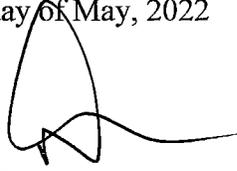


This is Exhibit "WW" referred to in the affidavit of  
Vivian Krause sworn before me at Vancouver, B.C.  
this 20th day of May, 2022

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and a short vertical stroke.

*A Commissioner for taking Affidavits within British Columbia*

Alan A Frydenlund, QC\*\*  
 Harvey S Delaney\*  
 Paul J Brown\*  
 John J Kim\*  
 Jonathan L. Williams\*  
 Paul A Brackstone\*\*  
 Daniel H Coles\*\*  
 Sameer Kamboj\*  
 Claire M Armstrong  
 Laura A Buiwendyk  
 Josephine M Nadel, QC, Associate Counsel\*  
 Duncan J Manson, Associate Counsel\*  
 Michelle Karby, Associate Counsel\*  
 Hon Walter S Owen, QC, QC, LLD (1981)  
 John I Bird, QC (2005)

Allison R Kuchta\*  
 James I. Carpick\*  
 Patrick J Haber\*  
 Heather E Maconachie  
 Michael F Robson\*  
 Scott H Stephens\*  
 Jocelyn M Bellerud\*  
 Heather A Frydenlund\*\*  
 Patrick J Weafer  
 Taahaa Patel

Jeffrey B Lightfoot\*  
 Christopher P Weafer\*  
 Gregory J Tucker, QC\*\* \*\*\*  
 Terence W Yu\*  
 James H McBeath\*  
 George J Roper\*  
 Tony R Anderson\*  
 Brian Y K Cheng\*\*\*  
 Georgia Barnard  
 Lily Y Zhang

Daniel W Burnett, QC\*  
 Ronald G Paton\*  
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 Kari F Richardson\*  
 David W P Moriarty\*  
 Katharina R Spotzl\*  
 Nikta Shirazian  
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 \*\* Also of the Alberta Bar  
 \*\*\* Also of the Ontario Bar  
 \*\* Also of the Washington Bar

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May 18, 2022

Allen/McMillan Litigation Counsel  
 1550-1185 West Georgia Street  
 Vancouver, BC V6E 4E6

Attention: Greg J. Allen

Dear Sirs/Mesdames:

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 Our File: 33554/0001

**Re: Plaintiff's List of Documents – Rule 7-1(10) and (11) demand**

We have had an opportunity to review the documents listed and produced by the plaintiff on March 17, 2022. The list fails to produce documents that should have been initially listed and we hereby demand under Rule 7-1(10) and/or there are additional relevant documents we require be listed and produced, which we hereby demand under Rule 7-1(11). As you will be aware, the latter demand triggers a wider scope of relevance akin to the Pervian Guano test.

The documents we demand are:

- A complete set of unredacted financial statements for the three charities involved in funding Fortius Sport & Health Centre, namely, New Dimensions Foundation, Fortius Foundation and Imladris Foundation, from the time of the first claimed donation forming part of the \$23 Million to the sale of the Sports Center to Burnaby**

These are plainly relevant to whether the claimed \$23 Million from the plaintiff was a true gift of that value. You have already clarified that it was in fact not a direct donation from the plaintiff but an asserted series of transactions through these charities. The transactions between them and the exchanges of value are essential to that central issue. It appears that the claimed \$23 Million may include some, all or part of \$17,392,300 which Fortius reported as a loan, secured by a mortgage, and not a gift.

According to our analysis of the information you have provided, Scott Cousens claims to have made donations for a total of \$22,677,341, as follows:

Gifts to New Dimensions Foundation (“NDF”)	\$ 17,885,000
Gifts to Imladris Foundation (“Imladris”)	\$ 4,792,341
	\$22,677,341.00

An analysis of these transactions and how they were a transfer of true value to the Sports Center require an examination of these financial statements,

**2. All documents surrounding and explaining the terms of the loan from New Dimensions Foundation to Fortius Foundation.**

In light of the factual issue over Mr. Cousens' public claim that Fortius was begun with his donation and the financial statements of Fortius indicating the contrary, namely, that Fortius' first finances came in the form of a loan from New Dimensions as noted above, we request all documentation surrounding, explaining and detailing the terms of this loan. These are relevant to determining the truth of Mr. Cousens' public claim and Ms. Krause's assertions to the contrary.

**3. Copies of all transaction documents and accompanying communications for the transactions totalling the claimed gifts to NDF totalling \$17,885,000 and Imladris totalling \$4,792,341.**

These are relevant to a determination of the exact nature of what is claimed to have been effectively a donation from the plaintiff to the Sports Center, and therefore needed to know how those transactions were handled and what conditions, agreements or understandings attached to each of them. We note for example that the gifts to NDF consisted of \$13,000,000 as shares in three gold mining companies and \$4,885,000 as cash/enduring property, according to the information provided.

The tax receipt issued for the latter to the plaintiff is marked "CASH". Yet in Imladris' tax return, the donation of \$4,885,000 is reported as "enduring property." The documents are relevant as to the nature of the "enduring property" reported.

**4. All valuation documents or reports asserting the gifts had the values assigned to them.**

These are relevant to a determination of whether the claimed donations were true gifts of true economic value.

As to the \$4,885,000 is reported as "enduring property" and noted above, no valuation documents have been provided. As to the remaining alleged gifts, they consist of shares of three mining companies, specifically:

Anooraq Resources Corp.	\$ 4,180,000.00
Detour Gold Corp.	\$ 5,205,000.00
Northern Dynasty Minerals	\$ 3,615,000.00
	\$ 13,000,000.00

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Anooraq Resources Corp. had operations in South Africa. As of September 17, 2019, Atlastsa was delisted from the TSX and from the South Africa exchange. Its trade volume was low. We require documents indicating the basis of valuation.

Detour Gold Corp. began trading on January 1, 2007 at an initial share price of \$3.50. By the end of 2007, DGC shares were trading in the range of \$10 to \$13. In January of 2008, the share price increased to nearly \$19 and remained between \$16 and \$19 until June of 2008 when it fell to approximately \$5 per share.

According to documents that you have provided, NDF acquired 290,000 shares of DGC on February 1, 2008 at a share price of \$17.95. DGC then sold these shares between February 12 and 29, 2008. The value assigned to these share appears to have been at an unusually high peak, on a low trading stock. We require the basis for valuation.

Northern Dynasty Corp. – Documents provided by you indicate that NDF acquired 300,000 shares of Northern Dynasty on March 5, 2008 at a share price of \$12.05, and sold these shares between March 11 and April 4, 2008. However, Northern Dynasty reached a peak of However, then fell to a low of approximately \$0.23 per share. As of February 2022, the share price was approximately \$0.50. The high value timing on a low volume share trade company begs the question of valuation and we require valuation documents.

**5. A full copy of the January 31, 2011 donation of \$1M.**

The documents which you provided include tax receipts from Imladris Foundation, which Mr. Cousens controls, to himself, however, one of them, namely a January 31, 2011 donation of \$1M has an incomplete supporting bank statement. The statement indicates two pages, but only one page was included among the documents produced by the plaintiff.

We expect this was merely a copying error, and the complete document is obviously relevant given that part of it has been produced. We therefore request that a complete copy of this statement is provided, including both of the two pages.

**6. Loan documentation and accompanying memos or other explanatory communications**

The bank statements provided by Mr. Cousens for his personal account show two entries for which receipts from Imladris Foundation were not provided, as follows:

September 8, 2015	Cheque	\$ 250,000
September 29, 2015	Debit Memo	\$ 35,000

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The bank statement dated September 29, 2015 indicates that the \$35,000 appears to have been a loan at 5 percent. Why there would be a loan or the term are unexplained, and require to investigate whether all alleged gifts were true gifts of true economic value in the overall transactions.

As to the \$250,000, the documents provided do not include a receipt from Imladris Foundation for this amount. We request this receipt and/or any other accompanying or explanatory documentation as to this payment, again to determine against the overall series of transactions whether alleged gifts were true gifts of true economic value and whether their character is otherwise.

#### **7. Valuation of software licencing agreements**

Tax returns for Imladris Foundation indicate that more than \$3 million of the gifts that Imladris Foundation made were software license agreements that were entirely or nearly entirely written off. In letters to Mr. Cousens dated June 15, 2021 and July 15, 2021, Vivian set out the evidence that she has compiled regarding the write-offs of software licenses and requested clarification as to the nature of these software licenses and why they were written off. We again request documentation regarding the valuation, write-offs of software licenses by the charities that received gifts from Mr. Cousens's foundation.

#### **8. How Mr. Cousens' Donations to Imladris Foundation Were Spent**

Tax returns for Imladris Foundation indicate that of the \$36,983,600 gifted by Imladris, \$30,270,000 was gifted to CHIMP. According to the CHIMP's financial statements for 2020, its Independent Auditor could not vouch for \$193 million of CHIMP's assets.

In light of these facts, and with reference to the software licences above, we request documentation regarding the ultimate use of the gifts for \$30,270,000 to CHIMP and the software licenses. We also request documentation of how CHIMP utilized the \$30,270,000 that it received and the Payout Order/Schedule of Disbursements of funds from the lawyers trust upon the sale of the sports centre.

These are required to assess the true economic value of these gifts and whether they were true gifts, and whether or to what extent Mr. Cousens effectively got his donations back when the City of Burnaby purchased the sports centre. We therefore request information about how.

#### **9. Amounts Owing to Non-Arms Length Parties**

Tax returns and financial statements show that year after year, Imladris foundation reported amounts owing to non-arms length parties, as follows:

2011	\$ 11,245.00
2012	\$ 2,896,246.00
2013	\$ 3,613,694.00
2014	\$ 2,896,245.00
2015	\$ 1,498,033.00
2016	\$ 1,087,200.00
2017	\$ 1,095,479.00
2018	\$ 1,104,228.00
2019	\$ 927,978.00
2020	\$ 1,199,728.00
2021	\$ 1,208,478.00

Considering that the only directors of Imladris Foundation are Scott Cousens and his immediate family, it stands to reason that the amounts owed by Imladris Foundation may have been owed to Mr. Cousens himself or to members of his family. We require documentation showing to whom these amounts owing were, and in particular if they were owed to Mr. Cousens or his immediate family. These are required to assess whether alleged gifts were of true economic value or whether some of them were actually loans or offset by loans or debts.

**10. All documents explaining or bearing upon the circumstances and transaction related to CHIMP's gift to Fortius of \$74,711,535 and the circumstances or reasons Fortius incurred debts to five Bromley charities totalling approximately \$60M**

Financial statements for Fortius Foundation indicate that it incurred debts to five of the Bromley Charities ("The Fortius Five"). According to the 2018 financial statements for Fortius Foundation its debts to these charities, totalled nearly \$60 million, as follows:

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Fortius Foundation debt to Imladris Foundation	\$ 28,919,628.00
Fortius Foundation debt to Almoner Foundation	\$ 14,799,307.00
Fortius Foundation debt to Foundation for Public Good	\$ 12,175,128.00
Fortius Foundation debt to Homestead on the Hill Foundation	\$ 3,305,573.00
Fortius Foundation debt to Assoc. for the Advancement of Scholarship	\$ 708,490.00
	\$59,908,126.00

During 2017 and 2018, Fortius Foundation documents indicate it fully paid its debts to the Fortius Five. We require copies of the payout documentation for the mortgage loans from Romspen Investment Corp., Almoner Foundation and the Bank of Montreal.

The repayment of money owing to the Fortius Five would have been impossible without the gift from CHIMP for \$74,711,535. According to the balance sheets in the 2019 financial statements for the five charities that comprise the Fortius Five, loans receivable were zero.

During the same year that Fortius Foundation paid its debts to the Fortius Five with the gift from CHIMP, the Fortius Five gifted \$76.5 million to CHIMP, as follows:

Gift to CHIMP from Imladris Foundation	\$ 29,260,000.00
Gift to CHIMP from Almoner Foundation	\$ 29,725,886.00
Gift to CHIMP from Foundation for Public Good	\$ 13,085,663.00
Gift to CHIMP from Homestead on the Hill Foundation	\$ 3,721,411.00
Gift to CHIMP from Assoc. Advancement of Scholarship	\$ 716,890.00
	\$76,509,850.00

In summary, the same year that Fortius Foundation received \$74.7 million from CHIMP, CHIMP received notes receivable from the five charities that made loans to Fortius Foundation. This raises the question of whether these were in reality or in part a series of circular, self-cancelling transactions between the Bromley Charities. The ultimate beneficiary of the \$74.7 million "gift" from CHIMP was CHIMP itself.

We require these documents to determine whether the \$74.7 million from CHIMP to Fortius Foundation was a true gift of true economic against the entire series of transactions.

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**11. The \$23M notes receivable documentation, including all connected explanatory agreements, memos, emails or other documents showing to whom the notes were owed, on what terms and for what reason.**

Attached to this letter are excerpts from the financial statements of Imladris and Fortius, both, indicating that Imladris held a note receivable, secured by mortgage, for \$23M plus interest, and Fortius was liable for a note payable in the same amount, being the very amount Mr. Cousens claims to have donated.

The documents sought are relevant to confirm this is the same \$23M, and the documentation is relevant to the core question of this litigation of whether it was a true gift, or in effect, a creative loan arrangement designed to make money back.

Response under the Rules

We look forward to receiving a supplemental list of documents and copies of the documents demanded above or any explanation as to why they are not provided, within the time limit under the Rules.

Yours truly,

**Owen Bird Law Corporation**



Daniel W. Burnett, Q.C.

DWB/chc  
Encl