This is the 2nd affidavit of
Milton Winberg in this case and was
made on November 1, 2023

No. S221214
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57, AS AMENDED AND *THE BUSINESS CORPORATIONS ACT*, R.S.O. 1990, C. B.16, AS AMENDED

AND

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BRON MEDIA CORP. AND THE ENTITIES LISTED AT **SCHEDULE "A"**

PETITIONERS

AFFIDAVIT OF MILTON WINBERG

I, **Milton Winberg**, of the City of Toronto, Ontario, SWEAR THAT:

1. I am the President of Premium Properties Limited ("**Premium Properties**"), and as such I have personal knowledge of the matters deposed to in this affidavit save and except for those matters where I specifically indicate that Premium Properties' lawyers, WeirFoulds LLP, are the source of my information.

2. Premium Properties, together with related entities (collectively referred to as "**Premium**"), are Plaintiffs in thirteen actions commenced in the Ontario Superior Court of Justice. The Defendants in one or more of the thirteen actions include Creative Wealth Media Finance Corp. ("**CW Finance**"), Creative Wealth Media Lending LP 2016 (**"CW Lending"**), Jason Cloth (**"Cloth"**), Bron Creative Corp., Bron Studios USA, Inc., Aaron Gilbert (**"Gilbert"**), and various other production and holding companies that are among the Petitioners and Non-Petitioner Entities in these proceedings. Examinations for discovery of Gilbert and the Bron Defendants in the thirteen actions were held in November 2022 and February 2023.

3. The thirteen actions arise from advances that Premium made to CW Finance or a Bron company which, in turn, loaned the funds to Bron companies which produced the films. The structure of the arrangements is very similar in each case. CW Finance (in most cases) entered into Master Term Sheets (**"MTS"**) with the production company pursuant to which CW Finance agreed to lend funds to the production company. Premium entered into Client Term Sheets and Participation Agreements with CW Finance (in most cases) pursuant to which Premium advanced funds to CW Finance which were supposed to be loaned by CW Finance to the production company for the film under the terms of the MTS. Generally, under the express terms of the Client Term Sheets and Participation Agreements, CW Finance was the trustee for Premium responsible for securing the loan in first priority position (or in some instances, in shared first priority position) for all collateral of the production company including, as applicable, any receipts throughout the world, assets, insurance policies, tax credits and rebates.

4. Generally, under the terms of the Participation Agreements, CW Finance sold and assigned to Premium "an undivided fractional interest in the [loan]" advanced by CW Finance pursuant to the MTS. As a consequence of the assignment, the Bron production company is

directly liable to Premium for repayment of the loan and other amounts owed to CW Finance under the master loan documents entered into between CW Finance and the Bron production company.

Background

5. Andrew Pollack (**"Pollack"**) and I are the principals of Premium. Our introduction to Cloth came in or about mid-2014, through a mutual business connection. Following that introduction, Cloth contacted us to solicit investments in films that he was financing through companies of which Cloth or Gilbert, or both were the directing minds. Prior to Cloth contacting us, I had no experience investing in films. Neither did Pollack.

6. Cloth represented to Pollack and me that he had a relationship with Gilbert who was very successful in producing movies and was, in fact, in the top 5% of independent film producers. Cloth introduced us to Gilbert who also encouraged us to invest in films.

7. Cloth knew that we had no experience and were not familiar with financing and investing in films. Therefore, to entice us to invest in films, Cloth analogized investing in films to investing in real estate. Cloth, on his own behalf and on behalf of CW Finance and the other Defendants, represented and assured us that any investment would be secured in first position and repayment would be in first secured priority, subject only to guilds and unions.

8. Cloth further represented and assured us that each investment would be protected by the appointment of a collection account manager under a Collection Account Management Agreement (**"CAMA"**) put into place to ensure the separate collection and repayment of Premium's advances and repayment of principal and interest in agreed priority for each film.

9. All discussions we had about investing in the films were with Cloth or Gilbert or both. As a result of those discussions, we were persuaded to make the investments based on a personal and business relationship we had developed with Cloth and Gilbert and their representations and assurances. Our investments started in mid to late 2014 and took the form of participating in loans made by CW Finance (in most cases) to the specific production company producing each film. Initially, our investments were successful, with principal, interest and share of net proceeds being paid to Premium.

Summary of Unpaid Amounts Owed to Premium

10. Since early 2015, Premium has invested approximately CAD $34,303,000.00 and USD $9,955,000.00 of principal in the thirteen films that are the subject of the actions. The overwhelming majority of this principal amount has not been repaid and is still owing, together with substantial interest which increases by the day. The total amount of principal owed per film is set out in the paragraphs below.

Overview of the Investments in the Thirteen Films

11. For each of the thirteen films Premium invested in, Premium signed a Participation Agreement and a Client Term Sheet. In many instances Premium's advances were made through different entities in the Premium family, including Premium Properties, Colonia Trustco Inc., Miaja Trust, JAAM Limited, Premium Trust Inc., Corinthian Enterprises Inc., and McFlow Capital Corp. Each separate Premium entity involved in an investment signed separate Participation Agreements and Client Term Sheets. Described and attached as exhibits below are examples of the Participation Agreements and Client Term Sheets for each of the thirteen films.

12. I have also described in paragraphs 13-39 below how, if at all, the thirteen films

are addressed in the Monitor's Third Report and in Schedules to the proposed Asset Purchase Agreement that I understand have been filed with the Court. The source of my information on how, if at all, the thirteen films have been addressed in these filed materials is John Buhlman who is one of Premium's lawyers at WeirFoulds LLP, and I believe this information to be true and accurate.

Assassination Nation

13. Attached as **Exhibit "1"** are the Term Sheet and Participation Agreements between Colonia and CW Finance for the film "Assassination Nation." These documents serve as an example of the identical terms that Premium Properties and Miaja entered into with CW Finance to fund this film. To date, Premium is owed approximately CAD $5,080,000.00 of principal plus accruing interest. No repayments have been made.

14. Assassination Nation is one of the films listed in Appendix 18 to the Monitor's Third Report dated October 26, 2023 (**"Monitor's Third Report"**), which is said to comprise the "final list of Unsold Assets". The CAMA for Assassination Nation is identified as an intended "Assumed Contract" in item 71 of Schedule B to the Asset Purchase Agreement dated October 24, 2023 (**"Asset Purchase Agreement"**). The CAMA appears to be the only agreement for Assassination Nation that is included in the Schedule B list of Assumed Contracts.

Beatriz at Dinner

15. Attached as **Exhibit "2"** are the Term Sheet and Participation Agreements between JAAM and CW Finance for the film "Beatriz at Dinner." These documents serve as an example of the identical terms that Colonia entered into with CW Finance to fund CW Finance's 50% share of the loan to this film. CW Lending funded the other 50% of the loan. To date, Premium is owed

approximately USD $702,000.00 of principal plus accruing interest. Approximately USD $559,000.00 of principal has been repaid.

16. The production company for this film, Brown Amy, LLC, is a Non-Petitioner Entity named as a "US Vendor" in Schedule A to the Asset Purchase Agreement. Beatriz at Dinner is one of the films listed in Appendix 18 to the Monitor's Third Report. The CAMA for Beatriz at Dinner (at item 86) and various option, distribution, and license agreements (at items 102-112) are identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement.

Drunk Parents

17. Attached as **Exhibit "3"** are the Term Sheet and Participation Agreements between JAAM and CW Finance for the film "Drunk Parents." These documents serve as an example of the identical terms that Colonia entered into with CW Finance to fund this film. To date, the plaintiffs are owed approximately CAD $6,975,000.00 of principal plus accruing interest. No repayments have been made.

18. Drunk Parents, LLC is a U.S. Petitioner and is named as a "US Vendor" in Schedule A to the Asset Purchase Agreement. Drunk Parents is one of the films listed in Appendix 18 to the Monitor's Third Report. The CAMA for Drunk Parents (at item 113) and various sales and distribution agreements (at items 114-118) are identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement. In addition, among the "Purchased Assets" listed in Schedule C to the Asset Purchase Agreement (at item 22) are a large number of other agreements that appear to relate to Drunk Parents.

<u>Fences</u>

19. Attached as **Exhibit "4"** are the Term Sheet and Participation Agreements between JAAM and <u>Bron Creative Corp.</u> (not CW Finance) for the film “Fences.” These documents serve as an example of the identical terms that Colonia entered into with Bron Creative Corp. to finance this film. To date, Premium is owed approximately USD $1,129,000.00 of principal plus accruing interest. Approximately USD $1,371,000.00 of principal has been repaid.

20. Fences is not listed in the “final list of Unsold Assets” attached as Appendix 18 to the Monitor’s Report. It appears that only one agreement involving Fences, a copyright assignment and notice of ownership (at item 10), is identified as an intended “Assumed Contract” in Schedule B to the Asset Purchase Agreement.

<u>Henchmen</u>

21. Attached as **Exhibit "5"** are the Term Sheet and Participation Agreements between JAAM and CW Finance for the film “Henchmen.” JAAM participated in two gap loans with CW Finance to fund the film as well as tax credit loans. Colonia also participated in two gap loans. To date, Premium is owed approximately CAD $4,300,00.00 of principal plus accruing interest. No repayments have been made.

22. Henchmen Productions Inc. is a “Canadian Petitioner”. Hench 2 BC Productions Inc. is a “Canadian Petitioner” and is named as a “Canadian Vendor” in Schedule A to the Asset Purchase Agreement. Henchmen is one of the films listed in Appendix 18 to the Monitor’s Third report. The CAMA for Henchmen is identified as an intended “Assumed Contract” at item 50 in Schedule B to the Asset Purchase Agreement. The CAMA appears to be the only agreement for Henchmen that is included in the Schedule B list of Assumed Contracts.

Layover

23. Attached as **Exhibit "6"** are the Term Sheet and Participation Agreements between Premium Trust and CW Finance for the film "Layover." These documents serve as an example of the identical terms that Corinthian and JAAM entered into with CW Finance to fund this film. To date, Premium is owed approximately CAD $1,303,000.00 of principal plus accruing interest. Approximately CAD $428,000.00 of principal has been repaid.

24. Layover is one of the films listed in Appendix 18 to the Monitor's Third Report. It does not appear that any agreements involving Layover have been identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement.

Leave No Trace

25. Attached as **Exhibit "7"** are the Term Sheet and Participation Agreements between Colonia and Bron Creative Corp. (CW Finance is a signatory only to the Client Term Sheet) for the film "Leave No Trace". Premium Properties signed identical documents to finance the film. In sum, the Premium companies fully funded Bron Creative Corp.'s / CW Finance's 50% share of the loan to the production company. To date, Premium is owed approximately CAD $3,465,000.00 of principal plus accruing interest. No repayments have been made.

26. Leave No Trace is one of the films listed in Appendix 18 to the Monitor's Third Report. The CAMA for Leave No Trace (at item 37) and various loan and security agreements (at items 7-9) are identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement.

Nightingale

27. Attached as **Exhibit "8"** are the Term Sheet and Participation Agreements between Colonia and Bron Creative Corp. (not CW Finance) for the film "Nightingale." These documents serve as an example of the identical terms that Premium Properties entered into with Bron Creative Corp. to finance this film. The Premium companies financed 100% of this loan. To date, Premium is owed approximately CAD $5,072,000.00 of principal plus accruing interest. No repayments have been made.

28. In the Term Sheets, the obligations of the borrower (Nightingale Films Holdings Pty Ltd) to Bron Creative Corp. with respect to the loans from the Premium companies were to be secured by a "first priority position" in all collateral and any receipts from the collateral in Bron Creative Corp.'s territory. Premium was not told about any other loans or that the "first priority position" would be shared with other parties.

29. Nightingale is not listed in the "final list of Unsold Assets" attached as Appendix 18 to the Monitor's Report. Yet the CAMA for Nightingale (at item 5) and various loan, general security and interparty agreements (at items 6 and 11-17) are identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement.

Parallel

30. Attached as **Exhibit "9"** are the Term Sheet and Participation Agreements between JAAM and CW Finance for the film "Parallel." These documents serve as an example of the identical terms that Colonia entered into with CW Finance to fund CW Finance's 50% share of the loan to this film. CW Lending funded the other 50% of the loan to this film. To date, Premium is owed approximately USD $3,993,000.00 of principal plus accruing interest. No repayments

have been made.

31. The production company for this film, Para Productions, LLC, is a Non-Petitioner Entity named as a "US Vendor" in Schedule A to the Asset Purchase Agreement. Parallel is one of the films listed in Appendix 18 to the Monitor's Third Report. The CAMA for Parallel (at item 61) and various other agreements (at items 38-39 and 196-204) are identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement.

Phil

32. Attached as **Exhibit "10"** are the Term Sheet and Participation Agreements between JAAM and CW Finance for the film "Phil." These documents serve as an example of the identical terms that Colonia entered into with CW Finance to fund this film. To date, Premium is owed approximately CAD $3,475,000.00 of principal plus accruing interest. No repayments have been made.

33. Phil is one of the films listed in Appendix 18 to the Monitor's Third Report. It does not appear that any agreements involving Phil have been identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement.

Red Sea Diving Resort

34. Attached as **Exhibit "11"** are the Term Sheet and Participation Agreements between Premium and CW Finance for the film "Red Sea Diving Resort." These documents serve as an example of the identical terms that Colonia entered into with CW Finance to provide early advances for the financing of this film. To date, Premium is owed approximately CAD $4,204,000.00 of principal plus accruing interest. No repayments have been made.

35. The production companies Red Sea LLC and Red Sea Productions Inc. are Non-Petitioner Entities named as a “US Vendors” in Schedule A to the Asset Purchase Agreement. Red Sea Diving Resort is one of the films listed in Appendix 18 to the Monitor’s Third Report. It does not appear that any agreements involving Red Sea Diving Resort have been identified as intended “Assumed Contracts” in Schedule B to the Asset Purchase Agreement, even though the Red Sea production companies are said to be US Vendors.

Tully

36. Attached as **Exhibit "12”** are the Term Sheet and Participation Agreements between Colonia and CW Finance for the film “Tully.” These documents serve as an example of the identical terms that JAAM entered into with CW Finance to contribute to the funding of this film. In sum, the Premium companies funded 50% of CW Finance’s 50% share of the loan to the production company. CW Lending funded the other 50% share of the loan to the production company. To date, Premium is owed approximately USD $945,000.00 of principal plus accruing interest. Approximately USD $1,255,000.00 has been repaid.

37. The production company for this film, Tully Productions, LLC, is a Non-Petitioner Entity named as a “US Vendor” in Schedule A to the Asset Purchase Agreement. Tully is one of the films listed in Appendix 18 to the Monitor’s Third Report. The CAMA for Tully (at item 209) and various other agency, licensing, and distribution agreements (at items 207-208 and 210-216) are identified as intended “Assumed Contracts” in Schedule B to the Asset Purchase Agreement.

Willoughbys

38. Attached as **Exhibit "13”** are the Amended and Restated Bridge Loan Term Sheet and related Participation Agreement between Premium Properties and CW Finance for the film

"Willoughbys." These documents serve as an example of the identical terms that Colonia entered into with CW Finance to contribute to the financing of this film. Premium has been repaid its principal in full but has not received all the applicable interest nor the gross receipts it is entitled to under the provisions of the Amended and Restated Bridge Loan Term Sheet.

39. Willoughbys is not listed in the "final list of Unsold Assets" attached as Appendix 18 to the Monitor's Report. It does not appear that any agreements involving Willoughbys have been identified as intended "Assumed Contracts" in Schedule B to the Asset Purchase Agreement. The film was sold to Netflix in 2018.

Premium's Demands of Cloth for Information and Repayment

40. By way of further background, on several occasions prior to the commencement of the thirteen actions, Premium demanded information and repayment from Cloth. From 2016 onwards, we were met with excuses, vague timelines, and promises of repayment that never occurred.

Requests for Information from the Monitor

41. On October 3, 2023, Premium's counsel wrote to the Monitor on our behalf and on behalf of other similarly situated investor creditors to pose questions and seek information concerning, among other things: (i) the accuracy and status of the Petitioners' indebtedness (including whether, if at all, Premium's and the other investor creditors' investments in film project loans had been disclosed in the Petitioners' filings, and a request that the Monitor review the books and records of the relevant Bron production company and review the security granted in respect of project loans); (ii) the extent of the connections that exist between and among the Petitioners, CW Lending, CW Finance and other CW entities in order to ascertain "…whether

sufficient safeguards have been put in place to guard against any inappropriate effects on the insolvency process"; and (iii) Gilbert's role in the Crystal Wealth Media Fund matter "…with a view to identifying any concerns that should be brought to the Court's attention, including whether Investor Creditor funds were utilized to repay aged loans purchased from the Receiver." A copy of the October 3, 2023 letter is attached as **Exhibit "14"**. A copy of the letter is also attached as Appendix 24 to the Monitor's Third Report.

42. The Monitor's Third Report briefly addresses the October 3, 2023 letter in paragraphs 246 through 248 but does so in purely descriptive terms that simply restate what the letter is asking for.

Additional Information

43. I understand that Cloth is a director of CW Finance. Cloth is also the director of certain Bron entities (Bron Creative Corp, and Bron Ventures 1 (Canada) Corp.), as set out in the First Affidavit of Gilbert. Until at least August 2022, Cloth was also a director of Bron Media Corp., one of the Bron parent companies, as disclosed in the corporate profile report attached hereto as **Exhibit "15"**.

44. Cloth appears to be a director of Creative Wealth Holdings Ltd. (**"CW Holdings"**), which is the parent company of Creative Wealth Media GenPar Ltd. ("**CWM GP**") as shown in the organizational chart at page 22 of the Creative Wealth Media Trust Offering Memorandum dated March 23, 2016, and amended December 23, 2016, a copy of which is attached hereto as **Exhibit "16"**. CWM GP is the general partner of CW Media Lending, the DIP Lender, and proposed purchaser. Attached hereto as **Exhibit "17"** are copies of the corporate profile report of CW Holdings and the Limited Partnership Report for CW Media Lending, respectively.

CW Finance's Notice of Intention Under the BIA

45. On October 27, 2023, CW Finance filed a Notice of Intention to make a proposal under the *Bankruptcy and Insolvency Act*. A copy of the results obtained from a search of the Office of the Superintendent of Bankruptcy Canada's online database is attached as **Exhibit "18"**.

46. I swear this affidavit in support of the orders sought in the Notice of Cross-Application made by the Ad Hoc Group of Investor Creditors and for no other or improper purpose.

SWORN BEFORE ME via video-conference with the deponent in the City of Toronto,) Ontario, and the Commissioner in Toronto in the Province of Ontario on November 1, 2023)

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A Commissioner for taking Affidavits
Kimberly Elinor Campbell, a Commissioner etc
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors
Expires October 11, 2024.

MILTON WINBERG