored at PMI's office in Burlington, Ontario, valued at approximately \$750,000 CAD.⁵⁸

52. It is unknown what other efforts the Mareva Defendants may be making to shelter or encumber assets improperly obtained through the Fraudulent Scheme. The Plaintiff therefore requests this court's assistance to freeze the assets of the Mareva Defendants, and compel the disclosure of information from the Mareva Defendants and non-parties, to allow the Investigation to continue and to prevent the Mareva Defendants' assets from being dissipated prior to trial.

PART III – STATEMENT OF ISSUES

53. The issues before the Court on this motion are:

- a. Whether the Plaintiff's motion is appropriately brought *ex parte* against Mr. Santor and the other Mareva Defendants;
- b. Whether the Plaintiff is entitled to a worldwide *Mareva* injunction restraining the Mareva Defendants from dealing with their assets and directing the Financial Institutions to freeze the accounts of Mareva Defendants;
- c. Whether the Plaintiff is entitled to an Order compelling Mr. Santor and the other Mareva Defendants to provide disclosure of their assets to the Plaintiff, and compelling Mr. Santor and the other Mareva Defendants to swear affidavits and submit to examinations under oath in respect of their affidavits and assets; and
- d. Whether the Plaintiff is entitled to a *Norwich Pharmacal* Order requiring disclosure from the Financial Institutions and Corporate Records Offices with respect to assets and accounts held on behalf of the Mareva Defendants.

54. The Plaintiff submits the answers to each of these questions is yes.

⁵⁶ See Chang-Sang Affidavit at para 69.

⁵⁷ PwC Affidavit at paras 269-276, Exhibits 276-278.

⁵⁸ Chang-Sang Affidavit at paras 126-127, Exhibit 73.

PART IV – LAW AND ARGUMENT

A. This Motion is Appropriately Brought *Ex Parte*

55. Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice.⁵⁹ There is good reason to believe that the Mareva Defendants, if provided with notice of this motion, will act to frustrate the process prior to the determination of the motion. Therefore, the Plaintiff submits an *ex parte* motion is appropriate.⁶⁰

56. The nature of the Orders sought, and particularly the *Mareva* injunction, necessitates that this motion be brought *ex parte* to avoid the real possibility that the Mareva Defendants will dissipate assets if they are provided with notice. This is particularly so in light of the evidence that Mr. Santor has transferred assets outside of Canada since about 2019, has acquired assets of substantial value in the Cayman Islands using funds properly attributable to the Plaintiff, and has recently made inquiries about mortgaging his Visa Del Mar Property.

57. We note that Mr. Santor received a copy of the Whistleblower Report in August, 2024, and therefore, he is aware of the serious allegations against him. He is also aware that PMI, through PwC, is investigating the allegations.⁶¹ While Mr. Santor generally has notice of the investigation, this fact should not prevent the Plaintiff from proceeding with this Motion on an *ex parte* basis.

58. To ensure all material facts are before the court, applicants are obligated to conduct reasonable investigations before seeking an *ex parte* order. Their disclosure obligations are, however, limited to *material* facts and the fruits of *reasonable* investigation. A fact is only considered material if its non-disclosure could affect the outcome of the motion.⁶²

59. The Plaintiff submits that it has satisfied its burden to provide full and frank disclosure as required by Rule 39.01(6). The Plaintiff has filed the Chang-Sang Affidavit and the PwC Affidavit that include detailed descriptions of the Fraudulent Scheme perpetrated by Mr. Santor and the investigations carried out to date. As such, the Plaintiff has done all that is reasonable in the circumstances to describe the material events as they relate to the relief sought in this motion.

⁵⁹ [Rules of Civil Procedure, RRO 1990, Reg 194, r 37.07\(2\)](#) [Rules].

⁶⁰ [Bell ExpressVu Ltd Partnership v Rodgers \(Tomico Industries\)](#), 2007 CanLII 50595 (ON SC) [at para 18](#) [Bell ExpressVu].

⁶¹ Chang-Sang Affidavit at paras 69-71.

⁶² [Noreast Electronics Co Ltd v Danis](#), 2018 ONSC 879 [at paras 24-25](#) [Noreast Electronics].

B. The Mareva Injunction Should be Granted

60. A *Mareva* injunction is an equitable pre-trial remedy that restrains a defendant from removing assets from the jurisdiction or dissipating assets pending the determination of a claim.⁶³ In determining whether such relief should be granted, the overriding consideration of the Court is that “the defendant threatens to so arrange his assets as to defeat his adversary, should that adversary ultimately prevail and obtain judgment, in any attempt to recover from the defendant on that judgment.”⁶⁴

61. The Court’s power to grant a *Mareva* injunction is derived from its equitable jurisdiction, supplemented by statutory provisions as to injunctive relief. Section 101(1) of the *Courts of Justice Act* provides the court with jurisdiction to grant an interlocutory junction or mandatory order “where it appears to a judge of the court to be just or convenient to do so.”⁶⁵ The court’s jurisdiction to grant a worldwide *Mareva* injunction in appropriate circumstances is derived from its *in personam* jurisdiction over the defendant.⁶⁶

62. The test for a *Mareva* injunction is five-fold and requires a plaintiff to establish:⁶⁷

- a. A strong *prima facie* case;
- b. Grounds for believing the defendant has assets in the jurisdiction;
- c. Grounds for believing there is a real risk that the defendant will remove his assets from the jurisdiction or dissipate those assets to avoid judgment;
- d. That the plaintiff will suffer irreparable harm if the injunction is not granted; and
- e. That the balance of convenience favours granting the injunction.

63. In addition to satisfying all of the above elements, the plaintiff must make full and frank disclosure of all material facts, particularly if the relief is sought on an *ex parte* basis. The plaintiff must also provide an undertaking as to damages. However, as explained further below, the Plaintiff requests relief from this requirement.

⁶³ *Aetna Financial Services Ltd v Fiegelman*, [1985] 1 SCR 2, [1985 CanLII 55 \(SCC\) at para 26](#) [*Aetna*]; *Chitel v Rothbart* (1982), 39 OR (2d) 513, [1982 CanLII 1956 \(ONCA\) at paras 42-43](#) [*Chitel*].

⁶⁴ *Aetna*, [supra note 63 at para 25](#).

⁶⁵ See also *Courts of Justice Act*, [RSO 1990, c C.43, s. 96\(1\)](#).

⁶⁶ *Google v Equustek Solutions Inc*, [2017 SCC 34 at para 38](#), *SFC Litigation Trust (Trustee of) v Chan*, [2017 ONSC 1815 at para 27](#) [*SFC Litigation Trust*].

⁶⁷ *SFC Litigation Trust*, [supra note 66 at para 60](#), *Sorichetti v Sorichetti*, [2021 ONSC 2816 at para 15](#).

64. *Mareva* injunctions are generally granted in cases involving fraud where the assets at issue are the “subject matter of the litigation,” and relief is necessary to prevent the defendants from taking steps to prevent or frustrate recovery in the event of a judgment.⁶⁸ Assets can be frozen to prevent fraud upon the court and the plaintiff.⁶⁹ Given the extraordinarily strong evidence of fraud in this case, it is submitted that the Plaintiff meets the test for a *Mareva* injunction.

65. In the absence of such relief, there is good reason to believe Mr. Santor and the *Mareva* Defendants will succeed in their efforts to misappropriate and misapply millions of dollars and other assets that are the property of the Plaintiff. Further, it will be significantly more difficult, if not impossible, for the Plaintiff to identify and realize upon any assets into which the misappropriated funds might be converted.

(i) The Plaintiff Has Established a Strong *Prima Facie* Case

66. The Plaintiff bears the onus of proving that its claim is not frivolous or vexatious, meaning there is a serious issue to be tried.⁷⁰ This is a low threshold. The facts as set out above establish a strong *prima facie* case of fraud and breach of fiduciary duty by Mr. Santor, among other causes of action that may be sought against Mr. Santor and/or the other Defendants at a later date.

67. Mr. Santor concocted an elaborate scheme to misappropriate funds from the Fund. Mr. Santor knowingly used his role and position of trust at PMI and the Fund to facilitate payments based upon fictitious loans to artificial companies established for the purpose of carrying out the Fraudulent Scheme, and ultimately used funds misappropriated from the Fund for his own benefit.

68. Evidence of fraud is relevant to the granting of a *Mareva* injunction because the risk of removal/dissipation of assets may, in the appropriate case, be inferred from the surrounding circumstances of a responding party’s misconduct.⁷¹ Such evidence militates in favour of granting a *Mareva* injunction.⁷²

⁶⁸ *Aetna*, *supra* note 63 at paras 9 & 25; *Chitel*, *supra* note 63 at para 22.

⁶⁹ *Aetna*, *supra* note 63 at paras 9 & 25; *Chitel*, *supra* note 63 at para 23.

⁷⁰ *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, [1994 CanLII 117 \(SCC\)](#) at para 49 [*RJR-MacDonald*].

⁷¹ *DSB Systems Ltd v Kastem Security Solutions Ltd*, [2019 ONSC 6576 at para 20](#) [*DSB Systems*]; see also *Sibley & Associates LP v Ross*, [2011 ONSC 2951 at para 65](#) [*Sibley*], *SFC Litigation*, [supra](#) note 66 at [para 43](#).

⁷² *Sibley*, [supra](#) note 71 at [para 32](#).

69. Where there is substantial evidence supporting an allegation of fraud, equity demands that some relief be given to a plaintiff that would not be available to a plaintiff in an ordinary action where fraud is not an issue.⁷³ In *Attorney General for Ontario v Stranges et al.*, Galligan J noted:⁷⁴

[E]quity will assist a person who has been defrauded so that assets are available to pay the person defrauded if judgment is obtained.

...

When a person is stolen from I do not think equity should be reticent about helping him recover his loss from the thief nor particularly solicitous to the thief.

70. To make out a case of civil fraud, the plaintiff must establish the following factors on a balance of probabilities:⁷⁵

- a. a false representation by the defendant;
- b. some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);
- c. reliance by the plaintiff on the false representation which caused plaintiff to act; and
- d. a resulting loss.

71. Silence as to a material fact may constitute fraudulent misrepresentation where the defendant intended (1) to deceive the plaintiff by his failure to disclose relevant information and (2) to commit a fraudulent act by such non-disclosure equivalent to that which would prevail had he made a false statement knowing it to be false.⁷⁶

72. In his role as CEO of PMI, Mr. Santor made fraudulent misrepresentations with full knowledge that PMI and the Fund reasonably relied on his representations, all while facilitating payments from the Fund to the Imposter Corporations that he controlled. The Fund suffered a loss of over \$44M CAD as a result.

73. In particular, Mr. Santor:

- a. Misappropriated almost \$100M CAD from the Fund to accounts established for the

⁷³ *Mills and Mills v Petrovic* (1980), 30 OR (2d) 238, [1980 CanLII 1871 \(ON SC\)](#); *Brown v Brewin*, [2003] OJ No 3905, [2003 CanLII 13969 \(ON SC\)](#) at para 5.

⁷⁴ *Ontario (Attorney General) v Stranges* (1984), 46 OR (2d) 452, [1984 CanLII 3060 \(ON SC\)](#) at para 13.

⁷⁵ *Hryniak v Mauldin*, [2014 SCC 7 at para 87](#).

⁷⁶ *Perdue v Myers*, [2005 CanLII 30860 \(ON SC\)](#) at para 31; *Canadian Centre for Ethics in Sport v Russel*, [2007 CanLII 20978 \(ON SC\)](#) at paras 28-31.

- Imposter Corporations, which accounts he wholly controlled;⁷⁷
- b. Impersonated the principals of the Target Corporations and fraudulently executed signatures on loan documents in their names;⁷⁸
 - c. Presented fraudulently signed loan documents to the Investment Committee and to Apex to cause funds to be transferred from the Fund to the Imposter Corporations' and 839 Canada's bank accounts, which he controlled;⁷⁹ and
 - d. Fraudulently represented to the other members of PMI's Investment Committee that the MG Loans were secured, each MG Loan would be paid into a secure Growth Account, and it was unlikely the Target Corporation would need to draw on the MG Loan as most Target Corporations met or exceeded their sales targets for the Media Project;⁸⁰ and
 - e. Impersonated the principals of the Target Corporations and fraudulently executed Audit Confirmation Letters, which he sent through the Imposter Email Accounts to the Investment Committee and to MNP.⁸¹

74. Further, it is well-established that directors and officers owe a fiduciary duty to companies in which they act as directors and officers. The fiduciary duty owed by directors and officers is a mandatory obligation to act in the best interests of the corporation.⁸² As a director and officer, acting in a conflict of interest, engaging in self-dealing, or improperly diverting assets away from the company for his own personal benefit constitutes a breach of fiduciary duty.⁸³

75. By virtue of his position as CEO of PMI, Mr. Santor owed fiduciary duties to both PMI and the Fund. He breached those duties when he manufactured fraudulent loans from the Fund to the Imposter Corporations and caused funds and assets to be improperly diverted from the Fund to the Imposter Corporations and then to his own corporations and accounts for his own benefit and the benefit of the other Mareva Defendants. This conduct demonstrates a clear failure by

⁷⁷ PwC Affidavit at paras 83, 137, 177, 197, 228, Schedule I.

⁷⁸ See *supra* note 35.

⁷⁹ See *supra* note 29.

⁸⁰ PwC Affidavit at para 44; Chang-Sang Affidavit at para 26.

⁸¹ PwC Affidavit at paras 50, 88, 91, 143-147, 182-186, 231-234.

⁸² *Business Corporations Act (Ontario)*, [RSO 1990, c B.16, s. 134\(1\)\(a\)](#); *BCE Inc v 1976 Debentureholders*, [2008 SCC 69 at para 37](#).

⁸³ *Georgakakos v Georgakakos*, [2020 ONSC 2256 at para 30](#), citing *Canadian Aero Service Ltd v O'Malley* (1973), [1974] SCR 592, [1973 CanLII 23 \(SCC\) at 607](#).

Mr. Santor to act in good faith and in the best interests of PMI and the Fund, including by attempting to enrich himself at the expense of the Fund and its investors.

76. Accordingly, the Plaintiff has established a strong *prima facie* case against Mr. Santor and the other Mareva Defendants.

(ii) The Mareva Defendants Have Assets in Ontario and Other Jurisdictions

77. Some of the Mareva Defendants have assets in Ontario, including bank accounts at National Bank, the Bank of Montreal, and The Toronto-Dominion Bank; an investment account at Questrade Inc.; and film equipment located at PMI's offices in Burlington, Ontario.

78. As set out in the PwC Affidavit, Mr. Santor owns or controls the Imposter Corporations. Each Imposter Corporation has an account at National Bank in Toronto, which Mr. Santor solely controls.⁸⁴ 839 Canada also holds an account at the Bank of Montreal in Toronto.⁸⁵

79. Mr. Santor, personally, holds at least one account at the same National Bank branch in Toronto and an investment account at Toronto-based Questrade Inc.⁸⁶ Ms. Santor appears to hold an account at TD Bank in Brampton.⁸⁷

80. The Investigation revealed that Mr. Santor and the other Mareva Defendants acquired assets in other jurisdictions, including in California, USA, and in the Cayman Islands, using misappropriated funds.⁸⁸ The fact that such assets are outside Ontario does not preclude the court from exercising its discretion to grant a *Mareva* injunction where circumstances merit.⁸⁹

(iii) There is a Real Risk of Dissipation

81. In *Sibley & Associates LP v Ross*, Justice Strathy stated "it should be sufficient to show that all the circumstances, including the circumstances of the fraud itself, demonstrate a serious risk that the defendant will attempt to dissipate assets or put them beyond the reach of the plaintiff."⁹⁰ Similarly, in *Gateway Internet Solutions Inc. v Gonsalves*, the court held that "there

⁸⁴ PwC Affidavit at paras 38-39, 55-58, 93-95, 150-152, 243, Exhibits 20, 24, 27, 72, 257, 259; Chang-Sang Affidavit at paras 29-30, Exhibits 15-18.

⁸⁵ PwC Affidavit at para 238, Exhibit 249.

⁸⁶ PwC Affidavit at para 236, Exhibits 246, 247, 249.

⁸⁷ PwC Affidavit at para 237, Exhibit 248.

⁸⁸ PwC Affidavit at paras 239-242, 255, 263.

⁸⁹ *Associated Foreign Exchange Inc et al v MBM Trading*, [2020 ONSC 4188 at para 54](#); see also *SFC Litigation Trust*, [supra note 66](#) at para 38.

⁹⁰ *Sibley*, [supra note 71 at para 63](#).

may be cases where the fraud is so egregious and the theft so obvious that, on its own, the presence of fraud will infer dissipation of the defendant's assets."⁹¹

82. The Plaintiff submits the evidence of fraud in this case is so strong that, on that basis alone, this Court may infer a real risk that Mr. Santor will dissipate or remove his assets from their current locations so as to frustrate the process of this Court in an effort to escape judgment.

83. Moreover, there are indications that Mr. Santor is taking steps to dissipate or encumber his assets. While the Net Worth Statement indicated Mr. Santor had no liabilities,⁹² in recent months he and Ms. Santor obtained a \$975,000 USD non-purchase mortgage against the Studio City Property⁹³ and he contacted CIBC First Caribbean about obtaining a secured loan against the Vista Del Mar Property.⁹⁴ Mr. Santor has also made inquiries to sell the PM Rentals film equipment stored in PMI's Burlington office.⁹⁵

84. If a defendant's assets within Ontario are unlikely to meet the value of a judgment in favour of the plaintiff, the case for a worldwide *Mareva* injunction is even stronger.⁹⁶ The Plaintiff's claim for damages is in excess of \$44M CAD as of today's date.⁹⁷ The value of the *Mareva* Defendant's known assets in Ontario are highly unlikely to satisfy a judgment favourable to the Plaintiff. Therefore, a *Mareva* injunction with worldwide reach is necessary.⁹⁸

(iv) The Plaintiff Will Suffer Irreparable Harm if the Injunction is Not Granted

85. Justice Penny has stated "the normal basis for irreparable harm in cases of this kind is that, if the respondent's assets are not secured, there will be no way for the applicant to collect on a money judgment."⁹⁹

86. In *Total Traffic Services Inc v Kone*, the court found that the plaintiff would suffer irreparable harm as the defendant had shown a willingness to deceive and mislead the plaintiff over a prolonged period of time and would likely apply the same ingenuity to conceal or dispose

⁹¹ *Gateway Internet Solutions Inc v Gonsalves*, [2007] OJ No 2114 (ON SC) at para 29.

⁹² PwC Affidavit at para 235, Exhibit 245.

⁹³ PwC Affidavit at paras 248-249, Exhibits 262-263.

⁹⁴ PwC Affidavit at paras 269-276, Exhibits 276-278.

⁹⁵ Chang-Sang Affidavit at paras 126-127, Exhibit 73.

⁹⁶ SFC Litigation Trust, [supra note 66 at paras 30-32, 38](#); *Pharma-Investment Ltd v Clark*, [1997] OJ No 1334 (Ont Gen Div) at para 18 [*Pharma-Investment*].

⁹⁷ Statement of Claim issued November 22, 2024, Tab 2, Plaintiff's Motion Record, Vol 1.

⁹⁸ *SFC Litigation Trust*, [supra note 66 at para 38](#); *Pharma-Investment*, [supra note 96 at para 18](#); *Alberta Treasury Branches v Leahy*, [2000 ABQB 575 at para 81](#), [aff'd 2002 ABCA 101 \[Leahy\]](#).

⁹⁹ *East Guardian SPC v Mazur*, [2014 ONSC 6403 at para 41 \[East Guardian\]](#).

of the improperly obtained funds.¹⁰⁰ Similarly, Mr. Santor has demonstrated a willingness to deceive and mislead PMI, the Fund, and its investors, as well as staff at Apex, National Bank, and other third-parties, with blatant disregard for their interests. As set out in the PwC Affidavit, PMI's investigation has revealed that Mr. Santor frivolously squandered large sums of money on luxury items, wine, and vehicles, and he has acquired real property of substantial value in the Cayman Islands.¹⁰¹

87. Unless a worldwide *Mareva* injunction is granted, there is a real risk that Mr. Santor will further dissipate the funds and that he will persist in his deceitful conduct in order to frustrate any judgment that may ultimately be obtained against him. This risk is foreseeable and is based on, among other things, the facts set out above in support of a strong *prima facie* case of fraud and breach of fiduciary duty.

(v) The Balance of Convenience Favours Granting the Mareva Injunction

88. The balance of convenience analysis considers whether the harm suffered by the plaintiff if the order is not made exceeds the harm that will be suffered by the defendant if it is.¹⁰²

89. The factors leading to irreparable harm are important in considering the balance of convenience.¹⁰³ If Mr. Santor's assets are not frozen, it is highly likely that the Plaintiff will be unable to collect on a judgment. The harm that the Plaintiff would suffer should Mr. Santor put his assets beyond the court's reach outweighs any harm that would be suffered by Mr. Santor in the meantime.

90. Any "inconvenience" to Mr. Santor from such order can be offset by the standard *Mareva* order which permits access to living expenses and legal expenses.¹⁰⁴ Moreover, it is open to Mr. Santor to move to vary the injunction order if any prejudice or harm should arise. Therefore, the Plaintiff submits that the balance of convenience favours granting the *Mareva* injunction.

(vi) An Undertaking as to Damages Ought Not to be Required

91. Rule 40.03 states:

¹⁰⁰ *Total Traffic Services Inc v Kone*, [2020 ONSC 4402 at paras 4, 15, 19](#).

¹⁰¹ PwC Affidavit at paras 235, 255-258, 263, 267, Exhibits 245, 268, 275.

¹⁰² *East Guardian*, [supra note 99 at para 39](#).

¹⁰³ *Noreast Electronics*, [supra note 62 at para 38](#).

¹⁰⁴ *HZC Capital Inc v Lee*, [2019 ONSC 4622 at para 89](#).

On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make... [emphasis added]

92. This rule employs permissive language. As such, the court is empowered to exercise its discretion as to whether the undertaking normally required for any interlocutory injunction is required in the circumstances.

93. The purpose of the undertaking as to damages is “to protect the defendant from the risk of granting a remedy before the substantive rights of the parties have been determined.”¹⁰⁵ Absent unusual circumstances, the plaintiff must provide the undertaking.¹⁰⁶

94. The Plaintiff submits the circumstances of this case warrant an exemption to the requirement to provide the undertaking. The Plaintiff has suffered substantial losses on account of the fraud perpetrated by Mr. Santor and is now at serious risk of insolvency.

95. On November 7, 2024, Two Shores Capital Corporation made an application to this court for the appointment of KSV as receiver over all the business and affairs of PMI and the Fund. The order was granted on November 19, 2024.¹⁰⁷

96. The Court of Appeal has held that a receiver is not a self-interested party. A receiver is an officer of the court with a fiduciary duty to comply with the powers granted in the receivership order and to act honestly and in the best interests of all parties, including the debtor. As such, a receiver is not required to provide an undertaking as to damages.¹⁰⁸

97. In light of both the strong *prima facie* case against Mr. Santor and the Receivership Order, the Plaintiff submits the obligation to provide an undertaking as to damages ought to be waived.

C. Discovery in Aid of Mareva

98. As part of the *Mareva* injunction, the Plaintiff seeks an order requiring each of the Mareva Defendants to provide, within seven days of the date of service of the Order, if granted, an affidavit

¹⁰⁵ *Business Development Bank of Canada v Aventura II Properties Inc*, [2016 ONCA 300 at para 25](#) [*Aventura II Properties*].

¹⁰⁶ *Rules*, [supra note 59, r 40.03](#); *O2 Electronics Inc v Sualim*, [2014 ONSC 5050 at para 67](#).

¹⁰⁷ Chang-Sang Affidavit, Exhibit 9.

¹⁰⁸ *Aventura II Properties*, [supra note 105 at para 25](#); see also *SFC Litigation Trust*, [supra note 66 at paras 74-75](#) (The Trustee did not give an undertaking as to damages on the initial motion for the *Mareva* injunction. On appeal to the Divisional Court, Justice Leitch took no issue with the Trustee’s lack of undertaking and clarified that “it was up to counsel to point out that no undertaking was offered unless required by the court.”)

describing the nature, value, and location of their respective assets, and to attend for examination on their affidavits and assets. The Plaintiff is aware of some assets held by the Mareva Defendants but has insufficient particulars as to the nature, extent, and whereabouts of such assets to make the *Mareva* injunction effective.¹⁰⁹

99. Courts of equity may draw upon the arsenal of equitable remedies or processes available to enforce equitable rights such that their judgments will not be rendered meaningless.¹¹⁰ This court has said:¹¹¹

...in order that the Mareva injunction should be effective both the court and the plaintiff require to know the particular assets upon which the order should bite... To my mind the desirability of the power to order discovery is obvious and it is particularly needed in the case of a defendant who has demonstrated himself to be untrustworthy and evasive ...

... If the court has the power to make a Mareva injunction it must have power to make an effective Mareva injunction. If the injunction will not be effective it ought not to be made.

100. The Plaintiff submits an order for discovery in aid of the *Mareva* injunction is required to locate *all* assets of the Mareva Defendants and prevent their dissipation to ensure the injunction is effective and achieves its intended purpose.¹¹²

D. The Circumstances Support Granting A Norwich Order

101. The Plaintiff seeks a *Norwich* Order requiring the Financial Institutions and Corporate Records Offices to disclose and produce relevant non-privileged information to enable the Plaintiff to trace the misappropriated funds, identify with certainty the holders of the known accounts and assets, identify any other accounts held by the Mareva Defendants into which the funds may be traced, and to provide copies of corporate records relating to the Mareva Defendants.

102. Such orders are often obtained against banks and other non-parties to a proceeding who have information that is necessary to trace and preserve assets.¹¹³ In cases where a party believes it has been defrauded and seeks access to bank records to prove the fraud and recover the wrongfully-obtained property, the courts of Ontario have granted such access. The court's

¹⁰⁹ *Gold Chance International Ltd v Daigle & Hancock*, 2000 CarswellOnt 2033 (ON SC) at paras 37-38 [*Gold Chance*].

¹¹⁰ *Waxman v Waxman*, [2002] OJ No 3533, [2002 CanLII 20932 \(ON SC\)](#) at para 42 [*Waxman*].

¹¹¹ [Ibid at para 43](#).

¹¹² [Ibid at para 36](#); *Gold Chance*, *supra* note 109 at paras 37-38.

¹¹³ *Isofoton SA v Toronto Dominion Bank* (2007), 85 OR (3d) 780, [2007 CanLII 16246 \(ON SC\)](#) at paras 50-51 [*Isofoton*].

equitable jurisdiction to grant access to such records must be invoked quickly and effectively if a victim of an alleged fraud is to have any recourse.¹¹⁴

(i) The Applicable Test

103. In determining whether to grant a *Norwich* order, the court will consider:¹¹⁵

- a. Whether the plaintiff has provided evidence sufficient to raise a valid, *bona fide*, or reasonable claim;
- b. If the third party from whom the information is sought is somehow involved in the acts complained of;
- c. If the third party is the only practicable source of the information;
- d. Whether the third party can be indemnified for costs to which it may be exposed because of the disclosure; and
- e. Whether the interests of justice favour disclosure.

(ii) The Plaintiff is Entitled to a Norwich Order

104. To show it has a valid, *bona fide*, or reasonable claim, the Plaintiff must only show that its claim is not frivolous or vexatious. This is a low threshold which is easily met on this motion.¹¹⁶

105. This Court has accepted that an entity, including a financial institution, in receipt of funds is not a “mere witness.”¹¹⁷ While there is no suggestion at this time that the Third Parties were involved in the Fraudulent Scheme, the wrongful receipt and transfers of funds by Mr. Santor could not have occurred without their involvement.

106. The requirement that a person be the “only practicable source of information” has been taken to mean that the person must be the only source from whom the information can be effectively obtained. This Court has recognized that in cases of fraud, the moving party is justified in seeking information from institutions where funds were deposited, rather than from the wrongdoers themselves, and that the third party need not be the only source of information.¹¹⁸

¹¹⁴ [Ibid at para 30.](#)

¹¹⁵ *Bell Express Vu*, *supra* note 60 at para 18, *Leahy*, [supra note 98 at para 106](#), *Subway Franchise Systems of Canada, Inc et al v Trent University*, [2017 ONSC 4562 at para 11](#)[*Subway*].

¹¹⁶ *Isofoton*, [supra note 113 at paras 46-47.](#)

¹¹⁷ [Ibid at paras 49-50.](#)

¹¹⁸ [Ibid at para 52.](#)

107. As the architect of the Fraudulent Scheme, Mr. Santor is not a practicable or reliable source of the information sought by the Plaintiff. As such, the Plaintiff is justified in seeking disclosure of relevant non-privileged records from the Third Parties.

108. Through the Investigation, the Plaintiff has gathered some limited information as to the nature, extent, and location of the Mareva Defendants' assets, as well as the use of the proceeds of the fraud once they were deposited into the Imposter Corporation and the 839 Canada bank accounts. However, given the scope of and monetary value associated with the fraud, it seems highly likely the Mareva Defendants have other assets unknown to the Plaintiff. The Plaintiff's tracing efforts have been limited to what could be gleaned from Mr. Santor's PMI email account and the Plaintiff's own banking records. The proceeds that could be traced the furthest were those for which Mr. Santor provided instructions to Financial Institutions using his PMI email account.

109. For example, with respect to the 20 North Property, Mr. Santor's emails with National Bank and CIBC First Caribbean revealed that:¹¹⁹

- a. On November 26, 2021, Mr. Santor completed the purchase of the 20 North Property using funds wired from 839 Canada, which funds came directly out of amounts wired to 839 Canada by the Plaintiff the day prior in connection with a purported MG Loan to 839 Canada "d/b/a Joker Media";
- b. On December 3, 2022, Mr. Santor entered into an agreement to sell the 20 North Property;
- c. On February 8, 2023, proceeds from the sale of the 20 North Property were wired into Erbschaft's account at CIBC First Caribbean; and
- d. On February 9, 2023, Mr. Santor wired funds from Erbschaft to 839 Canada and told CIBC First Caribbean, "Additionally - today you will see a 1.65M transfer to Cambridge Mercantile (Andrew Chang-Sang) which is a loan for a house purchase."

110. The potential harm arising from the Order sought is the prejudice the Mareva Defendants may suffer from the disclosure of their financial and corporate records. However, those records are relevant and producible in the action, and there is therefore no harm.¹²⁰ By contrast, the potential harm to the Plaintiff if disclosure is not ordered is serious, as the Plaintiff requires

¹¹⁹ PwC Affidavit at paras 216-227, 255-262, Exhibits 203-213, 267-271.

¹²⁰ Leahy, [supra note 98 at paras 161-163](#); GEA Group AG v Ventra Group Co, [2009 ONCA 619 at para 91](#) [GEA Group]; Isofoton, [supra note 113 at para 40](#).

disclosure to identify and trace its funds (and any assets acquired with them) so that its can quickly take steps to preserve them.¹²¹ These reasons have been held to justify granting a *Norwich* Order.

111. The Plaintiff undertakes to compensate the Financial Institutions and Corporate Records Offices for their reasonable costs incurred to comply with the Order.¹²²

E. Other Considerations

112. It is well-established that delay can be fatal to any injunction application if the plaintiff fails to act in a reasonable time. However, the question of how long of a delay justifies an inference that there is no urgency is fact-specific.¹²³

113. After receiving concerning information from Ms. Steinbauer in April 2024 about the loans to Radiant US, PMI began its internal investigation and sought to engage legal counsel, but encountered conflicts of interest at the firms it initially contacted. PMI engaged DLA Piper (Canada) LLP (**DLA**) in June 2024 to assist with its internal investigation, and was able to kick off that investigation in July 2024. While PMI was compiling relevant emails and records related to the purported loans to Radiant US, it received the Whistleblower Report on August 20, 2024. On August 26, 2024, DLA engaged PwC to conduct the Investigation on behalf of PMI and the Fund.¹²⁴

114. From August 29 to September 18, 2024, PMI produced approximately one million records, including emails and their attachments as well as the details of over twenty fraudulent loans.¹²⁵ These records were used to support the lengthy and detailed affidavits of Mr. Chang Sang and Ms. Mooney of PwC, in accordance with the Plaintiff's duty of full and frank disclosure.

115. KSV was appointed as receiver and manager of the business and affairs of PMI on November 19, 2024. Prior to its appointment as receiver, KSV lacked the authority and power to bring this motion on behalf of PMI and the Fund.¹²⁶

¹²¹ *Leahy, supra note 98 at paras 161-163*; GEA Group, *supra note 120 at para 91*; Isofoton, *supra note 113 at paras 40-41*.

¹²² *Subway, supra note 115 at para 12*.

¹²³ *Original Traders Energy Ltd, (Re), 2024 ONSC 325 at paras 85, 88 [Original Traders]*.

¹²⁴ Chang-Sang Affidavit at para 67-70.

¹²⁵ Chang-Sang Affidavit at paras 72-73.

¹²⁶ See *Original Traders, supra note 123 at para 89*.

116. The Plaintiff submits it acted as quickly as possible to investigate the concerns raised by Ms. Steinbauer and to engage PwC to continue investigating following the Whistleblower Report. This motion was brought as soon as reasonably possible after KSV's appointment as receiver.

117. The Defendants may assert that the Plaintiff's claims are statute barred, at least in relation to MG Loans whose payments were due more than two years before the Statement of Claim was issued on November 22, 2024. The Plaintiff submits that argument fails for the following reasons:

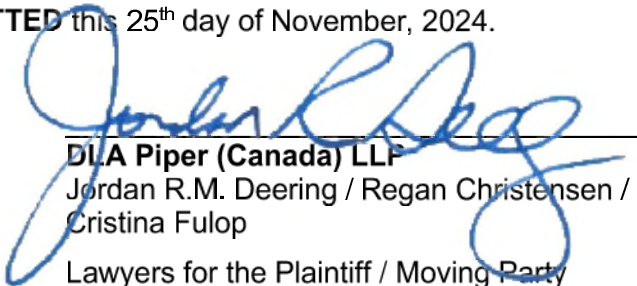
- a. As detailed above, Mr. Santor took numerous steps to conceal the Fraudulent Scheme. It was not until Ms. Steinbauer's discussion with Ms. Lerman in April 2024 and the receipt of the Whistleblower Report in August 2024 that Plaintiff discovered the Fraudulent Scheme.
- b. Mr. Santor's knowledge should not be attributed to PMI and the Fund to initiate the limitation period for the same reasons as were recently discussed by the Supreme Court in *Scott v Golden Oaks Enterprises*;¹²⁷ and
- c. The Plaintiff was both defrauded by and received no benefit from the wrongdoing of its CEO. As the Supreme Court held in *Canadian Dredge & Dock Co v The Queen*, it would be patently unjust to condemn the Plaintiff for Mr. Santor's conduct when it is clear he acted not as its directing mind but rather as its "arch enemy."¹²⁸

PART V – ORDERS REQUESTED

118. For the reasons set out above, the Plaintiff respectfully requests:

- a. An interim *Mareva* injunction and Orders in the form attached hereto as Schedule C; and
- b. Such further and other relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of November, 2024.


DLA Piper (Canada) LLP
Jordan R.M. Deering / Regan Christensen /
Cristina Fulop
Lawyers for the Plaintiff / Moving Party

¹²⁷ *Scott v Golden Oaks Enterprises*, 2024 SCC 32 at paras 11, 62-81.

¹²⁸ [1985] 1 SCR 662, 1985 CanLII 32 (SCC) at para 73 (per Estey, J).

SCHEDULE A – TABLE OF AUTHORITIES

1. *Bell ExpressVu Ltd Partnership v Rodgers (Tomico Industries)*, 2007 CanLII 50595 (ON SC)
2. *Noreast Electronics Co Ltd v Danis*, 2018 ONSC 879
3. *Aetna Financial Services Ltd v Fiegelman*, [1985] 1 SCR 2, 1985 CanLII 55 (SCC)
4. *Chitel v Rothbart* (1982), 39 OR (2d) 513, 1982 CanLII 1956 (ONCA)
5. *Google v Equustek Solutions Inc*, 2017 SCC 34
6. *SFC Litigation Trust (Trustee of) v Chan*, 2017 ONSC 1815
7. *Sorichetti v Sorichetti*, 2021 ONSC 2816
8. *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117 (SCC)
9. *DSB Systems Ltd v Kastem Security Solutions Ltd*, 2019 ONSC 6576
10. *Sibley & Associates LP v Ross*, 2011 ONSC 2951
11. *Mills and Mills v Petrovic* (1980), 30 OR (2d) 238, 1980 CanLII 1871 (ON SC)
12. *Brown v Brewin*, [2003] OJ No 3905, 2003 CanLII 13969 (ON SC)
13. *Ontario (Attorney General) v Stranges* (1984), 46 OR (2d) 452, 1984 CanLII 3060 (ON SC)
14. *Hryniak v Mauldin*, 2014 SCC 7
15. *Perdue v Myers*, 2005 CanLII 30860 (ON SC)
16. *Canadian Centre for Ethics in Sport v Russel*, 2007 CanLII 20978 (ON SC)
17. *BCE Inc v 1976 Debentureholders*, 2008 SCC 69
18. *Georgakakos v Georgakakos*, 2020 ONSC 2256
19. *Canadian Aero Service Ltd v O'Malley* (1973), [1974] SCR 592, 1973 CanLII 23 (SCC)
20. *Associated Foreign Exchange Inc et al v MBM Trading*, 2020 ONSC 4188
21. *Alberta Treasury Branches v Leahy*, 2000 ABQB 575 at para 81
22. *East Guardian SPC v Mazur*, 2014 ONSC 6403
23. *Total Traffic Services Inc v Kone*, 2020 ONSC 4402
24. *HZC Capital Inc v Lee*, 2019 ONSC 4622
25. *Business Development Bank of Canada v Aventura II Properties Inc*, 2016 ONCA 300

26. [O2 Electronics Inc v Sualim, 2014 ONSC 5050](#)
27. [Waxman v Waxman, \[2002\] OJ No 3533, 2002 CanLII 20932 \(ON SC\)](#)
28. [Isofoton SA v Toronto Dominion Bank \(2007\), 85 OR \(3d\) 780, 2007 CanLII 16246 \(ON SC\)](#)
29. [Subway Franchise Systems of Canada, Inc et al v Trent University, 2017 ONSC 4562](#)
30. [GEA Group AG v Ventra Group Co, 2009 ONCA 619](#)
31. [Scott v Golden Oaks Enterprises, 2024 SCC 32](#)
32. [Canadian Dredge & Dock Co v The Queen, \[1985\] 1 SCR 662, 1985 CanLII 32 \(SCC\)](#)

Attached, with key excerpts indicated:

33. *Gateway Internet Solutions Inc v Gonsalves*, [2007] OJ No 2114 (ON SC)
34. *Pharma-Investment Ltd v Clark*, [1997] OJ No 1334 (Ont Gen Div)
35. *Gold Chance International Ltd v Daigle & Hancock*, [2000] OJ No 2194 (ON SC)

SCHEDULE B – LEGISLATIVE PROVISIONS

Rules of Civil Procedure, RRO 1990, Reg 194

Service of Notice

Where Not Required

37.07 (2) Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice.

Full and Fair Disclosure on Motion or Application Without Notice

39.01 (6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application.

Undertaking

40.03 On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party.

Courts of Justice Act, RSO 1990, c C.43

Rules of law and equity

96 (1) Courts shall administer concurrently all rules of equity and the common law.

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

SCHEDULE C – DRAFT ORDER

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

B E T W E E N:

**PRODUCTIVITY MEDIA INCOME FUND I LP, by its general partner,
PRODUCTIVITY MEDIA INC., by its court-appointed receiver and manager,
KSV RESTRUCTURING INC.**

Plaintiff

and

**WILLIAM GREGORY SANTOR, SONJA SANTOR, also known as SONJA NISTELBERGER,
RADIANT FILMS INTERNATIONAL INC., DARK STAR PICTURES (CANADA) INC., CONCOURSE
MEDIA INC., JOKER FILMS PRODUCTIONS INC., 8397830 CANADA INC., PRODUCTIVITY MEDIA
RELEASING INC., PRODUCTIVITY MEDIA RENTALS INC., PRODUCTIVITY MEDIA PRODUCTIONS
(CAYMAN) LTD., PROSAPIA CAPITAL MANAGEMENT CORP., PROSAPIA HOLDINGS INC.,
PROSAPIA PROPERTY MANAGEMENT INC., PROSAPIA WEALTH MANAGEMENT LTD.,
ERBSCHAFT CAPITAL CORP., STREAM.TV (CAYMAN) LTD., STARK INDUSTRIES LIMITED, JOHN
DOE, MARY DOE, and ABC COMPANY**

Defendants

ORDER

NOTICE

If you, the Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, made without notice by the Plaintiff, Productivity Media Income Fund I LP, by its general partner Productivity Media Inc., by its court-appointed receiver and manager, KSV Restructuring Inc., for, among other things, (1) an interim Order in the form of an interim and interlocutory *Mareva* injunction restraining the Defendants, WILLIAM GREGORY SANTOR, SONJA SANTOR a.k.a. SONJA NISTELBERGER, RADIANT FILMS INTERNATIONAL INC., DARK STAR PICTURES (CANADA) INC., CONCOURSE MEDIA INC., JOKER FILMS PRODUCTIONS INC., 8397830 CANADA INC., PRODUCTIVITY MEDIA RELEASING INC., PRODUCTIVITY MEDIA RENTALS INC., PRODUCTIVITY MEDIA PRODUCTIONS (CAYMAN) LTD., ERBSCHAFT CAPITAL CORP., STREAM.TV (CAYMAN) LTD., and STARK INDUSTRIES LIMITED (the **Mareva Defendants**), from dissipating their assets and

other relief; (2) an Order directing the Financial Institutions (as defined in this Order) to freeze the accounts of the Mareva Defendants; (3) an Order compelling the Mareva Defendants to disclose the nature, value, and location of their assets; (4) an Order requiring the Financial Institutions and the Corporate Records Offices (as defined in this Order) to disclose certain records and information respecting the Mareva Defendants; (5) an Order requiring the Mareva Defendants to disclose certain records and information; and (6) an Order dispensing with the undertaking as to damages of the Plaintiff; and other ancillary relief, was heard this day at Toronto by judicial videoconference via Zoom.

ON READING the Statement of Claim, the Affidavit of Andrew Chang-Sang sworn, November 20, 2024 and the Affidavit of Krista Mooney affirmed, November 20, 2024; on dispensing with the requirement for an undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order; on noting the undertaking of the Plaintiff to pay the costs of the Financial Institutions and the Corporate Records Offices (as defined below) named in this Order for disclosing and delivering the documents required in this Order, and on hearing the submissions of counsel for the Plaintiff, with the Defendants not having been served.

Mareva Injunction

1. **THIS COURT ORDERS** that the Mareva Defendants, and their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:
 - (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Mareva Defendants, wherever situated in the world, including but not limited to the assets and accounts listed in Schedule "A" hereto (the **Accounts and Assets**);
 - (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
 - (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the Mareva Defendants' assets whether or not they are in their own name and whether they are solely or jointly owned, and wherever located in the world, including any Accounts and Assets which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The Mareva Defendants are to be regarded as having such power if a third party holds or controls the assets in accordance with their direct or indirect instructions.

Ordinary Living Expenses

3. **THIS COURT ORDERS** that the Defendants William Santor and Sonja Santor may apply for an order, on at least twenty-four (24) hours notice to the Plaintiff, specifying the amount of funds which those Defendants are entitled to spend on ordinary living expenses and legal advice and representation.

Disclosure of Information

4. **THIS COURT ORDERS** that the Mareva Defendants each prepare and provide to the Plaintiff within seven (7) days of the date of service of this Order, a sworn statement describing the nature, value, and location of their assets worldwide, whether in their own name or not and whether solely or jointly owned, including without limitation any bank or investment accounts, securities, cash, real property, vehicles, aircraft, boats, jewelry, or other personal property.
5. **THIS COURT ORDERS** that the Mareva Defendants each submit to examinations under oath within seven (7) days of the delivery by the Mareva Defendants of the aforementioned sworn statements. The examinations under oath shall be held with virtual Zoom attendance, with such attendance details to be provided in advance of the date of the examinations.
6. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate the Defendant William Santor or Sonja Santor, they may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraph 4 herein is contempt of court and may render the Mareva Defendants liable to be imprisoned, fined, or have their assets seized.

Third Parties

7. **THIS COURT ORDERS** National Bank of Canada, Bank of Montreal, The Toronto-Dominion Bank, CIBC Caribbean Bank (Cayman) Limited, Questrade Inc., and Interactive Brokers LLC, together with each of their subsidiaries or affiliates (collectively, the **Financial Institutions**) to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Defendants held in any account, registered savings plans, investment accounts, safety deposit boxes, or other assets, or on credit on behalf of the Mareva Defendants, whether solely or jointly held, with the Financial Institutions, until further Order of the Court, including but not limited to the accounts listed in Schedule "A" hereto.
8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions concerning any of the Mareva Defendants' assets, accounts, registered savings plans, investment accounts, safety deposit

boxes, or other assets, including but not limited to the accounts listed in Schedule "A" hereto, including the existence, nature, value and location of any monies or assets or credit, wherever situated in the world, held on behalf of the Mareva Defendants by the Financial Institutions.

Disclosure by Non-Parties (*Norwich Pharmacal Order*)

9. **THIS COURT ORDERS** that the Financial Institutions shall disclose and deliver up to DLA Piper (Canada) LLP attn: Jordan R.M. Deering, at the expense of the Plaintiff, within seven (7) business days of the date of service of this Order, or such other date agreed, any and all records held by the Financial Institutions concerning the assets and accounts of any of the Mareva Defendants, including records of the existence, nature, value, and location of any funds, assets, or credit, wherever situated, held by the Financial Institutions on behalf of the Mareva Defendants, whether solely or jointly held, including, but not limited to:

- (a) a list of all accounts, registered savings plans, investment accounts, safety deposit boxes, or other assets, and/or credit products now or formerly held;
- (b) all account opening documentation, corporate resolutions, signature cards, and powers of attorney;
- (c) the current balances in all accounts;
- (d) all monthly and/or periodic statements from 2016 to the present;
- (e) copies of all cheques, payment instruments, debit vouchers, wire transfer instructions, deposit records, transfer records, or other documents relating to withdrawals, transfers, or deposits from 2016 to the present; and,
- (f) all applications for credit.

10. **THIS COURT ORDERS** that each of Walkers Corporate Limited; Bodden Corporate Services Ltd.; Michael, Evrensel & Pawar LLP; and Bennett Jones LLP, as registered offices or holders of the corporate minutes books for the Defendants (the **Corporate Records Offices**), shall disclose and deliver up to DLA Piper (Canada) LLP attn: Jordan R.M. Deering, at the expense of the Plaintiff, within seven (7) business days of the date of service of this Order, or such other date agreed, any and all corporate records of the Mareva Defendants, including, but not limited to:

- (a) Certificate of Incorporation;
- (b) Memorandum and articles of association;

- (c) Register of directors and officers;
- (d) Register of shareholders/members;
- (e) Minute book;
- (f) All director or shareholder resolutions; and,
- (g) Annual returns.

Dispensing with Undertaking as to Damages

11. **THIS COURT ORDERS** that the requirement under Rule 40.03 for the Plaintiff to provide an undertaking as to damages is dispensed with.

Variation, Discharge or Extension of Order

12. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this order, on four (4) days notice to the Plaintiff.
13. **THIS COURT ORDERS** that the terms of this Order shall remain in force and be effective for ten (10) days.
14. **THIS COURT ORDERS** that the Plaintiff shall apply for a continuation of this Order to a Judge on December 12, 2024 at 10:00 am or as soon as possible thereafter, via judicial videoconference via Zoom.
-

**PRODUCTIVITY MEDIA INCOME FUND I LP, by its general partner
PRODUCTIVITY MEDIA INC., by its court-appointed receiver and manager
KSV RESTRUCTURING INC.**

WILLIAM GREGORY SANTOR ET AL

Plaintiff

Defendants

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>PROCEEDING COMMENCED AT TORONTO</p>
<p>ORDER</p>
<p>DLA PIPER (CANADA) LLP Barristers & Solicitors Suite 5100, Bay Adelaide – West Tower 333 Bay Street Toronto, ON M5H 2R2</p> <p>Jordan R.M. Deering (LSO #86337A)</p> <p>Tel: 416-365-3515 Fax: 403-213-4479 Email: jordan.deering@dlapiper.com</p> <p>Regan Christensen (LSA #24319)</p> <p>Tel: 403-698-8760 Email: regan.christensen@dlapiper.com</p> <p>Cristina Fulop (LSO #82224H) Tel: 416-862-3389 cristina.fulop@dlapiper.com</p> <p>Lawyers for the Plaintiff</p>

SCHEDULE D – GLOSSARY OF KEY DEFINED TERMS

Defined Terms	Definition
Number	
839 Canada	8397830 Canada Inc.
20 North Development Property	A 6-acre development site with the legal description West Bay South (WBS) Block 5C, Parcel 77, Grand Cayman. Purchased by Mr. Santor in May 2021 and sold in February 2023 to 20 North Development Company Limited for US\$4 million plus the 20 North Development Property Condo (see Affidavit of Krista Mooney at pages 63-64, paragraphs 255-262).
20 North Development Property Condo	A two-bedroom condominium unit being built on the 20 North Development Property that Mr. Santor received as part of his sale of the 20 North Development Property (see Affidavit of Krista Mooney at pages 63-64, paragraphs 259-262).
A,B,C	
Advance Request Certificate	Formal borrowing certificate for an MG Loan advanced under a Credit Facility (Statement of Claim, page 18, paragraph 24 (h) (ii)).
Advance Request Package	Fraudulent Advance Request Certificate, fake distribution agreement or sales agency agreement between the Target Corporation and the owner of the Target Media Project, and purported sales projections for the Target Media Project (Statement of Claim, page 20, paragraph 24 (j) (iii)).
CIBC Caribbean	Previously known as CIBC FirstCaribbean International Bank or CIBC FirstCaribbean Bank. As of October 18, 2024, rebranded as “CIBC Caribbean” and legally registered in the Cayman Islands as “CIBC Caribbean Bank (Cayman) Limited.”
Co-Founders	William Gregory Santor (Mr. Santor); Andrew Chang-Sang (Mr. Chang-Sang); John Hills (Mr. Hills)
Concourse Canada	Concourse Media Inc.
Concourse US	Concourse Media LLC
Credit Facility	Multi-project revolving credit facility represented by Mr. Santor to be for Target Corporation (Statement of Claim, page 18, paragraph 24 (g))
D,E,F,G,H,I	
Dark Star Canada	Dark Star Pictures (Canada) Inc.
Dark Star US	Dark Star Pictures, LLC
Deal Memo	Fraudulent deal memo setting out rationale and proposed deal to provide the Target Corporation with a multi-project revolving credit facility (Statement of Claim, page 18, paragraph 22 (g)).

Defined Terms	Definition
DLA Piper	DLA Piper (Canada) LLP
Erbschaft	Erbschaft Capital Corp.
Employment Agreement	Mr. Santor's employment agreement dated September 1, 2012, re-affirmed and amended on May 15, 2023, and January 1, 2014 (Statement of Claim, page 26, paragraph 34).
Enriched Defendants	Sonja Santor a.k.a. Sonja Nistelberger, Prosapia Capital Management Corp., Prosapia Holdings Inc., Prosapia Property Management Inc., Prosapia Wealth Management Ltd., John Doe, Mary Doe, and ABC Company (Statement of Claim, page 5, paragraph 3).
Fund	Productivity Media Income Fund I LP
Fraudulent Conveyances	Conveyances of real and/or personal property with the intent to defeat, hinder, delay, or defraud the Plaintiff (Statement of Claim, page 29, paragraph 43).
Fraudulent Defendants	Mr. Santor, 839 Canada, Dark Star Canada, Concourse Canada, Radiant Canada, Joker Films, PM Releasing, PM Rentals, PM Cayman, PM Foundation, Erbschaft, Stream.TV Cayman, Stark Industries, John Doe, Mary Doe, and ABC Company (Statement of Claim, page 5, paragraph 2).
Fraudulent Scheme	Described in the Statement of Claim on pages 15-23, paragraphs 22-24.
GSA	General Security Agreement
Growth Account	Deposit account in the name of the Target Corporation Mr. Santor said would be controlled by PMI (Statement of Claim, page 18, paragraph 24 (h) (iii)).
Imposter Corporation	Dark Star Canada, Concourse Canada, and Radiant Canada
Imposter Domain Name	Fraudulent domain name used to impersonate legitimate domain, such as www.dark-starent.com , www.concoursemedia.media , and www.radiant-ent.com (Statement of Claim, page 16, paragraph 24 (d)).
Imposter Email Accounts	Fraudulent email accounts used to impersonate legitimate email accounts, such as miker@dark-starent.com , shreder@concoursemedia.media , felts@concoursemedia.media , mimi@radiant-ent.com , tbrownjoker@gmail.com (Statement of Claim, page 17, paragraph 24 (e)).
Investment Committee	Comprised of the three Co-Founders, used to identify and negotiate potential investments (Statement of Claim, page 14, paragraph 19).
J,K,L,M,N	
Joker Films	Joker Films Productions Inc.
Limited Partnership Agreement	Fourth Amended and Restated Limited Partnership Agreement, dated June 15, 2015

Defined Terms	Definition
Media Projects	Independent film and television productions (Statement of Claim, page 13, paragraph 16).
MG	A “minimum guarantee” provided by a sales agent or distributor to the production company for a Media Project. In providing an MG, the sales agent or distributor commits to pay a specified minimum amount to the production company regardless of the actual sales the sales agent or distributor secures on the Media Project (Statement of Claim, pages 13-14, paragraph 17 (b)).
MG Loan	Type of loan made to sales agents and distribution companies in order to allow them to provide “minimum guarantees” to the producers of a Media Project (Statement of Claim, pages 13-14, paragraph 17 (b)).
Mr. Chang-Sang	Andrew Chang-Sang, Co-Founder of Productivity Media Inc., and Productivity Income Fund I LP
Mr. Hills	John Hills, Co-Founder of Productivity Media Inc., and Productivity Income Fund I LP
Mr. Santor	William Santor; Co-Founder of Productivity Media Inc., and Productivity Income Fund I LP
Ms. Santor	Sonja Santor, also known as Sonja Nistelberger
O,P,Q,R,S	
PMI	Productivity Media Inc.
PM Cayman	Productivity Media Productions (Cayman) Ltd.
PM Releasing	Productivity Media Releasing Inc.
PM Rentals	Productivity Media Rentals Inc.
Prosapia Capital	Prosapia Capital Management Corp.
Prosapia Holdings	Prosapia Holdings Inc.
Prosapia Property	Prosapia Property Management Inc.
Prosapia Wealth	Prosapia Wealth Management Ltd.
PwC	PricewaterhouseCoopers LLP
PwC Investigation	Privileged and confidential investigation of the allegations set out in the Whistleblower Report (Statement of Claim, page 25, paragraph 30)
Radiant Canada	Radiant Films International Inc.
Radiant US	Radiant Films International LLC

Defined Terms	Definition
Stream.TV Cayman	Stream.TV (Cayman) Ltd.
Stark Industries	Stark Industries Limited
Studio City Property	A jointly owned condominium property purchased in January 2018 by Mr. Santor and Ms. Santor. Located at #203, 12045 Guerin Street, Studio City, California, USA (see Affidavit of Krista Mooney at page 61, paragraphs 248-249).
T,U,V,W,X,Y,Z	
Target Corporation	Established sales agents or distribution companies within the entertainment industry that had legitimate business dealings with PMI and would plausibly require loans from the Fund (Statement of Claim, page 15, paragraph 24 (a)).
Target Media Project	Media Project that was currently, or previously had been, under development and currently, or at some point had been, connected with one of the Target Corporations (Statement of Claim, page 19, paragraph 24 (i)).
Vista Del Mar Property	A property jointly owned by Mr. Santor and Ms. Santor located at 150 Iron Shore Drive WB in Vista Del Mar, Grand Cayman, legally described as West Beach North Block 10A, Parcel 150, Grand Cayman. The land was purchased in February 2019 for \$1,461,313 CAD and a home built on the land for a further \$9,341,214 CAD (see Affidavit of Krista Mooney at pages 64-67, paragraphs 263-276).
Whistleblower Report	Anonymous email received on August 20, 2024 reporting various alleged misconduct in respect of PMI and the Fund (Statement of Claim, page 24, paragraph 29).

SCHEDULE E – CAST OF CHARACTERS

Name	Description
<i>Individuals</i>	
Adam Garvin	One of three directors of the Productivity Media Charitable Foundation (PM Foundation). One of two initial directors of Dark Star Pictures (Canada) Inc. (Dark Star Canada), the other being William Santor.
Andrew Chang-Sang	President, Chief Financial Officer, and 25% shareholder of Productivity Media Inc. (PMI) One of three co-founders of PMI and Productivity Media Income Fund I LP (the Fund) Member of the Fund’s investment committee
Andrew Felts	Also known as James Andrew Felts Former principal of Concourse Media LLC (Concourse US). Mr. Felts transferred his interest in Concourse US to Michael Shreder in around May 2019.
Doug Murray	Partner at Taylor Oballa Murray Leyland LLP External entertainment counsel to PMI
Dustin Pierce	Former advisor to William Santor
John Di Libero	Representative of National Bank of Canada
John Hills	Founder, Executive, and formerly, Chief Operating Officer of PMI 25% shareholder of PMI One of three co-founders of PMI and the Fund Member of the Fund’s investment committee.
Kathleen “Mimi” Steinbauer	Principal of Radiant Films International LLC (Radiant US)
Kimberlay Li	Representative of Apex Fund Services (Canada) Ltd. (Apex)
Kyle Leydier	Former Head of Development at PMI
Marcia Champagne	Former executive assistant to William Santor
Michael Shreder	Principal of Concourse US
Michael Robert Repsch	Also known as Mike Repsch Principal of Dark Star Pictures, LLC (Dark Star US)

Rob Budreau	Filmmaker and principal of Lumanity Productions. Former director of 8397830 Canada Inc (839 Canada).
Shara Lerman	Officer of and General Counsel to PMI
Sonja Santor	Defendant Also known as Sona Nistelberger William Santor's spouse
Stephanie Tsumura Bentley	Representative of National Bank of Canada
Stephen Cheung	Assistant Vice President, Canada, at Apex.
Tim Brown	Prior principal of Joker Films Productions Inc. (Joker Films), which is now wholly or primarily owned by 839 Canada.
Tom Berryman	Representative of MNP LLP Chartered Professional Accountants (MNP) who assisted with the audit of the Fund's financial statements for fiscal year 2022.
William Gregory Santor	Defendant Co-founder and CEO of PMI (temporarily suspended). 50% shareholder of PMI Leader of the Fund's investment committee
Corporate Entities	
8397830 Canada Inc. (839 Canada)	Defendant Ontario corporation incorporated on January 3, 2014. Holding company wholly owned and controlled by William Santor.
Apex Fund Services (Canada) Ltd. (Apex)	Apex has been engaged by PMI since inception of the Fund to perform certain financial administration functions for PMI and the Fund.
Bankdrama Film Ltd.	Canadian corporation incorporated by Robert Budreau (of Lumanity) and Nicholas Taborrok (of Darius Films) as a single purpose production company for the film "Stockholm", for which PMI provided production financing in around April 2017.
Concourse Media Inc. (Concourse Canada)	Defendant British Columbia corporation incorporated on August 23, 2017, that is wholly controlled by William Santor. Separate from and unrelated to Concourse US

Concourse Media LLC (Concourse US)	Delaware limited liability company owned by Michael Shreder that operates as a film finance, production and distribution company
Dark Star Pictures (Canada) Inc. (Dark Star Canada)	Defendant Ontario corporation incorporated on January 7, 2019, that is wholly controlled by William Santor. Separate from and unrelated to Dark Star US
Dark Star Pictures, LLC (Dark Star US)	California limited liability company owned by Michael Robert Repsch that operates as a film distribution entity
Erbschaft Capital Corp (Erbschaft)	Defendant Cayman Island holding company incorporated on August 3, 2020 that is wholly owned and controlled by William Santor.
Joker Films Productions Inc. (Joker Films)	Defendant British Columbia company incorporated on September 29, 2017. Previously owned by Tim Brown. Currently wholly or primarily owned by 839 Canada.
KSV Restructuring Inc. (KSV)	Receiver and manager, without security, of all of the assets, undertakings, and properties of PMI, the Fund, and PMLC pursuant to the Order of Justice B. Conway dated November 19, 2024.
MidCap Financial Services LLC (MidCap)	Potential provider of financing to PMI in around March 2022. The financing arrangement ultimately did not proceed.
MNP LLP Chartered Professional Accountants (MNP)	MNP has been retained by PMI since 2016 as auditor of the Fund's annual financial statements.
Pricewaterhouse Coopers (PwC)	PwC was retained by counsel for the Plaintiff to investigate and provide evidence regarding the flow of funds in and out of PMI and the Fund during the material time period.
Productivity Media Inc. (PMI)	An Ontario corporation incorporated on January 17, 2012. General partner of the Plaintiff, the Fund
Productivity Media Charitable Foundation (PM Foundation)	Ontario foundation created on July 27, 2018. Wholly controlled by William Santor, Sonja Santor, and Adam Garvin.

<p>Productivity Media Financing Inc. (PMFI)</p>	<p>Canadian corporation incorporated on July 29, 2022.</p> <p>A special purpose vehicle that was established in anticipation of financing from MidCap, which ultimately did not occur. PMFI does not carry on any active business.</p> <p>Wholly-owned subsidiary of PMI.</p>
<p>Productivity Media Income Fund I LP (the Fund)</p>	<p>Plaintiff</p> <p>An Ontario limited partnership formed on February 29, 2012.</p> <p>In the business of providing senior secured debt financing for independent film and television productions.</p>
<p>Productivity Media Lending Corp. I (PMLC)</p>	<p>Ontario corporation incorporated on May 17, 2018.</p> <p>A special purpose vehicle created to be the borrower on a credit facility with Equitable Bank that was terminated and repaid in 2020. PMLC has continued for the sole purpose of receiving the remaining tax credit from a film financed using the closed credit facility.</p> <p>Wholly-owned subsidiary of PMI.</p>
<p>Productivity Media Releasing Inc. (PM Releasing)</p>	<p>Defendant</p> <p>Ontario corporation incorporated on December 21, 2018</p> <p>Wholly owned and controlled by 839 Canada and William Santor.</p>
<p>Productivity Media Rentals Inc. (PM Rentals)</p>	<p>Defendant</p> <p>Ontario corporation incorporated on January 27, 2021</p> <p>Wholly owned and controlled by William Santor.</p>
<p>Productivity Media (US) Inc. (PMI US)</p>	<p>California corporation incorporated on January 17, 2022.</p> <p>Created for the purposes of leasing an office in Los Angeles and handling PMI's US dollar payroll.</p> <p>Wholly-owned subsidiary of PMI.</p>
<p>Prosapia Capital Management Corp., Prosapia Holdings Inc., Prosapia Property Management Inc., and Prosapia Wealth Management Inc. (the Prosapia Group)</p>	<p>Defendants</p> <p>Group of companies co-founded by William Santor that carry on business as a wealth management firm.</p> <p>The Prosapia Group companies are Ontario corporations incorporated between June 2006 and March 2009 that are wholly owned and controlled by William Santor.</p>
<p>Qwest Investments Fund Management Ltd. (Qwest)</p>	<p>One of PMI's largest investors and an exempt market dealer of Fund units to its investor clients through the Qwest Productivity Media Income Trust.</p>

Radiant Films International Inc. (Radiant Canada)	Defendant Ontario corporation incorporated on February 12, 2020, that is wholly controlled by William Santor. Separate from and unrelated to Radiant US
Radiant Films International LLC (Radiant US)	California limited liability company owned by Mimi Steinbauer that operate as a global film sales agency
Stream.TV (Cayman) Ltd. (Stream.TV)	Defendant Cayman Island corporation incorporated on June 21, 2021 that is wholly owned and controlled by Erbschaft and William Santor. Created to operate William Santor's business venture "YuVee" or "Stream.TV".
Stark Industries Limited (Stark Industries)	Defendant Cayman Island corporation incorporated on June 30, 2021 that is wholly owned and controlled by Erbschaft and William Santor.
Westfield Partners (Westfield)	One of PMI's largest investors and an exempt market dealer of Fund units to its investor clients.
<i>Other Parties</i>	
John Doe, Mary Doe, and ABC Company	Defendants Individuals and companies respectively who participated in or benefitted from the Fraudulent Scheme, as that term is defined in the Statement of Claim, whose identities are not presently known to the Plaintiffs.

**PRODUCTIVITY MEDIA INCOME FUND I LP, by its general partner
PRODUCTIVITY MEDIA INC., by its court-appointed receiver and manager
KSV RESTRUCTURING INC.**

and

WILLIAM GREGORY SANTOR ET AL

Plaintiff

Defendants

ONTARIO

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

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE MOVING PARTY

DLA PIPER (CANADA) LLP

Barristers & Solicitors
Suite 5100, Bay Adelaide – West Tower
333 Bay Street
Toronto, ON M5H 2R2

Jordan R.M. Deering (LSO #86337A)

Tel: 416-365-3515

Fax: 403-213-4479

Email: jordan.deering@dlapiper.com

Regan Christensen (LSA #24319)

Tel: 403-698-8760

Email: regan.christensen@dlapiper.com

Cristina Fulop (LSO #82224H)

Tel: 416-862-3389

cristina.fulop@dlapiper.com

Lawyers for the Plaintiff / Moving Party