

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

PROMARK ELECTRONICS INC.,

CASE NO. CACE-24-005937

Plaintiff,

vs.

BYOPLANET INTERNATIONAL, LLC,

Defendant.

_____ /

PLAINTIFF'S MOTION FOR PROCEEDINGS SUPPLEMENTARY

Plaintiff in Execution and Judgment Creditor, PROMARK ELECTRONICS, INC. ("Plaintiff"), by and through undersigned counsel, hereby moves for commencement of proceedings supplementary against RICHARD PATRICK MICHAEL O'SHEA ("O'Shea"), RPMOS, LLC ("RPMOS"), GOOD SALT LLC ("Good Salt"), JOHN H. BARRETT ("Barrett"), and MIGHTY AS A BEAR, LLC ("Mighty as a Bear") as third parties, pursuant to Fla. Stat. § 56.29, on the following grounds:

PROCEDURAL BACKGROUND

1. Plaintiff obtained a final judgment against Defendant, ByoPlanet International, LLC ("ByoPlanet"), in the principal amount of \$4,900,814.73¹ plus \$23,330.17, in legal costs and expert fees, totaling a judgment amount of \$4,924,144.91, from the Superior Court of Canada, Province of Quebec, District of Montreal, in Case No. 500-17-118996-217, on March 12, 2024 ("Canadian Judgment").

¹ The Canadian Judgment is in the principal amount of \$6,745,787.66 Canadian Dollars (CAD), plus \$32,113.11 CAD in legal costs and expert fees, totaling a judgment of \$6,777,900.77 CAD. Undersigned counsel converted the total Canadian Judgment amount to United States Dollars (USD) using the conversion rate as of the date of this Motion.

2. ByoPlanet did not file an appeal of the Canadian Judgment and the time to appeal has elapsed.

3. Pursuant to Fla. Stat. § 55.604, Plaintiff recorded a certified copy of the Canadian Judgment in the Official Records of Broward County on March 18, 2024, together with an Affidavit for Recording Out-of-Country Foreign Judgment Under Florida Uniform Out-of-Country Foreign Money-Judgment Recognition Act (§§55.601-55.607, Fla. Stat., Et. Seq) (“Recording Affidavit”). A certified copy of the Canadian Judgment, recorded as Official Records Instrument Number 119456389 of the Official Records of Broward County is attached as **Exhibit “A”** and a certified copy of the Recording Affidavit, recorded as Official Records Instrument Number 119456390 of the Official Records of Broward County is attached as **Exhibit “B.”**

4. Pursuant to Fla. Stat. § 55.604(2), ByoPlanet had thirty (30) days to file a notice of objection with the clerk of court, specifying its grounds for nonrecognition or nonenforceability. No such objection was filed and, on April 18, 2024, the clerk recorded a certificate stating that no objection was filed, pursuant to Fla. Stat. § 55.604(4). The clerk’s certificate of non-objection is attached as **Exhibit “C.”**

5. Accordingly, pursuant to Fla. Stat. § 55.604(5), the Canadian Judgment is enforceable against ByoPlanet in the same manner as a Florida judgment (the “Final Judgment”).

6. There is presently due on the Final Judgment the sum of \$5,110,088.64 (the “Judgment Debt”) which is comprised of (a) \$ 4,927,123.31, the principal balance of the debt unsatisfied and owing plus (b) \$23,455.42 in costs, plus (c) \$159,509.52 for accrued post-judgment interest through May 10, 2024 calculated at the per diem rate as set forth by Florida’s

Chief Financial Officer, that shall bear interest at the lawful rate from the date of this Final Judgment.

7. Plaintiff filed a judgment lien with the Florida Secretary of State on May 10, 2024 against ByoPlanet.

8. The Plaintiff filed a writ of execution for issuance against ByoPlanet on May 10, 2024 which is pending issuance by the clerk.

9. The execution is valid and outstanding.

FACTS SUPPORTING PROCEEDING SUPPLEMENTARY

10. The Canadian lawsuit was originally filed against ByoPlanet on November 12, 2021 in the Superior Court of Canada, Province of Quebec, District of Montreal for breach of contract (the “Canadian Litigation”).

11. For purposes of background on the Canadian Litigation, Plaintiff and ByoPlanet entered into a Supply Agreement in April 2020, pursuant to which Plaintiff sold and delivered goods to ByoPlanet for which ByoPlanet failed to timely pay and still had not paid for in May 2021. Final Judgment, ¶ 1, 9, 13.

12. On May 21, 2021, ByoPlanet signed an agreement that (a) formally acknowledged the debt ByoPlanet owed to Plaintiff and (b) established a payment plan under which ByoPlanet agreed to pay Plaintiff the outstanding debt in 29 weekly installments from June 18, 2021 until December 31, 2021 (the “Payment Agreement”). Final Judgment, ¶¶ 1, 17.

13. In the months following execution of the Payment Agreement, ByoPlanet breached by failing to make the promised payments. When Plaintiff contacted O’Shea about the status of payment, O’Shea incredibly attempted to invalidate the Payment Agreement by claiming that it had not been “approved by the board,” despite months of negotiations with

several members of ByoPlanet’s team and despite the obvious fact that it had been duly executed by both parties. Final Judgment, ¶¶ 20-21.

14. O’Shea later contradicted himself during his testimony at trial in the Canadian Litigation with respect to (a) his knowledge of the Payment Agreement, (b) the board’s approval of the Payment Agreement, and (c) the reasons for ByoPlanet’s failure to make payments to Plaintiff pursuant to the Payment Agreement. Final Judgment, ¶¶ 21-23.

15. The court in the Canadian Litigation described O’Shea’s contradictory actions and statements related to the Payment Agreement as “an attempt by O’Shea to set aside the Payment Agreement.” Final Judgment, ¶¶ 24.

16. Despite ByoPlanet’s acknowledgment of the debt in the Payment Agreement, ByoPlanet did not pay any of the amounts owing to Plaintiff. Instead, ByoPlanet falsely claimed for the first time in August 2021, that Plaintiff’s products were defective and, audaciously, ByoPlanet demanded payment from Plaintiff. Final Judgment, ¶ 2.

17. Ultimately, Plaintiff sued ByoPlanet in the Canadian Litigation for payment of the goods it delivered to ByoPlanet and, at the conclusion of trial, the court in Canada found that “the overwhelming factual and expert evidence reveal[ed] that there [was] no inherent defect in the products sold by [Plaintiff]. **In fact, the defect allegations [were] a pretext raised by ByoPlanet in order to avoid paying amounts that [are] clearly owing**” (emphasis added). Final Judgment, ¶ 3.

18. Even despite entry of the Final Judgment, ByoPlanet has still yet to pay Plaintiff the Judgment Debt.

19. ByoPlanet is owned and controlled by O’Shea, who also serves as the company’s Chief Executive Officer. Final Judgment, ¶ 7.

20. O'Shea filed the Articles of Organization for and created ByoPlanet, formerly known as ByoGlobe International, LLC, on April 8, 2011. The Articles of Organization for ByoPlanet are attached as **Exhibit "D."**

21. On January 19, 2024, after the trial in the Canadian Litigation ended and while the Canadian Court took the case under advisement, ByoPlanet was voluntarily dissolved. The Articles of Dissolution for ByoPlanet are attached as **Exhibit "E."**

22. For reasons unknown to Plaintiff, but surely in another attempt by O'Shea to render himself individually judgment proof, on March 11, 2024, a revocation of dissolution was filed for ByoPlanet with the Florida Division of Corporations, despite O'Shea's testimony at trial that ByoPlanet no longer existed and that it was operating as a new entity called Good Salt, LLC.² The Revocation of Dissolution for ByoPlanet is attached as **Exhibit "F."**

23. In fact, ByoPlanet not only continues to exist, but continues to operate, post on FaceBook to market new products, attend conferences like the AT100 Conference in Charlotte, North Carolina, as recently as April 24-26, 2024, own assets, like certain intellectual property registered under its name, and even purchase products within the last month from a company called Datastring Power (HK) Company Limited.

24. As explained more fully herein, O'Shea created and used other companies that he owns and controls, including RPMOS and Good Salt, and other partners in his businesses, including an individual named John H. Barrett ("Barrett") and Barrett's business, Mighty as a Bear, LLC ("Mighty as a Bear") with the intent to delay, hinder, or defraud Plaintiff from collecting the Judgment Debt ByoPlanet owes to it.

² It is worth noting that, like the Voluntary Dissolution, the Revocation of Dissolution was signed by an individual named Ann Maggard with a @goodsaltlife.com e-mail address, further evidencing the interconnectedness of the entities owned and controlled by O'Shea.

25. Upon information and belief, RPMOS is solely owned and controlled by O'Shea. However, according to O'Shea's testimony at trial, Barrett is a "partner" in RPMOS. O'Shea's trial testimony transcript ("O'Shea Trial Transcript") is attached hereto as **Exhibit "K."**

26. Upon information and belief, Good Salt is owned and controlled by O'Shea and RPMOS and, according to O'Shea's testimony at trial, Barrett is a "partner" in Good Salt, as well. *See* O'Shea Transcript, 38: 11-23.

27. Upon information and belief, RPMOS, Good Salt, Barrett, O'Shea, Mighty as a Bear, LLC, and John H. Barrett ("Barrett") are in possession of assets belonging to the Plaintiff.

Impleader of RPMOS, LLC in Aid of Execution

28. Plaintiff seeks to implead RPMOS ("RPMOS"), a Florida limited liability owned and controlled by O'Shea.

29. O'Shea filed the Articles of Organization for and created RPMOS on September 1, 2021, after signing the Payment Agreement in May 2021 and just weeks after ByoPlanet's August 2021 letter claiming the subject products were defective. The Articles of Organization for RPMOS are attached as **Exhibit "F."**

30. O'Shea is the registered agent and the only authorized person and member of RPMOS identified with the Florida Division of Corporations. Moreover, O'Shea's personal residence is listed as RPMOS' principal address, mailing address, and registered agent address. RPMOS' Entity Details with the Florida Division of Corporations are attached as **Exhibit "G."**

31. Notably, on the exact same date as ByoPlanet's dissolution and following the trial in the Canadian Litigation, RPMOS was voluntarily dissolved on January 19, 2024.³ RPMOS' Voluntary Dissolution is attached as **Exhibit "H."**

³ Unsurprisingly, RPMOS was voluntarily dissolved on the same date as ByoPlanet by the same individual, Ann Maggard. *See* FN 2.

32. RPMOS does not have an FEI/EIN number, which is required for businesses to file taxes with the IRS and which is typically required by financial institutions to open a bank account. *See Exhibit “G.”*

33. RPMOS also does not have a website or any online presence whatsoever.

34. In fact, upon information and belief, RPMOS does not conduct any legitimate business, other than the sham business it purportedly conducted with ByoPlanet to defraud Plaintiff, which is more fully described below.

35. From September 9, 2021 to September 19, 2022, well into the Canadian Litigation, ByoPlanet borrowed \$6 million USD from RPMOS (“RPMOS Loan Agreement”). Final Judgment, ¶ 41.

36. However, the evidence at the trial in the Canadian Litigation revealed that RPMOS did not have a bank account and the monies for the RPMOS Loan Agreement were actually personally advanced by O’Shea and Barrett, who O’Shea claimed has an interest in RPMOS. Final Judgment, ¶ 41; *see also* O’Shea Trial Transcript, 55: 2-4.

37. Although O’Shea testified at trial in the Canadian Litigation that Barrett has an interest in RPMOS, O’Shea is the only individual listed on the Articles of Organization for RPMOS and in the entity details registered with the Florida Division of Corporations. Final Judgment, ¶ 41; *see Exhibit “F,” “G.”; see also* O’Shea Trial Transcript, 38: 11-23.

38. O’Shea also testified at the trial in the Canadian Litigation that although the RPMOS Loan Agreement referenced the Lender, RPMOS, providing a line of credit to ByoPlanet, “the funds came from another account where it represents the money for RPMOS.” O’Shea Trial Transcript, 60: 20-25, 61: 1-25, 62: 1.

39. O'Shea further testified at the trial in the Canadian Litigation that because he is a partner in RPMOS, that he "[is] one with RPMOS." O'Shea Trial Transcript, 84: 1-11.

40. Under this same reasoning by O'Shea, Barrett is also one with RPMOS.

41. The RPMOS Loan Agreement was secured by a Security Agreement dated September 9, 2021, pursuant to which ByoPlanet granted a security interest in almost all of its assets, which made RPMOS essentially ByoPlanet's only secured creditor (the "RPMOS Security Agreement," and, together with the RPMOS Loan Agreement, the "RPMOS Agreements"). Final Judgment, ¶ 42.

42. Following ByoPlanet's failure to repay the loan to RPMOS, on February 17, 2023, RPMOS, which is also controlled by O'Shea, demanded immediate payment of the loan and RPMOS foreclosed on all of ByoPlanet's assets, except for its unfounded claim in the Canadian Litigation and the inventory supplied by the Plaintiff and the subject of the Canadian Litigation. Final Judgment, ¶ 43.

43. Undeniably, the following evidence demonstrates that RPMOS serves as an alter ego for O'Shea and Barrett and was created by O'Shea and Barrett as a shell company to move assets in an attempt to delay, hinder, and defraud Plaintiff from collecting the Judgment Debt owed to it: (a) the timing of RPMOS' creation, (b) the timing of the RPMOS Agreements, (c) the fact that O'Shea and Barrett own and/or control both ByoPlanet and RPMOS and acted on both sides of the RPMOS transactions, (d) the fact that RPMOS does not have a website or conduct any business outside of the fraudulent business it conducted through the RPMOS Agreements, (e) the fact that RPMOS does not have an FEI/EIN number, (f) the fact that RPMOS does not have a bank account, and (g) the fact that O'Shea and Barrett, individually, transferred money on behalf of and in the name of RPMOS for the RPMOS Agreements.

44. Upon information and belief, RPMOS, and O'Shea and Barrett, individually on behalf of RPMOS, are in possession of assets belonging to ByoPlanet, O'Shea, and Good Salt, and Plaintiff seeks to implead RPMOS in an effort to collect the Judgment Debt.

45. Due to the foregoing, all property owned by RPMOS, whether tangible personal or intangible property, is subject to execution.

46. Moreover, O'Shea and Barrett's transfer of funds on behalf of RPMOS and in RPMOS' name for the RPMOS Agreements, and O'Shea's testimony with respect to same at the trial in the Canadian Litigation, evidence the fact that O'Shea and Barrett are individual alter egos to RPMOS – a shell company with no bank accounts that they have used solely to hinder Plaintiff from collecting its judgment.

47. As a result, all property owned by both O'Shea and Barrett, whether tangible property or intangible property, not subject to exemption, is subject to execution.

48. Accordingly, Plaintiff respectfully requests the Court (a) enter an Order initiating proceedings supplementary to execution and (b) issue a Notice to Appear to RPMOS, O'Shea, and Barrett, as set forth under § 56.29(2), Florida Statutes.

Impleader of GOOD SALT, LLC in Aid of Execution

49. Plaintiff seeks to implead Good Salt, a Florida limited liability company, which is owned by O'Shea and upon information and belief RPMOS, as well as Barrett.

50. O'Shea filed the Articles of Organization for and created Good Salt on December 9, 2022. The Articles of Organization for Good Salt are attached as **Exhibit "I."**

51. RPMOS is the registered agent for Good Salt and O'Shea is the only authorized person and member of Good Salt listed with the Florida Division of Corporations. Moreover, O'Shea's personal residence is listed as Good Salt's principal address, mailing address, and

registered agent address. Good Salt's Entity Details with the Florida Division of Corporations are attached as **Exhibit "J."**

52. Following RPMOS' foreclosure of all of ByoPlanet's assets in February 2023, pursuant to the sham RPMOS Agreements, RPMOS entered into an asset purchase agreement with Good Salt on May 10, 2023, pursuant to which Good Salt, which was incorporated only five (5) months earlier, acquired all of ByoPlanet's transferred assets, for the suspiciously small sum of \$250,000, but none of its liabilities (the "Good Salt Transaction"). Final Judgment, ¶ 44.

53. Because RPMOS does not own a bank account, Good Salt, owned by O'Shea (and according to O'Shea, also Barrett) paid the \$250,000 sum to O'Shea and Barrett, individually, who, according to O'Shea, are "partners" in RPMOS, further evidencing Barrett and O'Shea's roles as alter egos to RPMOS and Good Salt.

54. Then, on May 16, 2023, Good Salt entered into an agreement with a publicly traded company called Plandai Biotechnology, Inc., whereby Plandai acquired all of the issued and outstanding ownership interests in Good Salt. However, just two months later in July of 2023, Plandai rescinded the agreement, rendering it null and void. Final Judgment, ¶ 47-48.

55. The Good Salt Transaction and Good Salt's subsequent agreement with Plandai, albeit rescinded, was yet another bad faith attempt by O'Shea to make ByoPlanet judgment proof, which was and remains O'Shea's ultimate objective.

56. Indeed, the (a) timing of the Good Salt Transaction, coupled with (b) the fact that O'Shea and Barrett were on both sides of the Good Salt Transaction due to their ownership and control of both entities and (c) the relatively modest purchase price for ByoPlanet's assets, evidence an intent on the part of O'Shea, Barrett, RPMOS, ByoPlanet, and Good Salt to delay,

hinder, and defraud Plaintiff from collecting the Judgment Debt owed to it and give rise to successor liability.

57. Indeed, the court in the Canadian Litigation agreed:

... [C]onsidering the new facts brought to light regarding the Good Salt Transaction, it would appear that **ByoPlanet is attempting to make itself judgement proof, thus demonstrating yet again its intent to use any means necessary to avoid paying the amounts it owes.** While the Court was not tasked with determining whether Good Salt and O'Shea can be held liable for the monies owing to Promark, **the facts put forward raise serious concerns,** when one looks at the timing of this transaction, the fact that O'Shea is the principal and the directing mind of all of the implicated entities (ByoPlanet, Good Salt and RPMOS), and the minimal amount paid by Good Salt, at first glance, to acquire all of ByoPlanet's assets.

(emphasis added) Final Judgment, ¶ 174-175.

58. Moreover, in the Canadian Litigation, O'Shea testified that, by November of 2023, ByoPlanet was no longer operating and had no employees because most of them had been hired by Good Salt. Final Judgment, ¶ 45.

59. The court in Canada described Good Salt as the “successor in interest to the vast majority of ByoPlanet’s assets.” Final Judgment, ¶ 46.

60. In fact, a quick Google search for the entity name “Good Salt, LLC” brings up ByoPlanet’s website, which identifies Good Salt as one and the same with ByoPlanet:



good salt llc



All Images Shopping Maps Forums More

Tools

About 134,000,000 results (0.37 seconds)

 **ByoPlanet**
<https://byoplanet.com> > pages > about


About – ByoPlanet (Good Salt, LLC)

Creating Innovative Product Technology. We offer cutting-edge technologies and high-performing products to help you live your healthiest life.

 **Sun Biz**
<http://search.sunbiz.org> > Inquiry > SearchResults > search...

Entity Name List - Sunbiz.org - Division of Corporations

Corporate Name, Document Number, Status. **GOOD SALT HOSPITALITY LLC**, L19000204834, Active. **GOOD SALT PROPERTIES, LLC**, L22000043331, Active.

 **ByoPlanet**
<https://byoplanet.com>

ByoPlanet | Eco-Friendly Disinfectants and Electrostatic ...

Good Salt, LLC, stands as an industry leader in the production and distribution of electrostatic applicator technology and disinfectant solutions. About. Who ...

Who we Are · Equipment · Electrostatic sprayers · bCOOL



For use in disinfection, mold remediation, odor control, indoor air quality, agriculture, post-harvest application and farm animal disinfection application.

Good Salt, LLC, stands as an industry leader in the production and distribution of electrostatic applicator technology and disinfectant solutions.

61. What is more, if you go to Good Salt’s website, <https://goodsaltlife.com/>, it automatically redirects you to ByoPlanet’s website, further proving that both companies are one and the same.

62. Up until April 25, 2024, Good Salt was still an active company with Florida’s Division of Corporations.

63. However, on April 25, 2024, following Plaintiff’s service of Canadian counsel’s motion for reimbursement of fees and punitive damages in the Canadian Litigation, Good Salt was voluntarily dissolved by Ann Maggard – the same individual that dissolved both ByoPlanet and RPMOS. Good Salt’s Articles of Dissolution are attached hereto as **Exhibit “L.”**

64. Despite its dissolution, upon information and belief, Good Salt is still actively operating and in possession of assets belonging to ByoPlanet and O’Shea, and Plaintiff seeks to implead Good Salt in an effort to collect the Judgment Debt.

65. Due to the foregoing, all property owned by Good Salt, whether tangible personal or intangible property, is subject to execution, including but not limited to:

- Good Salt’s bank account maintained at J.P. Morgan Chase; and
- Good Salt’s intellectual property, including all trademarks associated with or referring to ByoPlanet, Clean Republic, bCOOL, Armatrex, and Vital Oxide.

66. Accordingly, Plaintiff respectfully requests the Court (a) enter an Order initiating proceedings supplementary to execution and (b) issue a Notice to Appear to Good Salt, as set forth under § 56.29(2), Florida Statutes.

Impleader of RICHARD P. M. O’SHEA in Aid of Execution

67. Plaintiff seeks to implead O’Shea, the owner and controller of ByoPlanet, RPMOS, and Good Salt.

68. As detailed above, O'Shea created, owns, and controls all of the following businesses: ByoPlanet, Good Salt, and RPMOS.

69. Accordingly, at all relevant times hereto, O'Shea had unfettered access to all of the entities' known and unknown assets, including but not limited to bank accounts, intellectual property, vehicles, etc.

70. Among other bad faith actions, O'Shea:

- a. Served as the principal, authorized person, member, owner, and controller for each of the three entities that conducted business with one another;
- b. Orchestrated the sham Good Salt Transaction;
- c. Entered into the fraudulent RPMOS Agreements; and
- d. Attempted to invalidate or set aside the Payment Agreement.

71. It is evident that each of these actions was a transparent attempt by O'Shea to delay, hinder, or defraud Plaintiff from collecting the Judgment Debt owed to it.

72. Indeed, O'Shea continues to take bad faith action in an attempt to delay, hinder, or defraud Plaintiff from collecting the Judgment Debt owed to it.

73. O'Shea is the owner and controller of, at least, seven active businesses in the State of Florida, including three that were created either during ByoPlanet's pre-litigation dispute with Plaintiff or during the pendency of the Canadian Litigation: Get Wellness, LLC, Clean Republic, LLC, and Celt Resources, LLC (TX).

74. O'Shea is also the owner and controller of, at least, another thirty-two (32) businesses in Florida that are presently inactive, but may still be avenues of shielding assets from Plaintiff.

75. Upon information and belief, O'Shea is using these businesses similarly to ByoPlanet, RPMOS, and Good Salt to transfer collectable assets in an attempt to delay, hinder, or defraud Plaintiff from collecting the Judgment Debt owed to it.

76. Accordingly, upon information and belief, O'Shea is in possession of assets belonging to ByoPlanet, Good Salt, and RPMOS and Plaintiff seeks to implead O'Shea in an effort to collect the Judgment Debt.

77. Due to the foregoing, all property owned by O'Shea, whether tangible personal property or any other type of property, is subject to execution, including but not limited to:

- 2018 Ford Expedition Max (VIN: 1FMJK1MT8JEA52078);
- 2017 Land Rover Range Rover (VIN: SALGR2FV5HA375223);
- 2015 Porsche 911 (VIN: WP0CA2A97FS141289);
- 2022 Toyota Tacoma (VIN: 3TMAZ5CN7NM161996);
- All watercrafts identified in **Exhibit "M,"** attached hereto;
- Bank accounts maintained at Truist, PayPal, Bank of America, and J.P. Morgan Chase;
- Proceeds from the sale of a property located at 1517 Garden Rd., Weston, FL, 33326-2700, on June 10, 2021; and
- Proceeds from the sale of a property at 770 Morton Road, Athens, GA 30605 on March 4, 2021.

78. Therefore, Plaintiff respectfully requests the Court (a) enter an Order initiating proceedings supplementary to execution and (b) issue a Notice to Appear to O'Shea, as set forth under § 56.29(2), Florida Statutes.

Impleader of JOHN H. BARRETT and MIGHTY AS A BEAR, LLC in Aid of Execution

79. Plaintiff seeks to implead Barrett, the alleged partial owner of ByoPlanet, RPMOS, and Good Salt.

80. Plaintiff also seeks to implead Mighty as a Bear, which is a foreign limited liability company, owned and controlled by Barrett.

81. Barrett filed the Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida (the “Application”), on behalf of Mighty as a Bear, on November 22, 2021. Barrett is listed as the managing member of Mighty as a Bear. The Application is attached hereto as **Exhibit “N.”**

82. As detailed above, O’Shea testified that Barrett served as a “partner” in all of the following businesses, among others: ByoPlanet, Good Salt, and RPMOS. O’Shea Trial Testimony, 22: 4-10, 38: 11-23.

83. Indeed, in both the RPMOS Agreements and the sham Good Salt Transaction, Barrett either individually sent or received money on behalf of RPMOS.

84. Accordingly, at all relevant times hereto, and upon information and belief, Barrett had access to all of the entities’ known and unknown assets, including but not limited to bank accounts, intellectual property, vehicles, etc.

85. Among other bad faith actions, Barrett:

- a. Participated in and individually benefited from the sham Good Salt Transaction, as O’Shea did; and
- b. Entered into the fraudulent RPMOS Agreements, together with O’Shea, transferring money to ByoPlanet on RPMOS’ behalf, when Plaintiff was already a creditor.

86. It is evident that each of these actions was an attempt by Barrett, conspiring together with O'Shea, to delay, hinder, or defraud Plaintiff from collecting the Judgment Debt owed to it.

87. Moreover, Mighty as a Bear made several transfers to ByoPlanet, totaling over a million dollars, subsequent to the Payment Agreement entered into between ByoPlanet and Plaintiff and once Plaintiff was already a major creditor of ByoPlanet's. O'Shea's Trial Testimony, 98-100: 1-16

88. Worth noting is the fact that O'Shea, individually, and the Richard Patrick O'Shea Revocable Trust also effectuated several transfers totaling millions of dollars to ByoPlanet, subsequent to the Payment Agreement entered into between ByoPlanet and Plaintiff.

89. Upon information and belief, Barrett is using Mighty as a Bear to help ByoPlanet, O'Shea, and the other companies owned and controlled by the two of them, to transfer collectable assets in an attempt to delay, hinder, or defraud Plaintiff from collecting the Judgment Debt owed to it.

90. Accordingly, upon information and belief, Barrett and Mighty as a Bear are in possession of assets belonging to ByoPlanet, Good Salt, and RPMOS and Plaintiff seeks to implead Barrett and Mighty as a Bear in an effort to collect the Judgment Debt.

91. Due to the foregoing, all property owned by Barrett and Mighty as a Bear, whether tangible personal property or any other type of property, is subject to execution, including but not limited to:

- 2920 NE 52nd St., Fort Lauderdale, FL

92. Therefore, Plaintiff respectfully requests the Court (a) enter an Order initiating proceedings supplementary to execution and (b) issue a Notice to Appear to Barrett and Mighty as a Bear, as set forth under § 56.29(2), Florida Statutes.

CONCLUSION

93. Succinctly and astutely summing up the information and arguments contained in the instant Motion, the court in the Canadian Litigation stated the following in the Final Judgment:

ByoPlanet is playing the clock and placing as many obstacles as it can in Promark's way, hoping time will run out, and that ultimately, Promark will give upon recovering the significant amounts it is owed. **Simply put, [ByoPlanet] is attempting to defeat the ends of justice.**

(emphasis added) Final Judgment, ¶ 175.

94. Based on the information contained herein, as well as the findings by the Canadian court following the submission of evidence at trial by the parties in the Canadian Litigation, memorialized by the Final Judgment awarded to Plaintiff, Plaintiff seeks to implead O'Shea, RPMOS, Good Salt, Mighty as a Bear, and Barrett, pursuant to § Fla. Stat. 56.29.

95. Plaintiff has incurred and is obligated to pay the undersigned counsel reasonable attorneys' fees, for which ByoPlanet is liable under Fla. Stat. § 57.115.

WHEREFORE, Plaintiff and Judgment Creditor, PROMARK ELECTRONICS, INC., requests that this Court

1. Enter an Order initiating proceeding supplementary to execution and granting the impleader of

- (i) Richard O'Shea;
- (ii) RPMOS, LLC;

- (iii) Good Salt LLC;
- (iv) John H. Barrett; and
- (v) Mighty as a Bear, LLC

as third parties in this proceeding supplementary;

- 2. Issue a Notice to Appear to
 - a. Richard O'Shea;
 - b. RPMOS, LLC;
 - c. Good Salt, LLC;
 - d. John H. Barrett; and
 - e. Mighty as a Bear, LLC

and that they be required to plead their defenses and appear before this Court to show cause, if any, why they should not be ordered to apply assets transferred to the Judgment Debt and order that any property subject to execution be applied to the satisfaction of the Judgment Debt; and

3. Tax court costs, incidental costs, and reasonable attorneys' fees against the Defendant and Judgment Debtor, ByoPlanet International, LLC, pursuant to Fla. Stat. § 56.29(8).

Dated: May 10, 2024

Respectfully submitted,

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By: /s/ Alejandra M. Iglesia, Esq.
Jeffrey Bast, Esq. (FBN 996343)
Alejandra M. Iglesia, Esq. (FBN 1010519)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail upon the parties listed on the service list below on May 10, 2024.

By: /s/ Alejandra M. Iglesia
Alejandra M. Iglesia, Esq.

Exhibit “A”

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-17-118996-217

DATE: March 12, 2024

BY THE HONOURABLE ELENI YIANNAKIS, J.S.C.

PROMARK ELECTRONICS INC.

Plaintiff

v.

BYOPLANET INTERNATIONAL LLC

Defendant

This is to certify that on 3/18/24 notice of this recording was sent, certified mail, to the Debtor(s) at the addresses given in the affidavit recorded concurrently herewith.



County Administrator

Katherine Rini
Deputy

JUDGMENT

OVERVIEW

[1] In its Originating Application, Plaintiff, Promark Electronics Inc. ("Promark") is seeking \$6,745,787.66 CAD¹ for unpaid products sold and delivered to Defendant, ByoPlanet International LLC ("ByoPlanet") in 2020. The vast majority of the amounts owing are

¹ \$5,419,173.89 USD converted to CAD on November 11, 2021, the date of the Originating Application filed by Promark (see currency rate at Exhibit P-9).

acknowledged by ByoPlanet in an agreement effective on May 21, 2021. Promark's claim is in essence an action on account for breach of contract or for goods sold and delivered.

[2] Despite this acknowledgement, ByoPlanet did not pay any of the amounts owing to Promark. Instead, as of August 25, 2021, for the first time, ByoPlanet invokes defects affecting Promark's products. Constituting itself Cross-Plaintiff, ByoPlanet seeks the resolution of the sale for products it did not pay for and claims \$10,915,031.83 CAD².

[3] For the reasons that follow, the Court grants Promark's Originating Application and finds that the overwhelming factual and expert evidence reveals that there is no inherent defect in the products sold by Promark. In fact, the defect allegations are a pretext raised by ByoPlanet in order to avoid paying amounts that are clearly owing. Its Cross-Application is abusive under article 51 of the *Code of Civil Procedure* ("CCP") since it is manifestly unfounded.

FACTS

Genesis of the Parties' Relationship

[4] Promark, a Quebec based company, develops, and manufactures electronic and electromechanical components³. It is a family-owned business founded in 1987.

[5] The president Jarred Knecht ("Knecht")⁴ took over the company in 2016 with the help of his brother, Brandon Knecht, who is Vice President – Finance & Supply Chain.

[6] ByoPlanet is a Florida limited liability company, with offices in Athens, Georgia. Until recently, ByoPlanet developed and manufactured disinfectant delivery systems for spraying various surfaces, including a rolling cart system equipped with a nozzle (the "Rolling Cart")⁵.

[7] Rick O'Shea ("O'Shea") is the Chief Executive Officer of ByoPlanet.

[8] Clorox Company ("Clorox") is ByoPlanet's partner⁶ and principal client. Almost all of the products it manufactured, which at the time were mainly Rolling Carts, were sold to Clorox. Branded under the Clorox name as the "Clorox Total 360 Electrostatic Sprayer CLX1000"⁷, Clorox sold the Rolling Carts to third parties, such as Walmart, who in turn sold the products to end-users.

² \$ 8,291,576.90 USD: see Amended Cross-Application dated December 22, 2023, par. 42 and Exhibit D-14 for the conversion rate as of September 7, 2022.

³ Exhibit P-1.

⁴ The use of individual's first or last names in the present judgement is only for purposes of brevity and no disrespect is intended.

⁵ See Clorox Operator's Manual for a picture of the Rolling Cart, Exhibit P-62, p. 153.

⁶ In the Clorox Proceedings, Exhibit P-13, Clorox qualifies ByoPlanet as its partner.

⁷ See Clorox Operator's Manual, Exhibit P-62, p. 153.

[9] In light of the Covid-19 pandemic, in 2020, its sales grew tremendously. In order to keep up with the increasing demand, on April 25, 2020, ByoPlanet executed a Supply Agreement with Promark⁸. As per the Supply Agreement, Promark agreed to deliver a series of electronic and electromechanical components to ByoPlanet, which would be incorporated into the Rolling Cart.

[10] The components consist of three assemblies which operate together (collectively the "Assemblies") in order to provide the power supply to the Rolling Cart:

- a) the control panel assemblies, which include a power cord that is attached to the panel by a cable gland (the "Control Panels");
- b) the electrostatic power supply assemblies (the "ESPS Power Supplies");
- c) the sprayer control panel, which is the nozzle of the unit (the "ES-150 Sprayers")⁹.

[11] Promark is not ByoPlanet's first, or only supplier of the Assemblies used in the production of the Rolling Cart units. Since 2013, ByoPlanet had been working with DK International Associates Inc. ("DK"), which was manufacturing the same Assemblies. However, with the emergence of the Covid-19 pandemic, demand for disinfectant products increased so significantly, that a second supplier—Promark, was needed to meet Clorox's orders.

[12] To that end, on October 9, 2020, Clorox loans ByoPlanet \$6 M as a means to facilitate production and delivery of the units¹⁰.

[13] In total, over 60,000 Assemblies are sold and delivered by Promark to ByoPlanet¹¹. While the numbers presented by both parties differ, the products sold represent a total amount varying between \$12,5 M USD and \$14,5 M USD¹², of which it is admitted that \$5,982,311 USD, is outstanding as of May 2021¹³.

The Strategic Agreement and Acknowledgement of Debt

[14] In January 2021, ByoPlanet is seeking to transition the Rolling Cart into a backpack system, known as the "Clorox Total 360 Propack" (the "Proton Backpack")¹⁴, where the

⁸ Exhibit P-2.

⁹ Exhibit P-2, section 1.

¹⁰ Exhibit P-13, par. 5.

¹¹ Amended Cross-Application dated December 22, 2023, par. 7, 9 for the breakdown of the Assemblies sold and delivered.

¹² Regarding ByoPlanet's position, see Amended Cross-Application dated December 22, 2023, par. 7.4, where the total amount of the products sold and delivered excluding freight is \$ 12,509,157 USD (9,041,701 + 1,749,938 + 1,717,518) as well as Exhibits D-42, D-42A and D-43. As for Promark, the total sales amount indicated is \$ 14,614,703 USD, as per Exhibit P-54.

¹³ Exhibits P-3 and P-52.

¹⁴ Exhibit P-3, section 2.

user could carry the disinfectant delivery system on his back, rather than roll the system on a cart. Some of the parts necessary for the backpack model are the same as the Rolling Cart, but others not, so a transition to this new product must be discussed and agreed upon.

[15] Knecht begins discussions regarding the Proton Backpack with Peter Johansson ("Peter"), president, and Chief Operating Officer of ByoPlanet at the time. These discussions continue over several months and also involve Kyle Robinson, Director of Supply Chain and Charles ("Chuck") Gilstrap ("Gilstrap"), Chief Financial Officer of ByoPlanet.

[16] The parties also agree that the amounts owing to Promark at the time should be included in the new agreement that will be signed. To this end, between February and April 2021, the parties' accounting teams have several exchanges to ensure that the accounts are properly reconciled as to the final amount owing to Promark¹⁵.

[17] On May 21, 2021, the parties execute the Strategic Manufacturing and Supply Agreement (the "Strategic Agreement") which is signed by Gilstrap for ByoPlanet and Knecht on behalf of Promark. The Strategic Agreement provides for the transition to the Proton Backpack and ByoPlanet's formal acknowledgement that it owes \$ 5,982,311 USD to Promark (the "Outstanding Amount"). In this regard, the Strategic Agreement lays out a payment plan, whereby ByoPlanet agrees to pay the Outstanding Amount in 29 installments¹⁶ commencing on June 18, 2021, until December 31, 2021¹⁷.

[18] At the time of the execution of the Strategic Agreement, of the 60,000 Assemblies sold and delivered to ByoPlanet, 23,349 have already been incorporated into Rolling Carts sold to Clorox and are currently in the field¹⁸. ByoPlanet was fully paid by Clorox for these products¹⁹. The only existing log of returned items reveals that from June 2020 to April 2021, only 50 units were returned to Promark for various issues ranging from missing serial numbers, pump not rotating, and the unit won't turn on. This represents approximately 2% of the units sold to Clorox²⁰. These were all deemed minor issues, and the parties collaborated to resolve them.

[19] Moreover, in March 2021, ByoPlanet starts receiving complaints notably from Walmart regarding damage to the power cord²¹. In this regard, ByoPlanet has some exchanges with Clorox, where it is found that user error could cause damage to the power cord, if the user pulls the Rolling Cart from the cord (a.k.a. the "Pigtail") rather than from

¹⁵ Exhibit P-11.

¹⁶ Section 7.4 of Exhibit P-31 indicates 31 installments, but there is a typo, it is in reality 29 installments.

¹⁷ Exhibit P-3, section 7.4.

¹⁸ Amended Cross-Application dated December 22, 2023, par. 9.

¹⁹ Exhibit P-26, pp. 139-140.

²⁰ Exhibit P-18; 50 returned units + 23,349 sold units x 100 = 2 %.

²¹ Exhibits D-3 and D-4.

the handle²². It is agreed that a "strain relief hook"²³ and an installation video would be distributed to customers²⁴. Thereafter, ByoPlanet's internal report dated August 31, 2021, confirms that the incident rate drops significantly—a monthly chart from March to August reveals that there were less than five incidents reported regarding damage to the power cord in July and August 2021²⁵.

Failed Attempt to Set Aside the Strategic Agreement

[20] On July 20, 2021, Knecht writes to Gilstrap and O'Shea stating that they need to speak since the payment plan outlined in the Strategic Agreement has not been respected²⁶. Indeed, the five first payments provided therein had not been made. Approximately 10 minutes later, O'Shea responds that "Peter" has been terminated and the Strategic Agreement had not been approved by the board²⁷. Knecht answers that the Strategic Agreement had been negotiated with several members of the ByoPlanet team over many months and had been duly executed²⁸. He expects ByoPlanet to abide by its obligations.

[21] O'Shea's response is baffling. "Peter" did not sign the Strategic Agreement on behalf of ByoPlanet, Chuck Gilstrap did. Moreover, O'Shea's testimony on whether he actually sought approval from the board regarding the Strategic Agreement is contradictory. In his pre-trial examination, he claims that he did, "through a quick phone call"²⁹. At trial, he contradicts his previous statement, maintaining that he only learned of the agreement sometime in June 2021.

[22] O'Shea contradicts himself yet again when addressing the reasons for the first unpaid installments. In his pre-trial examination, he testifies that the first payment due on June 18, 2021, was not paid since "all payments were put on hold until further research was done on the Boards"³⁰. However, at trial, he admits that the first payments should have been made, since he acknowledges that it was in August 2021 that ByoPlanet truly became aware of the alleged seriousness of the defect issue.

[23] In actuality, none of ByoPlanet's witnesses were able to offer any explanation as to why the five first payments provided under the Strategic Agreement (due on June 18, June 25, July 2, July 9, and July 16, 2021) totaling \$ 400 000 USD were not paid. O'Shea contends that ByoPlanet had the liquidities at the time to cover them. However,

²² Exhibit D-27, P-28, and P-29; see also Exhibits D-28 and P-30, exchanges between ByoPlanet and Clorox regarding procedures to put in place on how to properly service Walmart.

²³ See Exhibit D-27 for a photo of the strain relief hooks.

²⁴ Exhibits D-11, P-29, and D-27.

²⁵ Exhibit D-11, pp. 1, 3.

²⁶ Exhibit P-4.

²⁷ Exhibits P-16 and D-19.

²⁸ Exhibit D-19.

²⁹ Exhibit P-26, pp. 50-51.

³⁰ Exhibit P-26.

ByoPlanet's bank statements reveal a balance of \$ 336,503.76 USD as of August 31, 2021, showing that cash flow availability was actually limited³¹.

[24] Clearly, this was an attempt by O'Shea to set aside the Strategic Agreement. O'Shea testified that when he learned of the existence of this agreement around June 2021, he was "livid". He felt that Peter, a friend since high school, who had participated in the negotiations, had betrayed him by going behind his back.

[25] Following O'Shea's failed attempt to set aside the Strategic Agreement, the parties agreed that an initial payment of \$ 50 000 USD would be made to Promark on July 26 or 27, 2021³².

[26] Rather than make the payment, on July 28, 2021, ByoPlanet's external council sends Promark an email asking to set up a call to "address your concerns"³³.

[27] On August 3, 2021, Promark sends a formal letter of demand signed by its attorneys asking for the payment of the Outstanding Amount and the termination of the Strategic Agreement³⁴. This letter was never answered.

"Defective Product Discovery"

[28] Suddenly and unexpectedly, on August 25, 2021, Steve Cooper ("Cooper"), Vice-president of Research & Development at ByoPlanet, informs Promark in a short email, that it has discovered "serious issues" with the Control Panels³⁵.

[29] He states that ByoPlanet has received multiple complaints of power cord failures and that this results in an "inoperable machine and causes a safety hazard". No supporting documentation is provided. Instead, Cooper indicates that "further analysis" is needed to determine whether a full repair and replacement of all the units will be required:

(...) We have received multiple complaints of power cord failures that have been characterized by splitting of the outer insulation or broken wires inside the power cord. This results in an inoperable machine and a safety hazard. Our initial, ongoing investigation has shown that the panel-mounted fitting used to hold the power cord is excessively deforming the cord. (...) We are also seeing that when this condition is combined with cold weather there is a high incidence of failure of the cord's insulated sheath or internal wires.

³¹ O'Shea refers to Exhibit P-31 which are ByoPlanet's redacted bank statements, and specifically to the one on page 21, which shows a balance of \$ 336,503.76. The other bank statements that were filed are for the months of June and July 2021.

³² Exhibit P-5.

³³ Exhibit P-6.

³⁴ Exhibit P-7.

³⁵ Exhibit P-17.

(...) Based on inspections and testing, BYP concludes that the Control Panels supplied by Promark are defective and not fir for their intended use such that the manufacturing process employed by Promark will need to be revised accordingly. Further analysis and discussion is required to determine if a full repair and replacement of all existing units will be required. (...) ³⁶

[Emphasis added]

[30] Cooper testified that he fortuitously found out about the alleged defects in August 2021, when he glanced at a Control Panel lying on a desk while in the R&D department. He stated that he was in charge of the root cause analysis "by default" which is an indication of the less than thorough analysis carried out by ByoPlanet in this instance.

[31] In fact, prior to sending this email, ByoPlanet conducted limited testing on the Control Panels, which did not reveal any inherent defect³⁷. From the evidence filed, there is only one comprehensive report dated August 31, 2021, which outlines the results of ByoPlanet's root cause analysis³⁸. It is the same report that states that the reason for the power cord failures identified from March to August 2021 is user error and was solved with the addition of strain relief hooks³⁹.

[32] There is no evidence of a formal written notice provided to Clorox by ByoPlanet of this allegedly serious defect issue, despite a contractual obligation to do so⁴⁰. The only piece of evidence put forward by ByoPlanet is Cooper's meeting notes with Clorox for August 19, 2021, where one of the indicated discussion points is to "determine potential need for recall, or field repair of units"⁴¹. Cooper also spoke with Clorox of this issue on August 24, 2021, and understood that Clorox was not going to remove, recall or withdraw any of the Promark products⁴².

[33] Finding the August 25th email bizarre and suspicious in a context where important amounts are still outstanding, Promark does not respond. ByoPlanet never notifies Promark of any results of a "further analysis", Promark is not afforded the opportunity to "repair or replace" the supposedly defective Control Panels, nor is it informed of Clorox's position on this matter⁴³.

³⁶ Exhibit P-17.

³⁷ Exhibit D-6, testing conducted on August 18, 2021. The other testing conducted was on September 8, 2021 (Exhibit D-10) and on October 6, 2021 (Exhibit D-12).

³⁸ Exhibit D-11.

³⁹ Exhibit D-11.

⁴⁰ Exhibit D-46, section 5.2 a).

⁴¹ Exhibit D-8.

⁴² Exhibit D-9; Amended Cross-Application dated December 22, 2023, par. 23.

⁴³ Exhibit P-27, U-10.

[34] Instead, and despite Clorox's position, on September 9, 2021, Sean Corrigan ("Corrigan"), Director of Operations at ByoPlanet sends another email to Promark advising it that it will be:

- a) shipping back 32,618 of inventory of the Assemblies that have not been incorporated into any finished units;
- b) reworking 7,049 of Assemblies in inventory that have been incorporated into finished products but not sold; and
- c) reworking 25,138⁴⁴ Assemblies currently in units in the field as they are returned⁴⁵.

[35] The total costs claimed by ByoPlanet, which include the purchase price of the Assemblies is approximately \$ 6.8 M USD⁴⁶.

[36] However, even though ByoPlanet is asking for the "reimbursement" of the purchase price, in reality, ByoPlanet has not paid Promark for these Assemblies, or at least it admits that it has not paid for the majority thereof. While Promark contends that none of these Assemblies have been paid for, ByoPlanet admits that it did not pay for 20,320 of the 32,618 units held in inventory⁴⁷.

Termination of Clorox Relationship and Cash Flow Problems

[37] During this same period and unbeknownst to Promark, ByoPlanet's relationship with Clorox is also starting to deteriorate. On July 29, 2021, Clorox institutes proceedings against ByoPlanet alleging breach of contract and a default on the repayment of the \$6M loan (the "Clorox Proceedings")⁴⁸. On December 20, 2021, Clorox and ByoPlanet agree to terminate their relationship (the "Wind Down Agreement")⁴⁹ and settle the Clorox Proceedings⁵⁰.

[38] According to O'Shea's testimony, the last order received from Clorox is in February 2021 for approximately 10,000 Rolling Cart units. Clorox paid for this order upfront and in full⁵¹.

[39] There is no mention of any defective products in either the Clorox Proceedings or in the Wind Down Agreement. In fact, there is no evidence adduced at trial regarding any

⁴⁴ In its Cross-Application, the number indicated is 23,349 Control Panels in the field, par. 9.

⁴⁵ Exhibit P-19.

⁴⁶ Exhibit P-19: \$ 6,730,158.10 + \$ 140,980 + \$ 502,760 = \$ 6,871,640 USD.

⁴⁷ Exhibit P-27, U-41: ByoPlanet admits to having paid for 12,298 of the 32,618 Control Panels, leaving 20,320 unpaid units. It contends having paid for the 23,346 that are in the field and the 7,049 Control Panels incorporated in units but still held in inventory.

⁴⁸ Exhibit P-13.

⁴⁹ Exhibit D-45.

⁵⁰ Exhibits D-29 and D-44.

⁵¹ Exhibit P-13, par. 40.

complaints or concerns from Clorox about defective units, returned products or any recall of the Rolling Carts by Clorox.

[40] In addition to the Clorox Proceedings, again during the same period, on July 15, 2021, ByoPlanet is facing a lawsuit from one of its major suppliers Gast Manufacturing Inc. ("Gast") for breach of contract and for unpaid invoices, claiming \$ 1.8 M USD (the "Gast Proceedings")⁵². The Gast Proceedings are settled on February 27, 2023⁵³.

[41] As of the summer of 2021, ByoPlanet is experiencing serious cash flow problems. From September 9, 2021, to September 19, 2022, ByoPlanet borrows \$ 6 M USD (the "Loan Agreement")⁵⁴ from RPMOS LLC, a Florida limited liability company ("RPMOS")⁵⁵. However, despite numerous contradictions in O'Shea's testimony on this issue⁵⁶, the evidence reveals that RPMOS does not have a bank account and so the monies are actually advanced by its members⁵⁷, O'Shea and John Barrett⁵⁸. Based on O'Shea's testimony, John Barrett holds 33 % equity and O'Shea 67 % in RPMOS. O'Shea is the only "Authorized Person" listed on RPMOS' corporate registry⁵⁹.

[42] The Loan Agreement is secured by a Security Agreement dated September 9, 2021, pursuant to which ByoPlanet grants a security interest in almost all of its assets. RPMOS is essentially ByoPlanet's only secured creditor⁶⁰.

[43] Following ByoPlanet's failure to repay the loan, on February 17, 2023, RPMOS demands immediate repayment of the loan⁶¹. RPMOS executes a foreclosure on all of ByoPlanet's assets, save for the claim in the Cross-Application and all of the inventory supplied by Promark which is still being held by ByoPlanet⁶².

Good Salt Transaction

[44] Thereafter, on May 10, 2023, RPMOS enters into an asset purchase agreement with Good Salt LLC ("Good Salt") pursuant to which Good Salt, a company incorporated

⁵² Exhibit P-20. See also, Exhibits P-21 and P-22.

⁵³ Exhibit D-30.

⁵⁴ Exhibit D-31.

⁵⁵ Exhibit P-40.

⁵⁶ In his first pre-trial examination held on October 4, 2022, O'Shea, states that he personally loaned ByoPlanet funds as of late December 2021 (P-26, pp. 117-118). In his second pre-trial examination held on November 13, 2023, he testifies that he did not loan ByoPlanet any funds, maintaining that despite the fact that RPMOS has no bank account, it still "loaned" the monies to ByoPlanet (P-26A, pp. 11, 59).

⁵⁷ A member is the equivalent of a shareholder.

⁵⁸ Exhibit D-32, which are redacted bank account statements showing the advances from the two members.

⁵⁹ Exhibit P-40. However, the members are not listed.

⁶⁰ Exhibit D-33. There are two other secured creditors, but on specific pieces of equipment.

⁶¹ Exhibits D-34 and D-34A.

⁶² Exhibit D-35. There was a debate as to whether the Promark inventory was excluded or not from the transaction, but this issue is not relevant to deciding the case.

only five months earlier⁶³, acquires all of ByoPlanet's transferred assets (but none of its liabilities) for \$ 250 000 USD (the "Good Salt Transaction")⁶⁴.

[45] In his testimony, O'Shea confirms that ByoPlanet is no longer operating and has no employees, most of which have been hired by Good Salt⁶⁵.

[46] Essentially, Good Salt is the successor in interest to the vast majority of ByoPlanet's assets. O'Shea is Good Salt's president and RPMOS its agent⁶⁶. Also, Good Salt, RPMOS and O'Shea all have the same registered address⁶⁷.

[47] On May 16, 2023, Good Salt enters into a share exchange and reorganization agreement with Plandai Biotechnology Inc. ("Plandai"), whereby Plandai is set to acquire all of the issued and outstanding interests in Good Salt (shares and assets)⁶⁸. Plandai is a publicly traded company based in London, United-Kingdom.

[48] On July 31, 2023, Plandai rescinds the agreement, thereby rendering it null and void⁶⁹.

PROCEDURAL HISTORY

[49] On November 12, 2021, Promark files its Originating Application, which is modified on three occasions thereafter⁷⁰, seeking the recovery of \$ 5,419,173.89 USD broken down as follows:

- a) The Outstanding Amount, \$ 5,982,311 USD as per section 7.4 of the Strategic Agreement;
- b) \$ 749,362.89 USD for work in progress as per section 15 *in fine* of the Strategic Agreement⁷¹;
- c) The whole net of a security deposit held by Promark of \$ 1,312,500 USD.

Total: \$ 5,419,173.89 USD

⁶³ Exhibit P-37. Good Salt was incorporated on December 9, 2022.

⁶⁴ Exhibit D-37.

⁶⁵ Exhibit P-26A, pp. 50-53. O'Shea, Cooper, and Corrigan all began their testimony by stating they worked for Good Salt.

⁶⁶ Exhibit P-37.

⁶⁷ Exhibits P-37, P-40, and P-41. The registered address is: 175 Royal Palm Drive, Fort Lauderdale, Florida.

⁶⁸ Exhibit P-32. See also Exhibit P-48 (PU-1fA)—subject to a publication ban (see section 5 of the present Judgement).

⁶⁹ Exhibit D-38.

⁷⁰ The most recent version of the Originating Application is on November 22, 2023.

⁷¹ Exhibit P-8.

[50] On February 7, 2022, and then on September 9, 2022, ByoPlanet files its Summary Statement of Oral Grounds of Defence ("Defence") and its Cross-Application, both of which are modified several times thereafter⁷².

[51] ByoPlanet does not contest the amounts claimed, nor the validity of the Strategic Agreement and the Outstanding Amount. Rather, it invokes defects in Promark's products and ultimately argues that it is justified not only to refuse to pay for the Assemblies but also claims in its Cross-Application \$ 8,291,576.90 USD⁷³, which consists of the purchase price and damages resulting from the alleged defects.

[52] On December 15, 2022, the parties file a Request for Setting Down for Trial and Judgement by way of a Joint Declaration. On March 9, 2023, the parties set the dates for a 4-day trial which is held on December 11 to 14, 2023.

[53] On April 18, 2023, upon learning of the Good Salt and Plandai transactions through press releases, Promark modifies its Originating Application and adds Good Salt as a new Defendant, which is contested by ByoPlanet. On November 2, 2023, Justice Daniel Urbas hears Promark's Application for Authorization to Amend its Originating Application and renders his oral judgement on November 3, 2023. He allows the amendments and additional exhibits sought by Promark but refuses the addition of Good Salt as a Defendant. He also allows ByoPlanet to modify its proceedings to respond to the new allegations and exhibits as well as the conduct of a new pre-trial examination of O'Shea and the communication of undertakings.

[54] At the outset of the trial, the parties argued an Amended Application for a Sealing Order dated November 21, 2023, and an Application for Confidentiality and Sealing Orders dated December 4, 2023, presented by ByoPlanet (collectively the "Confidentiality Application"). The Court took the Confidentiality Application under advisement and will address it in this judgement.

PARTIES' POSITIONS

Promark's Position

[55] Promark argues that its Originating Application is straightforward. The Strategic Agreement contains an acknowledgement of debt, which is the equivalent to an extrajudicial admission. It is simply asking to be repaid the amounts owing as per the uncontested acknowledgement of debt and the Strategic Agreement.

⁷² The most recent versions of the Defence and Cross-Application are dated December 22, 2023.

⁷³ Using the conversion rate at Exhibit D-14, this represents \$10,915,031.83 CAD.

[56] Promark further contents that ByoPlanet is acting in bad faith in invoking alleged defects to the products sold and delivered, which is a pretext to avoid paying monies that are clearly owed.

[57] From a purely legal point of view, Promark argues that ByoPlanet cannot ask for the resolution of the sale and the "reimbursement" of a purchase price for products it has not paid for. This is nonsensical and demonstrates that the Cross-Application is baseless. It is asking the Court to declare the Cross-Application abusive within the meaning of articles 51 and following of the CCP⁷⁴.

[58] On the issue of the alleged defects, it points out that there is not a shred of evidence that the 23,000 plus units that were sold to Clorox and are currently in the field have had any significant issues. Moreover, nearly three years later, there have been no safety issues or hazardous incidents reported, no log of items returned (save for the 50 units)⁷⁵ and no recall by Clorox. No evidence that the units are inoperable and need to be repaired or replaced. There are barely any written communications with Clorox relating to this issue⁷⁶.

[59] To add insult to injury, ByoPlanet's own root cause analysis report dated August 31, 2021, reveals that the power wire failures are due to user error and to the Pigtail being overly pulled⁷⁷. The report confirms that once cable pulls also called "strain relief hooks"⁷⁸ are distributed to customers, the incident rate drops significantly. Promark's expert also corroborates this finding⁷⁹.

[60] Lastly, Promark argues that ByoPlanet's bad faith is further evidenced when one analyzes the Good Salt Transaction, which reveals ByoPlanet's ultimate objective to make itself judgement proof.

ByoPlanet's Position

[61] ByoPlanet contends that although the timing of the discovery of the defects is not ideal, said defects exist, are confirmed by its engineering team⁸⁰ and by its experts⁸¹. It argues that its expert evidence shows that the gland connecting the cable to the Promark Control Panel is overtightened, a feature that is completely absent on the comparable DK panels. This defect creates an over compression and causes damage to the cable which

⁷⁴ Amended Oral Grounds of Defence to ByoPlanet's Amended Cross-Application, dated November 21, 2023.

⁷⁵ Exhibit P-18.

⁷⁶ Exhibits D-7, D-8 and, D-9. As already stated, there are other communications regarding power cord issues where it is determined that user error was the cause: Exhibits D-27, D-28, P-28 to P-30. Some of these exhibits contain duplicates.

⁷⁷ Exhibit D-11.

⁷⁸ See Exhibit D-27 for a photo of the strain relief hooks.

⁷⁹ Exhibit P-62.

⁸⁰ Exhibits D-5 to D-11.

⁸¹ Exhibit D-17.

could pose electrical safety hazards. Thus, Promark's Control Panels are defective. Since the Assemblies all operate as a unit, all of Promark's products are unusable.

[62] It argues that Promark violated its obligation to warrant that the Control Panels it supplied were free from defects and could be used for their intended purpose under articles 1726 and 1729 of the *Civil Code of Quebec* ("CCQ"). As such, considering the defect of the Control Panels supplied by Promark, ByoPlanet is entitled to the resolution of their sale and to the restitution of the purchase price, or subsidiarily, it is entitled to invoke the exception of non-performance. ByoPlanet is also entitled to damages equivalent to the purchase price paid to Promark for the ESPS Power Supplies and the ES-150 Sprayers, which are being held by ByoPlanet as unusable inventory.

[63] To the extent that ByoPlanet is ordered to pay Promark any of the amounts claimed in the Originating Application, ByoPlanet is entitled to seek judicial compensation between the said amount, on the one hand, and the purchase price of the Control Panels and damages, on the other hand, to be paid by Promark.

[64] Finally, regarding the Good Salt Transaction, ByoPlanet argues that it is absurd to think that all of the steps taken leading up to this transaction were for the sole purpose of frustrating Promark, should it obtain a favorable judgement. It argues that ByoPlanet had cash flow issues that it attempted to resolve, but in the end was unsuccessful.

ISSUES IN DISPUTE

[65] The Court must decide the following issues:

1. Is Promark's Originating Application well founded?
2. Are Promark's products defective?

More specifically:

- a) Has ByoPlanet proven a loss of use of Promark's products in order to establish a presumption of liability in its favor?
- b) If not, has ByoPlanet established that Promark's products are otherwise defective?
3. If not, was ByoPlanet acting in bad faith?
4. Is ByoPlanet's Cross-Application an abuse of process?
5. Is ByoPlanet's Confidentiality Application well-founded?

ANALYSIS**1. IS PROMARK'S ORIGINATING APPLICATION WELL FOUNDED?**

[66] The source of Promark's claim is the Strategic Agreement. This agreement clearly provides that the amounts claimed are due by ByoPlanet.

[67] Regarding the Outstanding Amount, the Court finds that the Strategic Agreement contains an acknowledgement of debt by ByoPlanet at section 7.4. An acknowledgement of debt constitutes an extra-judicial admission and serves as evidence against its author⁸², namely, ByoPlanet. It can only be revoked if an error vitiating consent is proven⁸³.

[68] Here, although O'Shea attempted to cancel the Strategic Agreement on July 20, 2021, in its proceedings and at trial, ByoPlanet did not contest the validity of the acknowledgement of debt, nor did it invoke any error which could have vitiated its consent⁸⁴. The Outstanding Amount is due.

[69] Regarding the amount of \$ 749,362.89 USD for work in progress, section 15 *in fine* of the Strategic Agreement provides that the termination of the Agreement does not relieve the parties of its obligation to pay for any raw materials or work in progress (WIP) that remains unpaid. The invoice for the amount claimed was issued on June 18, 2021, prior to the termination of the Strategic Agreement, was uncontested by ByoPlanet and remains unpaid⁸⁵. This amount is also due.

[70] After deducting the security deposit held by Promark of \$ 1,312,500 USD, the Court finds that Promark is entitled to the sum of \$ 5,419,173.89 USD. Applying the conversion rate as of the date of the institution of the Originating Application, November 11, 2021, the amount owed by ByoPlanet to Promark is \$ 6,745,787.66 CAD⁸⁶.

[71] Section 7.4 of the Strategic Agreement provides that all outstanding amounts will bear annual interest at a rate of 5% plus current prime. The annual prime rate of the Bank of Canada on November 11, 2021, was 2.45 %, so that the applicable conventional interest is 7.45 % per annum⁸⁷.

[72] As such, the Court finds that Promark is entitled to recover the sum of \$6,745,787.66 CAD plus interest at a rate of 7.45 % per annum.

⁸² *Droit de la famille—153636*, 2015 QCCS 6706, par. 4, 9,18; *Hivon v. 3039510 Canada inc. (Services financiers Diane Gagné)*, 2016 QCCS 1406, par. 107.

⁸³ *Hivon v. 3039510 Canada inc. (Services financiers Diane Gagné)*, 2016 QCCS 1406, par. 107.

⁸⁴ Exhibit P-26, pp. 52-53.

⁸⁵ Exhibit P-8.

⁸⁶ Exhibit P-9, the conversion rate for USD →CAD is 1.2448.

⁸⁷ Exhibit P-10.

[73] However, ByoPlanet argues that it is justified in refusing payment since Promark's products are defective.

[74] While Promark contests this assertion, its preliminary argument is that ByoPlanet is barred from presenting this claim, since the Supply Agreement was replaced by the Strategic Agreement, and therefore no longer has any effect. It argues that since the Supply Agreement was terminated, the warranty obligations attached to the Assemblies sold can no longer be invoked.

[75] The Court does not agree. Even though the Supply Agreement was "updated"⁸⁸ by the Strategic Agreement, Promark's warranty obligations still survive under the Supply Agreement for the products already sold and delivered. One of the conditions to invoke warranty obligations is that the latent defect must have existed at the time of the sale⁸⁹. As such, whether a contract was replaced or terminated has no impact on the continued existence of the warranty obligations⁹⁰.

[76] Nevertheless, for ByoPlanet's argument to be successful, it must prove that Promark's products are affected by a latent defect.

2. ARE PROMARK'S PRODUCTS DEFECTIVE?

2.1 Legal Principles

[77] Pursuant to articles 1716 and 1726 CCQ, the seller is bound to warrant the buyer that the property, at the time of the sale is free of latent defects that render it unfit for the use for which it was intended or that so diminish its usefulness that the buyer would not have bought it or paid so high a price had they been aware of the defect.

[78] A buyer seeking to invoke the warranty of quality must necessarily establish that the alleged defect (i) is latent, (ii) is sufficiently serious, (iii) existed at the time of the sale, and (iv) was unknown to the buyer⁹¹.

[79] The buyer who discovers a latent defect must also comply with article 1739 CCQ and provide the seller with a timely notice outlining the discovered defects⁹². This is a substantive requirement, so that in order to succeed on its warranty claim, a buyer must not only prove the criteria outlined above but must also demonstrate that he provided timely notice of the latent defect⁹³.

⁸⁸ See third paragraph of the preamble of the Strategic Agreement, Exhibit P-3.

⁸⁹ *ABB Inc. v. Domtar Inc.*, 2007 SCC 50, par. 50.

⁹⁰ *ABB Inc. v. Domtar Inc.*, 2007 SCC 50, par. 50; see also article 1606 al. 2 CCQ and *Beaulne v. Valeurs mobilières Desjardins inc.*, 2013 QCCA 1082, par. 9.

⁹¹ *ABB Inc. v. Domtar Inc.*, 2007 SCC 50, par. 50.

⁹² *Claude Joyal inc. v. CNH Canada Ltd.*, 2014 QCCA 588, par. 24, 28.

⁹³ *Cvesper v. Melatti*, 2023 QCCA 1545, par. 12, 13.

[80] The starting point of this analysis is the existence of an actual defect⁹⁴. The main purpose of the legal warranty aims to provide the buyer with the usefulness and full use of the sold property. The CCQ defines a defect as a flaw that renders the property unfit for its intended use⁹⁵.

[81] There are three main types of latent defects: (i) the material defect, which relates to a specific good that was for example broken upon delivery; (ii) the functional defect, which relates to the good's design; and (iii) the conventional defect, which arises where the buyer has disclosed that the good is to be put to a particular use⁹⁶. Regarding the functional defect, which is at issue here, such a defect will be established if the good cannot partially or totally perform its intended use regardless of the cause while applying an objective standard⁹⁷.

[82] In assessing whether the defect is sufficiently serious, the defect does not have to render the good completely unusable but simply has to reduce its usefulness significantly in relation to the legitimate expectations of a prudent and diligent⁹⁸.

[83] While the occurrence of an actual material prejudice is not required, it is necessary to prove the existence of a likely risk of prejudice or a deficit in the usefulness of the defective product:

[88] A defect will be considered to be serious if it renders the good unfit for its intended use or so diminishes its usefulness that the buyer would not have bought it at the price paid (arts. 1522 C.C.L.C. and 1726 C.C.Q.). An example frequently cited by the authors is where a house is at risk of water damage owing to a crack in its foundation. The crack does not actually have to cause such damage for a latent defect to exist; it is enough that the crack exists and that it is likely to lead to serious damage.

[89] C.E. considers only the first aspect of the seriousness of the defect. According to its interpretation, the boiler could not be considered to be defective unless there were absolutely no possibility of it working. The trial judge, too, failed to ask whether the usefulness of the good had been diminished, as he stressed that the recovery boiler could continue to operate despite the cracks.⁹⁹

[Emphasis added]

⁹⁴ *Media Graph Dépôt inc. v. Mtex Solutions*, 2021 QCCS 5206, par. 38, 40.

⁹⁵ Article 1726 CCQ; *Ville de Gatineau v. 1561660 Ontario Ltd.*, 2023 QCCS 4242, par. 70.

⁹⁶ *ABB Inc. v. Domtar Inc.*, 2007 SCC 50, par. 48.

⁹⁷ *Ville de Gatineau v. 1561660 Ontario Ltd.*, 2023 QCCS 4242, par. 72.

⁹⁸ *ABB Inc. v. Domtar Inc.*, 2007 SCC 50, par. 52.

⁹⁹ *ABB Inc. v. Domtar Inc.*, 2007 SCC 50, par. 88, 89; *3223701 Canada inc. v. Darkallah*, 2018 QCCA 937, par. 27 and 28. The Court will use the terms "likely risk" since these are the terms used by the Supreme Court of Canada in *ABB v. Domtar*. The French terms used are "*risque probable*".

[84] In principle, the burden of proof rests with the buyer who is invoking a latent defect¹⁰⁰. However, in the case of a professional seller, a presumption of liability can be set up in favour of the buyer if he establishes that the property malfunctioned or deteriorated prematurely in comparison with identical property or property of the same type¹⁰¹.

[85] Once established, this presumption of liability includes: (i) a presumption that there was a latent defect in the product, (ii) a presumption that the defect existed at the time of the sale, and (iii) a presumption that the defect caused the premature malfunction or deterioration of the product and is thus serious¹⁰².

[86] In essence, if the presumption applies, three out of the four criteria are thus presumed and there is a reversal of the burden of proof such that it is incumbent upon the professional seller to demonstrate, on a balance of probabilities, that the malfunction or premature deterioration resulted from (i) improper use by the buyer, (ii) the fault of a third person, or (iii) superior force¹⁰³.

[87] The key factor in this analysis resides in the loss of use, as assessed in light of the buyer's reasonable expectations¹⁰⁴. Bottom line, in the case of a professional seller, the starting point of the analysis should be to determine whether there is a loss of use, in other words whether the buyer established a malfunction or the premature deterioration of the product, in order to determine whether the presumption of liability applies.

[88] Here, Promark is clearly a professional seller and ByoPlanet is alleging a functional defect and a significant loss of use, since it claims that the defect renders the Control Panels provided by Promark inoperable, unfit for their intended purpose and poses an electrical hazard¹⁰⁵.

[89] On one hand, if ByoPlanet proves a loss of use, the presumption of liability applies and it is up to Promark to rebut the presumption, which it can do by notably proving improper use by the end-user. On the other hand, if ByoPlanet fails to prove a loss of use, the presumption of liability does not apply, the burden rests with ByoPlanet to prove that the Control Panels are defective.

[90] As such, the Court will tackle the following sub-questions:

¹⁰⁰ Article 2803 CCQ; *Ville de Gatineau v. 1561660 Ontario Ltd.*, 2023 QCCS 4242, par. 73.

¹⁰¹ Article 1729 CCQ; *CNH Industrial Canada Ltd. v. Promutuel Verchères, société mutuelle d'assurances générales*, 2017 QCCA 154, par. 28. There is a similar presumption provided for at article 1730 CCQ regarding a manufacturer's liability.

¹⁰² *CNH Industrial Canada Ltd. v. Promutuel Verchères, société mutuelle d'assurances générales*, 2017 QCCA 154, par. 28; *CCI Thermal Technologies Inc. v. AXA XL*, 2023 QCCA 231, par. 43.

¹⁰³ *Demilec inc. v. 2539-2903 Québec inc.*, 2018 QCCA 1757, par. 44 to 47.

¹⁰⁴ *ABB Inc. v. Domtar Inc.*, 2007 SCC 50, par. 49; *Ville de Gatineau v. 1561660 Ontario Ltd.*, 2023 QCCS 4242, par. 76.

¹⁰⁵ Exhibit P-17.

- a) Has ByoPlanet proven a loss of use of Promark's products in order to establish a presumption of liability in its favor?
- b) If not, has ByoPlanet established that Promark's products are otherwise defective?

2.2 Has ByoPlanet Proven a Loss of Use of Promark's Products in order to Establish a Presumption of Liability in its Favor?

[91] On this issue, the Court will first examine the evidence in order to determine whether ByoPlanet has established an *actual* loss of use, and if not, whether it has proven the existence of a *likely risk* of a deficit in the usefulness Promark's products.

2.2.1 Actual Loss of Use

[92] The question as to whether ByoPlanet has proven an actual loss of use of the Promark Control Panels entails a purely factual analysis. The Court must analyze the evidence which supported ByoPlanet's claim at the time of the alleged discovery. The relevant period is from March 2021, the time where ByoPlanet alleges having received complaints regarding damaged power cords¹⁰⁶ up until September 9, 2021, where it informs Promark that it will return all defective parts held in inventory and rework the ones already incorporated into units and the ones in the field¹⁰⁷.

[93] Moreover, since there are over 23,000 Rolling Cart units in the field incorporating the alleged Promark defective Control Panels, the other relevant period that must be considered is the current lifespan of the products, which is from approximately June 2020¹⁰⁸, the date the products were first delivered until the trial date, December 2023.

[94] ByoPlanet's expert evidence, while potentially relevant to establishing the existence of a *likely risk* of a usefulness deficit, is not helpful in determining an actual loss of use since this aspect was not addressed in the report filed¹⁰⁹.

[95] The Court finds that the evidence does not establish any actual loss of use of Promark's products, nor any reasonable grounds to state that the alleged defect caused the Control Panels to be inoperable, pose a safety hazard or render them unfit for their intended purpose, as alleged by ByoPlanet in its email dated August 25, 2021¹¹⁰.

[96] First, although the evidence shows complaints received by Walmart regarding power cord failures¹¹¹, ByoPlanet did not keep a specific and contemporaneous log of the

¹⁰⁶ Exhibits D-3 and D-4.

¹⁰⁷ Exhibit P-19.

¹⁰⁸ The Court relies on Exhibit P-18, the only Return Log of the 50 items, which reveals returns as of June 2020, so that the products must have been delivered shortly before.

¹⁰⁹ Exhibit D-17.

¹¹⁰ Exhibit P-17.

¹¹¹ Exhibits D-3 and D-4.

complaints received pertaining to this issue and more importantly did not keep a return log. At trial, none of ByoPlanet's witnesses, including its experts, knew how many units (if any) had been returned as a result of this supposed defect. It is revealing that at trial, ByoPlanet could only produce 7 Promark Control Panels with damaged power cords returned from the field¹¹². These panels were examined by ByoPlanet's expert who did not know where they came from nor to which complaint they were attached to, if any, the chain of custody not having been established.

[97] The lists of complaints filed as Exhibits D-3 and D-4 were generated for the sole purpose of this litigation and compiled based on a key word search. They admittedly contain numerous duplicates¹¹³ and relate to multiple issues, not necessarily to the alleged defect¹¹⁴. The only reliable log of returned items is the one kept by Promark and shared with ByoPlanet, which in total reveals 50 returned items over a period of 14 months¹¹⁵. This represents 2% of the Rolling Carts sold¹¹⁶. This extremely low return rate of the Promark products demonstrates that there is no actual loss of use or any premature deterioration of the products.

[98] Second, ByoPlanet administered no evidence showing its own explicit policies or internal process when investigating alleged defects. The root cause analysis conducted in this case is more of a botched attempt to piece something together rather than a sophisticated, systematic, and elaborate process you would expect from a company dealing with Clorox products and who take their warranty obligations seriously.

[99] Based on Cooper's testimony, he learned of this "serious defect" fortuitously, and took charge of the root cause analysis by "default". Not only is it difficult for the Court to understand whether this analysis actually yielded a true result, but ByoPlanet's most comprehensive report does not support its position. Quite the contrary.

[100] The August 31, 2021, report reveals that the power cord failures identified from March to August 2021 were caused by user error and were solved by the addition of a strain relief cord¹¹⁷. Also noteworthy, the author of this report did not testify at trial. The only other testing conducted prior to this report was on August 18, 2021, and the results do not contain any conclusions regarding an overtightening of the gland in the Promark Control Panels¹¹⁸. As such, ByoPlanet's own internal investigation does not reveal that Promark's products were affected by any inherent defect nor that there was any premature deterioration or actual loss of use.

¹¹² See Brosz Report, Exhibit D-17, p. 7.

¹¹³ Promark counted over 100 duplications repeating the same case numbers over and over again.

¹¹⁴ Exhibit P-27, U-19 and U-20.

¹¹⁵ The period of 14 months is from June 2020 to April 2021, as per the Return Log, Exhibit P-18. The evidence did not reveal whether the 7 Control Panels with damaged cords examined by the experts were included or not in the 50 returned items captured by the only Return Log, Exhibit P-18.

¹¹⁶ Exhibit P-18; $50 \text{ returned units} + 23,349 \text{ sold units} \times 100 = 2 \%$.

¹¹⁷ Exhibits D-11 and D-27.

¹¹⁸ Exhibit D-6.

[101] Third, there is no written notice provided to Clorox of this "serious defect", despite ByoPlanet being contractually bound to do so¹¹⁹. Astonishingly, O'Shea testified that Clorox's policy was not to have any paper trail of any defects. This statement is not credible when one considers that it runs contrary to the parties' explicit contractual obligations.

[102] However, even based on the limited information that was provided to Clorox by ByoPlanet regarding this alleged defect¹²⁰, it appears that Clorox was not concerned, let alone took any positive action such as recall, withdraw, or remove any of Promark's products¹²¹. In any event, since no Clorox representative testified at trial, the Court does not have any firsthand knowledge of Clorox's position on this matter, which is in and of itself, detrimental to ByoPlanet's allegations.

[103] Furthermore, ByoPlanet itself took no action to rework any of the Control Panels in its possession despite its declared intent to do so on September 9, 2021. The absence of any evidence regarding a recall, or replacement of Promark's products is an important factor indicating an absence of a significant and actual loss of use.

[104] Fourth, at that time, over 23,000 units incorporating Promark's allegedly defective Control Panels had been sold to Clorox and had been in the field for approximately one year. There were no reported safety issues or hazardous incidents. At trial, three years later, there is still no evidence of any such incidents. Keeping in mind that ByoPlanet is alleging a widespread and systemic defect affecting *all* of Promark's products which poses a safety hazard, the complete absence of any incident is very telling and reveals that there is no actual loss of use.

[105] Finally, there is no mention of any defect issues with the 23,000 Rolling Carts in the field in the Wind Down Agreement signed with Clorox in December 2021, which indicates that ByoPlanet is responsible for warranty claims and replacement parts for previous products sold¹²². There is also no such mention in the Settlement Agreement signed by the parties putting an end to the Clorox Proceedings¹²³. Again, if such a widespread and systemic issue did indeed exist, would ByoPlanet not have taken precautions in its termination agreements with Clorox, considering that it was still on the hook for warranty claims? The absence of any mention of a defect issue in the Wind Down Agreement demonstrates that this was not a live issue with Clorox.

[106] The Court finds that a preponderance of the evidence leads to the conclusion that there is no actual loss of use of Promark's Control Panels.

¹¹⁹ Exhibit D-46, section 5.2.

¹²⁰ The only written evidence of the information provided to Clorox regarding the alleged "defects" are Cooper's meeting notes of August 19, 2021, Exhibit D-8.

¹²¹ Exhibit D-46, section 5.2; Amended Cross-Application dated December 22, 2023, par. 23.

¹²² Exhibit D-45, sections 3.2. and 4.1.

¹²³ Exhibit D-44.

[107] Turning to the next question, has ByoPlanet proven the existence of a *likely risk* of a deficit in the usefulness Promark's products?

2.2.2 Likely Risk of a Deficit in Use

[108] To answer this question, the Court can also consider the expert evidence adduced, but must nevertheless, take into account the time period elapsed since the products were put into the field. In other words, this analysis cannot be conducted in a vacuum, ignoring the fact that the 23,000 Rolling Carts have been in use for nearly three years.

[109] The Court will conduct its review of the expert evidence in the following section. For now, even assuming that ByoPlanet's experts have proven an overtightening of the gland which could potentially lead to damage to the power cord, there is no expert evidence presented to the Court regarding the probable timeline that would be required for the power cord to actually show signs of damage once incorporated into the Rolling Cart units. Would it take one, two, three, four years for the alleged damage to occur to the power cord and lead to a malfunction or a premature deterioration of the unit?

[110] This evidence is key since according to ByoPlanet, the complaints began in March 2021, so less than a year after Rolling Carts were in use. As such, following ByoPlanet's own reasoning, this defect surfaced rather quickly, approximately one year after the Rolling Carts were put into the field. However, three years later, there is no proof of any actual loss of use affecting the 23,000 Rolling Carts in the field and no explanation offered by ByoPlanet's experts as to this issue.

[111] The Court also considers the fact that in accordance with the Wind Down Agreement, ByoPlanet would necessarily be aware of any such incidents since it is responsible for warranty claims and replacement parts¹²⁴. Without such expert evidence as to a probable timeline of deterioration and considering the actual evidence adduced that the damage started to allegedly occur a year after the Rolling Carts were in use, the Court finds that there is no likely risk of a deficit of use of Promark's Control Panels.

[112] Based on the above, ByoPlanet has failed to demonstrate that Promark's Control Panels malfunctioned or deteriorated prematurely thus engendering an actual or a likely loss of significant use, which would lead to the application of the presumption of liability.

[113] Since the presumption of a liability does not apply, the burden rests with ByoPlanet to demonstrate that the Promark Control Panels are defective.

¹²⁴ Exhibit D-45, sections 3.2 and 4.1.

2.3 If not, has ByoPlanet Established that Promark's Products are Otherwise Defective?

2.3.1 Expert Evidence Adduced

[114] In order to prove that the Promark Control Panels are defective, ByoPlanet relies primarily on its expert evidence:

- a) Peter J.E. Brosz ("Brosz"), an electrical engineer who testified and provided a report dated October 12, 2022 (the "Brosz Report")¹²⁵; and
- b) Ivan Matijevic ("Matijevic"), an expert in materials science¹²⁶ who also testified and provided a report dated October 7, 2022. This is not a stand-alone report, as it forms an integral part of the Brosz Report¹²⁷.

[115] Brosz examined 49 Control Panels in total:

- a) 7 Promark Control Panels which based on information provided by ByoPlanet had been returned from the field with fractures in the cord jacket;
- b) 37 new Promark Control Panels which had never been assembled into final units;
- c) 5 new DK Control Panels which also had never been assembled into final units¹²⁸.

[116] The Brosz Report provides that the root cause associated with the alleged power cord failures on the Promark Control Panels is the overtightening of the cable gland during assembly, which caused an over compression at the connection between the gland and the power cord. He states that 100 % of the Promark Control Panels examined were found to have the overtightened gland which could lead to damage to the power cord. He concludes by stating that the damage to the power cords caused by the overtightening of the cable glands into the cords causes an electrical safety hazard since the cords operate at 120 volts¹²⁹.

[117] However, in order to identify the ultimate root cause, the Brosz Report relies on the Matijevic Report. Matijevic, after conducting a fractography analysis on one of the damaged Control Panels concludes that there is a premature overstress rupture of the power cords, when in combination with environmental factors¹³⁰.

[118] Promark in turn relies on the expert report and testimony of Hugo Julien, a mechanical engineer who provided a report dated December 7, 2022 (the "Julien

¹²⁵ Exhibits D-17, D-17.1 to D-17.8.

¹²⁶ Materials science is a field which studies how materials are manufactured and behave.

¹²⁷ Exhibit D-17.6.

¹²⁸ Exhibit D-17, p. 7.

¹²⁹ Exhibit D-17, pp. 25 and 26.

¹³⁰ Exhibit D-17, p. 26, point 7.3; Exhibit D-17.6, p. 2.

Report")¹³¹. He examined 59 Control Panels in total, 26 new Promark Control Panels never incorporated into final units, 28 Control Panels already disassembled by ByoPlanet's expert, and 5 new DK Control Panels never incorporated into final units¹³².

[119] He finds that it is simply not possible to "overtighten" the gland because there is a stopper which prevents overtightening to occur¹³³. He concludes that the damaged cords he examined cannot be caused by an overtightened gland but by misuse of the product by users. He does not see any damage to the cords on the new Promark Control Panels when compared to the DK Control Panels.

[120] Regardless, Julien states that even assuming this was a real issue, it could have been remedied by loosening the gland and replacing the cord, a procedure that could be executed by the average assembly person¹³⁴.

2.3.2 Analysis of Expert Evidence

[121] The Court finds that the expert evidence adduced by Promark is more credible and convincing than that of ByoPlanet. The fact that the Promark Control Panels show a gland that is more tightly screwed than the gland on DK's Control Panels only proves a different feature and not that there is a defect. In order to prove that the gland is indeed overtightened, one must begin by looking to ByoPlanet's specifications and to the manufacturer's gland requirements, in this case Beisit.

[122] ByoPlanet designed the Control Panel that was assembled by Promark. In ByoPlanet's drawings, it requests cable glands to be plastic and to have a diameter of 4-8 mm¹³⁵. It is uncontested that the Beisit glands used by Promark are plastic and had the required diameter¹³⁶. There are no further instructions provided regarding the tightening of the gland nor any torque measurement requirement¹³⁷.

[123] As for Beisit, both experts testified that the gland manufacturer also did not indicate a required torque measurement. Julien explains in his report that the only Beisit "requirement" he found stated the following: "Tighten the sealing nut to clamp the cable *firmly* in clockwise direction"¹³⁸. He finds that both the Promark and DK glands located on their respective panels are "firmly tightened" and show no damage to the power cables¹³⁹.

¹³¹ Exhibit P-62.

¹³² Exhibit P-62, p. 4.

¹³³ Exhibit P-62, p. 12.

¹³⁴ Exhibit P-62, p. 12.

¹³⁵ Exhibit D-1, p. 6.

¹³⁶ Exhibit P-62, p. 6.

¹³⁷ There are no further requirements regarding the tightening of the gland in the Bill of Materials provided by ByoPlanet to Promark for the Control Panels, Exhibit D-20.

¹³⁸ Exhibit P-62, p. 5.

¹³⁹ Exhibit P-62, p. 6.

[124] Brosz does not contradict the Beisit requirement¹⁴⁰ but adds that the general applicable CSA standard for gland fitting provides that "a fitting shall be constructed to allow assembly to a cable or raceway as intended *without damaging the cable* (...)"¹⁴¹. Brosz then concludes that it was observed that the gland was overtightened which caused damage to the cords, thereby not respecting this standard.

[125] So, keeping in mind the absence of any torque measurement requirements, have ByoPlanet's experts demonstrated that the glands on the Promark Control Panels are overtightened and have caused damage to the power cord? The Court finds that the Brosz Report is not reliable.

[126] The issue is threefold.

[127] First, in order to claim that the gland is overtightened, proof must be made as to torque requirements which were not met or at least a design specification which was not respected. Both experts agree that this is not the case. All of the requirements, whether coming from ByoPlanet or from Beisit were met.

[128] Second, regarding the notion of "damage" to the cord, Brosz's conclusion is at best hypothetical since it only analyzed 7 Promark Control Panels which actually had damaged power cords, representing 0.03 % of the Control Panels in the field¹⁴². Since no return log was kept, the reasons leading up to the damaged power cords are unknown, given that ByoPlanet is incapable of retracing these 7 panels in its compiled lists¹⁴³.

[129] As such, the use of the term "damaged" by Brosz to qualify the power cords on all of the Promark Control Panels is problematic. What he has revealed is simply a difference in the tightening measurements of the gland between the DK and the Promark panels, nothing more¹⁴⁴. To attempt to substantiate a claim that all of Promark's Control Panels had "damaged" power cords, they had to be placed under a specialized microscope, a digital zoom stereo microscope and, even then, he still had to seek the opinion of a specialist in materials science to establish an ultimate root cause of the damaged panels. Matijevic who after conducting a fractography analysis and using another specialized microscope known as a scanning electron microscope, concludes that the compression of the gland *in combination with environmental factors* creates conditions for environmental stress cracking ("ESC") of the power cord¹⁴⁵.

¹⁴⁰ Exhibit P-17, p. 8.

¹⁴¹ Exhibit D-17, p. 21 and 22, CSA standard C22.2 No. 18.3.

¹⁴² $7 \div 23\,000 \text{ field units} \times 100 = 0.03 \%$.

¹⁴³ Exhibits D-3 and D-4. It is also unclear whether these 7 Control Panels are included in the 50 items captured in the Promark Return Log, Exhibit P-18.

¹⁴⁴ Measurements of the gland insert internal diameter once compressed were taken which revealed a difference between the two. Exhibit D-17, p. 17-19. DK's diameter measured 5.8 mm whereas Promark's was 3.72 mm.

¹⁴⁵ Exhibit D-17, pp. 1, 12, 26.

[130] The Court thus understands from ByoPlanet's experts that for the cord to eventually become damaged, environmental factors, such as cold temperatures, need to contribute. As already stated, the crucial element of a timeline for the occurrence of such a deterioration is not specified by either expert. These conclusions simply do not substantiate any inherent defect in the Promark Control Panels, but at best point to outside factors.

[131] Contrary to ByoPlanet's assertion, facts matter. A determination as to the defective nature of a product cannot be conducted in a vacuum, using abstract mathematical calculations, and ignoring the most important component—the factual evidence from the field.

[132] The probative value to be assigned to an expert opinion is directly related to the amount and quality of admissible evidence on which it relies¹⁴⁶. In *La preuve civile*, Justice Catherine Piché summarizes this rule as follows:

*Opinion fondée sur la preuve – Le témoin expert ne se contente pas de dénoncer une opinion purement théorique, scientifique ou abstraite. Son opinion est fondée sur ses connaissances et son expérience, ainsi que sur des faits qu'il a observés ou qui ont été légalement prouvés.*¹⁴⁷

[Emphasis Added]

[133] ByoPlanet could only produce 7 Promark Control Panels with damaged power cords returned from the field. It is admitted that there were zero incidents reported where anyone's safety was compromised due to this supposed defect. There was no recall from Clorox. There was no reworking of any of Control Panels by ByoPlanet despite its declared intention to do so¹⁴⁸. ByoPlanet's own internal investigation revealed that any issue that may have existed relating to power cord failures were attributable to user error¹⁴⁹.

[134] Keeping in mind that ByoPlanet's expert claims that 100 % of its Control Panel are affected by this systemic defect and pose a significant electrical hazard, how can there be almost no returns, no incidents reported, no actions taken by Clorox and by ByoPlanet itself? ByoPlanet's experts conducted a completely abstract and theoretical expertise not addressing any of the factual evidence nor considering the results of ByoPlanet's own internal investigation reports. This undermines ByoPlanet's experts' credibility and reveals that rather than addressing the elephant in the room, they chose to ignore it and draft a report that is dissociated with reality.

¹⁴⁶ *R. v. Lavallée*, 1990 CanLII 95 (SCC), [1990] 1 SCR 852, p. 897.

¹⁴⁷ PICHÉ, Catherine, *La preuve civile*, 5th Edition, Éditions Yvon Blais, Cowansville, 2017, par. 543.

¹⁴⁸ Exhibit P-19.

¹⁴⁹ Exhibit D-11.

[135] Thirdly, the Brosz Report devotes several pages to what he considers to be electrical safety hazards posed by the Promark Control Panels, going as far as to state that someone could be electrocuted if the copper wire strands are exposed¹⁵⁰. During his testimony, he even recounted a story of a teenager getting electrocuted after touching exposed wires on an electrical panel in a garage, that had absolutely nothing to do with the current situation. These far fetched and alarmist conclusions are another demonstration of the abstract and theoretical nature of the report filed. They simply do not fit with reality. Confronted with the fact that in the last three years, there are zero incidents of this nature attributable to Promark's Control Panels, Brosz has no response.

[136] Overall, the Court finds that the Julien Report is more comprehensive and reliable than the Brosz Report.

[137] First, Julien's conclusion that it is not possible to "overtighten" the gland because of the existing stopper is consistent with the fact that both ByoPlanet and Beisit did not provide any torque measurement specification since evidently none was needed.

[138] Second, his conclusion that both the new DK and Promark power cords show similar local deformation enough to firmly secure the cable and reveal no damage is consistent with the fact that there have been no reported incidents in the field and no recall from Clorox.

[139] Third, his conclusion that the actual damaged power cords coming from the 7 Promark Control Panels are more likely attributable to user error, is compatible with ByoPlanet's own internal analysis and conclusions at the time.

[140] Finally, Julien's conclusion that even if an issue did exist, it could have been easily remedied, remains uncontradicted by ByoPlanet's experts. It is also supported by ByoPlanet's own email dated September 9, 2021, stating that it would be reworking the Control Panels already incorporated in the Rolling Carts finished units. This takes away any possible basis to argue that the "defect", even if did exist, was serious in nature.

[141] Based on the above, the Court finds that ByoPlanet has not proven that Promark's Control Panels are defective. The expert evidence does not support the conclusion of any inherent defect in the Promark Control Panels. As such, it has not established that there was a defect, nor that it was latent, sufficiently serious, existed at the time of the sale and unknown to it. On the contrary, a preponderance of the factual and expert evidence, establishes that there was no defect let alone that it was serious or latent, since Promark's products did not malfunction nearly three years after being put into the field.

[142] Given the Court's conclusion that ByoPlanet has established none of the required criteria to prove its latent defect claim, it is unnecessary to decide the question as to whether a timely notice was provided, as required by article 1739 CCQ.

¹⁵⁰ Exhibit D-17, pp. 22-25.

3. IF NOT, WAS BYOPLANET ACTING IN BAD FAITH?

[143] The evidence demonstrates that ByoPlanet conveniently raised the defect issue at the exact same time that it was experiencing serious cash flow problems and facing two major legal actions, in order to avoid paying the Outstanding Amount. The defect and the supposed loss of use were never seriously documented internally whether in a complaints/return log or in a serious root cause analysis.

[144] First, O'Shea was livid when he discovered the existence of the Strategic Agreement and attempted to cancel it at the first possible opportunity. This demonstrates ByoPlanet's clear intent from the outset not to abide by its obligation to pay the Outstanding Amount.

[145] This intent is further corroborated by the absence of any explanation regarding the unpaid five first installments due as per the Strategic Agreement. Promark's first email invoking the absence of payments is on July 20, 2021¹⁵¹. According to Cooper's testimony he became truly aware of the defect issue in August 2021. Why then were the five first payments provided for under the payment plan in the Strategic Agreement not made? There is no explanation offered by ByoPlanet.

[146] On one hand, O'Shea testimony is contradictory on this issue, but ultimately, he states that he does not know. On the other hand, Cooper, and Corrigan both testified that they were completely in the dark as to the fact that significant amounts were owing to Promark when they sent their respective emails alleging defects and ultimately claiming the reimbursement of the purchase price¹⁵². So of course, they too had no explanation as to why the five first payments were not made, not even knowing the Strategic Agreement existed.

[147] Rather, the missed payments totalling \$ 400 000 USD were not made since ByoPlanet was having serious cash flow issues. ByoPlanet's August 31, 2021, bank statements reveal a balance of \$ 336,503.76 USD, showing that cash flow availability was actually limited¹⁵³. The \$ 6 M USD RPMOS "loan" paid out from September 2021 to September 2022 also shows that ByoPlanet was lacking liquidities¹⁵⁴.

[148] Second, and most importantly, there were simply no more orders from Clorox, the last one dating back to February 2021. So, ByoPlanet was stuck with thousands of products that it could not sell given its fractured relationship with its main client and partner.

¹⁵¹ Exhibit P-4.

¹⁵² Exhibit P-18, email from Cooper dated August 25, 2021, and Exhibit P-19, email from Corrigan dated September 9, 2021.

¹⁵³ O'Shea refers to Exhibit P-37 which are ByoPlanet's redacted bank statements, and specifically to the one on page 21, which shows a balance of \$ 336,503.76.

¹⁵⁴ Exhibit D-31.

[149] The relationship with Clorox was so damaged that it led to the institution of the Clorox Proceedings in July 2021 and ultimately to its termination by the end of the year. Another of its main suppliers, Gast was also unpaid and seeking to recover \$ 1.8 M from ByoPlanet in proceedings instituted in July 2021.

[150] The lack of orders combined with serious cash flow and litigation issues created an environment where ByoPlanet had to find a reason not to pay the Outstanding Amount that was clearly owing to Promark, or at least buy some time.

[151] Third, over the 14 months (June 2020 to April 2021) that Promark sold and delivered the Assemblies to ByoPlanet, there were only 50 documented returns¹⁵⁵; this was the process followed by the parties to identify issues with the items and they collaborated to resolve them. This process was not followed with regard to the "defect issue"¹⁵⁶. ByoPlanet does not even know where the 7 Promark Control Panels with damaged cords examined by its experts came from.

[152] Lastly, ByoPlanet never gave Promark the opportunity to study its root cause analysis, nor to remedy the supposed defect, contrary to the parties' contractual obligations¹⁵⁷. It did not provide it with its August 31, 2021, report¹⁵⁸ nor did it inform Promark of Clorox's position that no recall would be conducted. Instead, on its own, on September 9, 2021, ByoPlanet conducted a "*de facto* recall" of the inventory held and mislead Promark stating that it would be "reworking" the Control Panels in inventory already incorporated into units and the ones that would be returned from the field¹⁵⁹. It never "reworked" any of the Control Panels.

[153] ByoPlanet's own inaction regarding this "serious defect", reveals that it simply did not take this issue seriously. This can be seen in the absence of any tracing regarding returns, its botched internal investigation, and its backtracking on reworking the Control Panels. It leaves the distinct impression that ByoPlanet was using the defect issue as a diversion and employing stalling tactics to avoid making payments that were clearly due.

[154] A preponderance of the evidence reveals that not only are Promark's Control Panels not defective, but that the defect issue was raised to avoid paying the amounts clearly owing to Promark. As such, ByoPlanet acted in bad faith.

¹⁵⁵ Exhibit P-18.

¹⁵⁶ See also section 12 of the Strategic Agreement (Exhibit P-3), which was not respected.

¹⁵⁷ Exhibit P-3, section 12.

¹⁵⁸ Exhibit D-11.

¹⁵⁹ Exhibit P-19.

4. IS BYOPLANET'S CROSS-APPLICATION AN ABUSE OF PROCESS?

4.1 Legal Principles

[155] Article 51 CCP allows the Court to declare a pleading or a party's conduct abusive:

51. The courts may, at any time, on an application and even on their own initiative, declare that a judicial application or a pleading is abusive.

Regardless of intent, the abuse of procedure may consist in a judicial application or pleading that is clearly unfounded, frivolous or intended to delay or in conduct that is vexatious or quarrelsome. It may also consist in a use of procedure that is excessive or unreasonable or that causes prejudice to another person, or attempts to defeat the ends of justice, particularly if it operates to restrict another person's freedom of expression in public debate.

[156] Article 51 CCP has a broad reach as to what is considered abuse and can also concern the nature or quality of the pleading. An abuse can arise from an application or pleading which is clearly unfounded. To the extent that article 51 CCP addresses an abuse of right in the pursuit of a right, then article 6 CCQ informs that the parties are bound to exercise their civil rights in accordance with the requirements of good faith¹⁶⁰.

[157] The first paragraph of article 51 CCP appears to limit its application to the nature of an application or a pleading. However, the second paragraph clarifies and enlarges the scope of what is targeted by abuse of procedure.

[158] The second paragraph defines abuse of procedure as consisting of (i) a judicial application or pleading that is clearly unfounded, frivolous, or intended to delay or (ii) conduct that is vexatious or quarrelsome or (iii) use of procedure that is excessive, unreasonable, causes prejudice to the other party or attempts to defeat the ends of justice. Attempts to defeat the ends of justice include a variety of situations, including where a party uses a procedure for the purpose of revenge or retaliation or for a disguised purpose having little to do with seeking justice¹⁶¹. These grounds apply regardless of the party's intent¹⁶².

[159] Article 52 CCP identifies the burdens which alternate between the parties. As the applicant, Promark has the burden to summarily establish that ByoPlanet's pleading is abusive. If Promark does summarily establish that abuse, the onus is then on ByoPlanet to show that its conduct was not excessive or unreasonable and was justified in law¹⁶³.

¹⁶⁰ *Webb Electronics Inc. v. RRF Industries Inc.*, 2023 QCCS 3716, par. 58.

¹⁶¹ *Webb Electronics Inc. v. RRF Industries Inc.*, 2023 QCCS 3716, par. 59.

¹⁶² *Webb Electronics Inc. v. RRF Industries Inc.*, 2023 QCCS 3716, par. 216; *9218-4167 Québec inc. v. Bayview Financial, l.p.*, 2015 QCCS 6209, par. 84.

¹⁶³ *Webb Electronics Inc. v. RRF Industries Inc.*, 2023 QCCS 3716, par. 63.

[160] Only an abuse of process and not on the merits can lead to the attribution of the legal fees incurred¹⁶⁴. Article 54 al.1 CCP also allows the Court to award punitive damages, if warranted by the circumstances¹⁶⁵.

[161] Finally, the Court of Appeal reminds us that the Court must exercise caution prior to concluding that a situation constitutes an abuse of process and that the bar remains high:

[126] L'article 51 *C.p.c.* couvre une panoplie de situations et le spectre de ces situations est large, mais, dans tous les cas, la barre est haut placée et elle doit le demeurer au risque de banaliser ce qu'est une procédure abusive et de constituer un frein à l'accès à la justice. Les procédures manifestement mal fondées et celles qui ne visent qu'à faire taire l'autre partie doivent être sanctionnées. Il en va de même de la partie qui utilise la procédure de manière excessive ou déraisonnable ou de manière à nuire à autrui. Mais, je le répète, la barre de l'abus de procédure doit demeurer haut placée.¹⁶⁶

[Emphasis added]

4.2 Application

[162] Promark argues that ByoPlanet's Cross-Application constitutes an abuse of process since it is clearly unfounded¹⁶⁷. There is no evidence of any defects in the Promark Control Panels and the legal bases of ByoPlanet's Cross-Application—resolution of the sale or subsidiarily, exception for non-performance, are manifestly unfounded. The most obvious unsurmountable obstacle being that ByoPlanet has not paid for the Control Panels for which it is asking the resolution of the sale and the "reimbursement" of the purchase price.

[163] In its Cross-Application, ByoPlanet is seeking \$ 8,291,576.90 USD¹⁶⁸ broken down as follows:

- a) The resolution of the sale for the approximately 39,667 (32,618 + 7,049) Promark Control Panels held in inventory *and for which ByoPlanet has paid for,*

¹⁶⁴ *Viel v. Les Entreprises immobilières du Terroir Ltée*, [2002] R.R.A. 317 (C.A); *9083-8210 Québec inc. v. Paquette*, 2015 QCCS 4765, par. 42-43.

¹⁶⁵ *Balabanian v. Cour du Québec*, 2023 QCCS 1636, par. 26-28.

¹⁶⁶ *Biron v. 150 Marchand Holdings inc.*, 2020 QCCA 1537, par. 126.

¹⁶⁷ See conclusions of Promark's Amended Oral Grounds of Defence to Cross-Application dated November 21, 2023.

¹⁶⁸ \$ 10,915,031.83 CAD: see Amended Cross-Application dated December 22, 2023, par. 42 and Exhibit D-14 for the conversion rate as of September 7, 2022.

- b) The restitution by Promark of \$ 5,769,565.15 USD representing the *purchase price* of these Control Panels, based on a per unit cost of \$ 145.45 USD;
- c) Damages in the amount of \$ 2,522,011.75 USD for the value of the ESP Power Supply and the ES-150 Sprayer, shipping costs and *rework costs*¹⁶⁹.

[164] ByoPlanet admits that it cannot ask for the resolution of the sale nor the reimbursement of the purchase price for products it has not paid for. In fact, in its Cross-Application it continues to maintain that it has paid for *all* of the 39,667 Control Panels¹⁷⁰. In actuality and while this is a flagrant contradiction with its own allegations, ByoPlanet admits to not having paid for at least 20,320 units out of the 32,618 held in inventory. It contends having paid for the 12,298 Control Panels not incorporated into finished units and 7,049 Control Panels incorporated in units but still held in inventory¹⁷¹.

[165] Thus, of the 39,667 Control Panels, ByoPlanet claims to have paid for 19,347 Control Panels representing 49% of the inventory claimed and has not paid for 20,320 Control Panels, so for 51%¹⁷².

[166] In other words, there is a judicial admission by ByoPlanet that it has not paid for over 51%¹⁷³ of the products for which it is claiming the resolution of the sale and the reimbursement of the purchase price. But did it actually pay for the remaining 49% of the Promark products?

[167] ByoPlanet's assertion that it has paid for 19,347 Control Panels is based on the "first in, first out inventory method"¹⁷⁴ and not on any documented proof of payment administered at trial. It remains unexplained why ByoPlanet could not adduce proof of payment since at first glance, this would appear to be basic evidence.

[168] Especially since simple math demonstrates that ByoPlanet's undocumented assertion does not hold up. Considering that the admitted Outstanding Amount owing to Promark is \$ 5,419,173.89 USD and that the value of each Control Panel is \$ 145.45 USD¹⁷⁵, it follows that the number of unpaid Control Panels is 37,257¹⁷⁶. This number is very close to the 39,667 Control Panels for which ByoPlanet is seeking the resolution of the sale.

[169] Therefore, it is not possible that ByoPlanet paid for the Control Panels it is claiming.

¹⁶⁹ Amended Cross-Application dated December 22, 2023, par. 41. ByoPlanet is also seeking "rework" costs that it has not incurred and has no intention of incurring.

¹⁷⁰ Amended Cross-Application dated December 22, 2023, par. 38, 41(a).

¹⁷¹ Exhibit P-27, U-41; Amended Cross-Application dated December 22, 2023, par. 9.2 and 9.3.

¹⁷² Amended Cross-Application dated December 22, 2023, par. 9.2, 9.3.

¹⁷³ $20,320 \div 39,667 = 51.23 \%$.

¹⁷⁴ Exhibit P-27, U-41; Amended Cross-Application dated December 22, 2023, par. 9.1.

¹⁷⁵ Exhibit D-2A; see also ByoPlanet's Brief of Arguments, dated December 14, 2023, par. 133(b).

¹⁷⁶ $\$ 5,419,173.89 \text{ USD} \div \$ 145.45 \text{ USD} = 37,257 \text{ Control Panels}$.

[170] Regarding the exception for non-performance, this legal basis is also unfounded. In order to succeed on this basis, ByoPlanet had to demonstrate four conditions¹⁷⁷: (i) the existence of a bilateral contract (art. 1380 CCQ), (ii) a substantial inexecution of Promark's contractual obligations, (iii) proportionality between Promark's inexecution and ByoPlanet's refusal to pay and (iv) good faith. Given the Court's conclusions that there is no latent defect affecting Promark's Control Panels, there is no substantial inexecution of Promark's contractual obligations. Moreover, since ByoPlanet acted in bad faith it is barred from invoking the exception for non-performance¹⁷⁸.

[171] Applying article 52 CCP, the Court finds that Promark has proven summarily that the Cross-Application is abusive. ByoPlanet has not discharged its onus to show that the pleading and its conduct were not excessive or unreasonable and were justified in law.

[172] ByoPlanet's unfounded Cross-Application unduly complicated a case that should have been a simple action on account, where the amounts were already admitted through an acknowledgement of debt. In a similar case, the Court of Appeal reminds us of the reprehensible behaviour that should be called out as an abuse of process:

[9] Un « comportement blâmable » dans l'exercice d'un recours, c'est aussi, même sans mauvaise foi ou intention de nuire, faire preuve de témérité, par exemple en formulant des allégations qui ne résistent pas à une analyse attentive et qui dénotent une propension à une surenchère hors de toute proportion avec le litige réel entre les parties. En l'occurrence, il est certain qu'un facteur aggravant tient au fait que de telles allégations ont été présentées en demande reconventionnelle dans le cadre d'un recours qui, envisagé de manière réaliste et pratique, avait la simplicité d'une modeste action sur compte¹⁷⁹.

[Emphasis Added]

[173] Here, ByoPlanet's behaviour is reckless (*téméraire*) and the Cross-Application can be viewed as an extension of the stalling tactics it employed when it invoked the defect issue to avoid paying Promark amounts that are clearly owing. The most revealing aspect of the abusive nature of the proceeding is the manifestly unfounded legal basis of its principal argument asking for the resolution of the sale for Control Panels it clearly did not pay for. This is a position that ByoPlanet maintained up until the end, even once the trial was completed¹⁸⁰.

¹⁷⁷ Article 1591 CCQ; MOORE Benoit (dir.), *Code Civil du Québec Annotations—Commentaires 2022-2023*, 7th Ed., 2022, Yvon Blais, pp. 1510-1511.

¹⁷⁸ *Portes et fenêtres Hickson inc. c. Mondou*, 2007 QCCS 2994, par. 38-40.

¹⁷⁹ *El-Hachem v. Décary*, 2012 QCCA 2071 (CanLII) (QC CA), par. 9; *9218-4167 Québec inc. v. Bayview Financial, l.p.*, 2015 QCCS 6209, par. 84; *9083-8210 Québec inc. v. Paquette*, 2015 QCCS 4765, par. 59.

¹⁸⁰ See Amended Cross-Application dated December 22, 2023.

[174] Moreover, considering the new facts brought to light regarding the Good Salt Transaction, it would appear that ByoPlanet is attempting to make itself judgement proof, thus demonstrating yet again its intent to use any means necessary to avoid paying the amounts it owes. While the Court was not tasked with determining whether Good Salt and O'Shea can be held liable for the monies owing to Promark, the facts put forward raise serious concerns, when one looks at the timing of this transaction, the fact that O'Shea is the principal and the directing mind of all of the implicated entities (ByoPlanet, Good Salt and RPMOS), and the minimal amount paid by Good Salt, at first glance, to acquire all of ByoPlanet's assets.

[175] ByoPlanet is playing the clock and placing as many obstacles as it can in Promark's way, hoping time will run out, and that ultimately, Promark will give up on recovering the significant amounts it is owed. Simply put, it is attempting to defeat the ends of justice. This is exactly the type of conduct that article 51 CCP was meant to sanction.

[176] In accordance with article 54 al. 2 CCP, since the amount of damages cannot easily be calculated at this time, the Court will allow the parties to present evidence on the issue of damages in a subsequent hearing.

5. IS BYOPLANET'S CONFIDENTIALITY APPLICATION WELL-FOUNDED?

5.1 Context

[177] In its Confidentiality Application, ByoPlanet is seeking permanent sealing orders regarding some of the exhibits filed¹⁸¹. At the Court's request, the parties provided a *Summary of the Parties' Positions with respect to the Documents to which Confidentiality and Sealing Orders Have Been requested* (the "Summary"). This Summary outlines some of the compromises made by the parties.

[178] Most of the documents that ByoPlanet seeks to permanently seal are unredacted documents that were filed following the judgement rendered by Justice Urbas on November 3, 2023. They consist of two series of documents: (i) documents regarding the loan and security agreements with RPMOS and the foreclosure as well as two documents between RPMOS and Good Salt¹⁸² (the "RPMOS Documents")¹⁸³ and (ii) the Share Exchange Agreement between Good Salt and Plandai (the "Plandai Agreement")¹⁸⁴.

¹⁸¹ Amended Application for a Sealing Order and for a Declaration of Substantial Breach in the Conduct of Proceedings dated November 21, 2023; Application for Confidentiality and Sealing Orders dated December 3, 2023.

¹⁸² Exhibits D-37, P-48 (PU-1bJ).

¹⁸³ Exhibits D-31, D-32 (redacted), D-33, D-34, D-34A, D-35 and, D-36.

¹⁸⁴ Exhibit P-48 (PU-1fA).

[179] The last three documents that are the subject of the permanent sealing request are agreements with Clorox that ByoPlanet filed on its own initiative and have been heavily redacted (the "Clorox Agreements")¹⁸⁵.

[180] In many instances, Promark has filed under its own exhibits, duplicates of the same documents¹⁸⁶. Promark contests the request for a sealing order but has no objection to the redactions that have already been made. It does not contest the sealing order regarding the Plandai Agreement.

5.2 Legal Principles governing Confidentiality Orders

[181] In *Sierra Club*, the Supreme Court of Canada reminds us that confidentiality orders should only be granted if:

- a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings¹⁸⁷.

[182] An "important commercial interest" cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality¹⁸⁸. The existence of confidentiality provisions can be a sign that an important commercial interest is at play since the preserving of contractual confidentiality obligations can constitute such an interest, under reserve of the consideration of alternative measures to the confidentiality order¹⁸⁹.

[183] Courts must nevertheless remain cautious in determining what constitutes an "important commercial interest". A confidentiality order involves an infringement on freedom of expression. Although the balancing of the commercial interest with freedom of expression takes place under the second branch of the test, Courts must be alive to the fundamental importance of the open court rule¹⁹⁰.

¹⁸⁵ Exhibits D-44, D-45, and D-46. There are no duplicates filed by Promark.

¹⁸⁶ Exhibits P-48 (PU-1bA), P-53 (U-6), P-48 (PU-1bD), P-53 (U-9), P-48 (PU-1bE), P-53 (U-7) unredacted, P-48 (PU-1bB), P-48 (PU-1bF), P-53 (U-2), P-48 (PU-1bG), P-48 (PU-1bH), P-48 (PU-1bI).

¹⁸⁷ *Sierra Club du Canada v. Canada (Ministre des Finances)*, [2002] 2 RCS 522, par. 53.

¹⁸⁸ *Sierra Club du Canada v. Canada (Ministre des Finances)*, [2002] 2 RCS 522, par. 55.

¹⁸⁹ *Sierra Club du Canada v. Canada (Ministre des Finances)*, [2002] 2 RCS 522, par. 55.

¹⁹⁰ *Sierra Club du Canada v. Canada (Ministre des Finances)*, [2002] 2 RCS 522, par. 56.

[184] "Reasonable alternative measures" can include the expungement of commercially sensitive content, and the filing of edited versions of the documents¹⁹¹. Moreover, a publication ban — less constraining on openness than the sealing orders — can also be a reasonable alternative, since such an order can restrict the dissemination of information to only those persons consulting the court record for themselves and prohibit those individuals from spreading the information any further¹⁹².

[185] In *Sherman*, the Court recasts the test without altering its essence, helping to clarify the burden on an applicant seeking an exception to the open court principle, who must establish that:

- a) Court openness poses a serious risk to an important public interest;
- b) The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- c) As a matter of proportionality, the benefits of the order outweigh its negative effects¹⁹³.

[186] The test posed by *Sherman* places a heavy burden on the applicant seeking such orders and the Court must adopt a restrictive interpretation¹⁹⁴.

[187] Regarding settlement privilege, the leading authority remains *Sable Offshore*¹⁹⁵. The purpose of settlement privilege is to promote settlement and to protect the parties' efforts to settle their disputes by ensuring that communications made in the course of those negotiations are inadmissible including the settlement agreement itself¹⁹⁶.

[188] As with other class privileges, there are exceptions. To come within those exceptions, a defendant must show that, on balance, a competing public interest outweighs the public interest in encouraging settlement¹⁹⁷. In this regard, the following exceptions have been recognized: fraud, abuse of influence, preventing overcompensation of the claimant, the possibility of proving the existence or extent of the settlement, the need to resolve a statute of limitations issue or the need to explain or justify a delay in bringing a lawsuit¹⁹⁸. Finally, a party may waive its right to benefit from

¹⁹¹ *Sierra Club du Canada v. Canada (Ministre des Finances)*, [2002] 2 RCS 522, par. 63.

¹⁹² *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), par. 105.

¹⁹³ *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), par. 38. The Court of Appeal granted leave in *Air Canada v. Choquette*, 2023 QCCA 1512 and should specify the *Sherman* test in the context of commercial documents. See also: *Raymond Chabot Grant Thornton v. Bourgeois*, 2021 QCCS 2933, par. 32. However, this does not change the essence of the criteria that must be met.

¹⁹⁴ *Raymond Chabot Grant Thornton v. Bourgeois*, 2021 QCCS 2933, par. 32.1.

¹⁹⁵ *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2017] CSC 37; see also: *Union Carbide v. Bombardier*, 2014 SCC 35 at paras 31-34.

¹⁹⁶ *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2017] CSC 37, par. 11-12.

¹⁹⁷ *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2017] CSC 37, par. 12, 19.

¹⁹⁸ *J.J. v. Oratoire Saint-Joseph du Mont-Royal*, 2021 QCCS 2727, par. 47.

settlement privilege. Such a waiver may be explicit or implicit, but in the latter case, it must be clear and unambiguous¹⁹⁹.

5.3 Application

[189] Here, regarding the first series of documents, the RPMOS Documents which include loan agreements, a security agreement and foreclosure documents, none of these documents contain a confidentiality provision. In addition, there is no important public interest identified by ByoPlanet regarding these documents, which in the context of insolvency proceedings would have been public anyways. Finally, the parties involved in all of these agreements, ByoPlanet, RPMOS and Good Salt are all controlled by O'Shea, so that we are not in a situation similar to *Sierra Club* where the orders sought were to prevent sensitive information from being provided to a competitor.

[190] Regarding, ByoPlanet's bank statements, they have already been heavily redacted leaving only the minimal amount of information relating to this litigation. These redactions are not contested. However, the Court will order the removal of the unredacted duplicate copy filed by Promark, under Exhibit P-53, U-7.

[191] For all of these documents, there is no compelling public interest requiring the permanent sealing order sought by ByoPlanet.

[192] As for the Clorox Documents, they consist of the Settlement Agreement, the Wind Down Agreement and a Strategic Alliance Agreement that is no longer in force. All of these documents have been heavily redacted to only reveal the sections that are relevant to the Promark litigation. The Settlement Agreement²⁰⁰ and the Strategic Alliance Agreement²⁰¹ contain confidentiality clauses. It is likely that the Wind Down Agreement also contains a similar clause but may have been redacted.

[193] While the existence of confidentiality clauses does signal the potential of an important commercial interest that may give rise to an important public interest, the Court is of the opinion that the redactions made by ByoPlanet are sufficient to protect the parties' commercial information and therefore no permanent sealing order is needed. Moreover, the Strategic Alliance Agreement, which is dated September 30, 2020, has been terminated and so the exposure of the limited unredacted information that remains does not compromise any current important interest²⁰².

[194] Regarding the Clorox Settlement Agreement, the Court notes that this agreement was filed by ByoPlanet of its own accord in order to prove the existence or extent of the settlement regarding the Clorox Proceedings. Under these circumstances, and considering the redactions made, the Court believes that settlement privilege does not

¹⁹⁹ *Centre universitaire de santé McGill c. Lemay*, 2022 QCCA 1394, par. 28.

²⁰⁰ Exhibit D-44, section 5.

²⁰¹ Exhibit D-46, sections 8.1, 8.2 and 8.3.

²⁰² *Raymond Chabot Grant Thornton v. Bourgeois*, 2021 QCCS 2933, par. 79.1.

apply to this edited version of the document and that it falls within the exceptions cited above.

[195] Another factor which weights in the Court's decision is the extent to which some of the information contained in the documents will already be in the public domain. The Court has relied on some of these documents to render its decision and has referred to them in this judgement, which will be public.

[196] Applying the *Sherman* test, the Court finds that ByoPlanet has not demonstrated that Court openness poses a serious risk to an important public interest since no such interest has been identified, even if it had, reasonable alternative measures have been taken to expunge the documents of any unrelated information to prevent that risk and as a matter of proportionality, the benefits of the sealing order sought do not outweigh its negative effects.

[197] Lastly, regarding the Plandai Agreement, which is completely unredacted, there is no confidentiality provision, and the agreement has since been rescinded by Plandai. However, since Promark does not contest this request and given that this agreement is with a third party unrelated to these proceedings, rather than issue a permanent sealing order, the Court will issue the less constraining measure, a publication ban, which restricts the dissemination of information to only those persons consulting the court record for themselves and prohibit those individuals from spreading the information any further.

CONCLUSION

[198] In conclusion, the Court finds that Promark's Originating Application is well-founded and that ByoPlanet has failed to demonstrate that it has any valid reason to avoid paying the amounts owing. The factual and expert evidence demonstrates that there is no inherent defect in the Promark products it sold and delivered to ByoPlanet.

[199] Rather, in a context of limited liquidities coupled with a damaged relationship with its principal client and partner, ByoPlanet raised an excuse to delay payment and ultimately to avoid paying altogether by attempting to make itself judgement proof through a series of transactions. ByoPlanet's Cross-Application is an abuse of process. It is factually and legally unfounded and is an attempt to defeat the ends of justice. Its behaviour must be sanctioned under articles 51 and following CCP.

[200] Finally, the Court also grants Promark's expert fees for the preparation of the Julien Report and his testimony at trial, in the amount of \$32,112.11 CAD²⁰³. Julien's report and testimony were useful and relevant in deciding the outcome of the case²⁰⁴. The fees

²⁰³ Exhibit P-64.

²⁰⁴ *Maison Simons inc. v. Lizotte*, 2010 QCCA 2126, par. 40-46.

claimed are reasonable especially when compared to the fees incurred by ByoPlanet, which are over three times the amount (\$119,432.69 CAD)²⁰⁵.

FOR THESE REASONS, THE COURT:

[201] **GRANTS** Promark's Amended Originating Application dated November 22, 2023;

[202] **CONDEMS** ByoPlanet International LLC, to pay to Promark Electronics Inc. the sum of \$6,745,787.66 CAD bearing an annual interest of 7.5%, plus the additional indemnity provided for under article 1619 of the *Civil Code of Quebec*, as of the date of the letter of demand, being August 3, 2021²⁰⁶;

[203] **DISMISSES** ByoPlanet International LLC's Amended Cross-Application, dated December 22, 2023;

[204] **DECLARES** ByoPlanet International LLC's Amended Cross-Application, dated December 22, 2023, abusive within the meaning of articles 51 and following of the *Code of Civil Procedure*;

[205] **DECLARES** that pursuant to article 54 al. 2 of the *Code of Civil Procedure*, Promark Electronics Inc. may claim and prove its damages in a subsequent hearing;

[206] **ORDERS** that the Share Exchange and Reorganisation Agreement between Plandai Biotechnology Inc. and Good Salt LLC dated May 16, 2023²⁰⁷ be the subject of a publication ban restricting the dissemination of information to only those persons consulting the court record for themselves and prohibit those individuals from spreading the information any further;

[207] **ORDERS** that Exhibit P-53, U-7 consisting of the duplicate unredacted copy of ByoPlanet Internal LLC's redacted bank statements filed under Exhibit D-32 be removed from the Court record;

[208] **THE WHOLE**, with legal costs, including expert fees in the amount of \$32,113.11 CAD.

²⁰⁵ *Lamoureux v. Organisme canadien de réglementation du commerce des valeurs immobilières (OCRCVM)*, 2024 QCCS 78, par. 10-28; Amended Cross-Application dated December 22, 2023, conclusions and Exhibits D-47 to D-49.

²⁰⁶ Exhibit P-7.

²⁰⁷ Exhibit P-48, PU-1(f)(A), consisting of 115 pages in total.



ELENI YIANNAKIS, J.S.C.

Mtre Jason S. Novak
Mtre Carolyn Booth
Mtre Lara Assy

Attorneys for Plaintiff Promark Electronics Inc.

Mtre Erica Shadeed
Mtre Alexander Little
Mtre Abbie Buckman
Mme Lauren Manoukian (Stagiaire en droit)

Attorneys for Defendant ByoPlanet International LLC

Hearing dates: December 11, 12, 13 and 14, 2023

COPIE CERTIFIÉE CONFORME AU
DOCUMENT DÉTENU PAR LA COUR



PERSONNE DÉSIGNÉE PAR LE GREFFIER
EN VERTU DE 67 C.P.C.

Exhibit “B”

7

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

PROMARK ELECTRONICS INC.

Plaintiff,

v.

BYOPLANET INTERNATIONAL LLC

Defendants.

_____ /

INSTR # 119456390
Recorded 03/18/24 at 02:26 PM
Broward County Commission
2 Page(s)
#2

**AFFIDAVIT FOR RECORDING OUT-OF-COUNTRY FOREIGN JUDGMENT UNDER
FLORIDA UNIFORM OUT-OF-COUNTRY FOREIGN MONEY-JUDGMENT
RECOGNITION ACT (§§55.601-55.607, FLA.STAT., ET SEQ.)**

STATE OF CANADA)
PROVINCE OF QUEBEC)
DISTRICT OF MONTREAL)

BEFORE ME, the undersigned authority, personally appeared Brandon Knecht, as Vice-President of Plaintiff, Promark Electronics Inc. ("Plaintiff") who, after being duly sworn, deposes and says:

1. I am over eighteen (18) years of age and I am competent to testify to the matters contained herein, and the information contained herein is based upon my personal knowledge.
2. I am the Vice-President of Plaintiff, and I am authorized to make this Affidavit.
3. The judgment to be recorded is a judgment of the Superior Court of Canada, Province of Quebec, District of Montreal, dated March 12, 2024 against Defendant ByoPlanet International LLC ("ByoPlanet") in Case No. 500-17-118996-217 ("Judgment") and is being recorded contemporaneously with this Affidavit.
4. The Plaintiff seeks to file and domesticate the Judgment against ByoPlanet in Broward County, pursuant to Fla. Stat. § 55.604.

5. The Plaintiff states that the names of judgment debtor is ByoPlanet International, LLC with last known address of 1305 Shotgun Road, Sunrise, FL 33326.

6. The judgment debtor is a company and has no social security number.

7. The Plaintiff is a company and has no social security number.

8. The Plaintiff's last known address is 6875 Chem. De la Côte de Liesse, Saint-Laurent, Québec, Canada H4T 1E5.

9. The Plaintiff's attorneys in Florida are Jeffrey P. Bast (Florida Bar No. 996343) and Alejandra M. Iglesia (Florida Bar No. 1010519) of the law firm Bast Amron LLP at the address of 1 SE 3rd Avenue, Suite 2410, Miami, FL 33131.

FURTHER AFFIANT SAYETH NAUGHT.

Under the penalties of perjury, I declare that I have read the foregoing Affidavit and the facts stated in it are true.

By: Brandon Knecht, as Vice-President of Promark Electronics Inc.

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 14th day of March, 2024, by Brandon Knecht, as Vice-President of Promark Electronics Inc., who has produced his driver's license and his passport as identification.

NOTARY PUBLIC,
Print Name: Debra Bruman, notary
STATE OF QUÉBEC, CANADA

Me Debra Bruman, Notaire/Notary

1255 Peel, Suite 1000
Montréal, Québec H3B 2T9
Tel: 514-875-2100



Exhibit “C”

**JUDGMENT OBJECTION CERTIFICATE
FOREIGN JUDGMENT**

The County Administrator in and for the County of Broward, State of Florida, does hereby certify as follows:

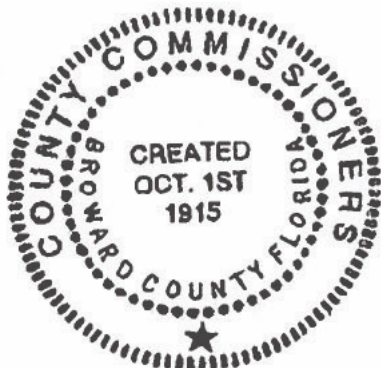
- (1) A judgment was recorded 03/18/2024 under Instrument Number 119456389.
- (2) A Notice of Recording said judgment was mailed to the following debtor(s):

BYOPLANET INTERNATIONAL LLC

- (3) The Official Records of Broward County were searched under the abovenamed debtor(s). The search covered all documents recorded in the thirty-day range start from 03/18/2024 thru 04/17/2024. The search revealed that:

- A Notice of Objection was recorded under the following Instrument Number: _____.
- No Notice of Objection was found.

GIVEN UNDER MY HAND AND OFFICIAL SEAL.



COUNTY ADMINISTRATOR

By *[Signature]* *[Signature]*
Deputy

Date: 04-18-2024

Exhibit “D”

L11000042853

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP WAIT MAIL

(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only

G. MCLEOD
APR 11 2011
EXAMINER



300199194113

04/06/11--01002--011 **3.44

03/28/11--01016--016 **25.00

03/24/11-60323-018-~~121.56~~

FILED
11 APR - 8 PM 12: 02
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: ByoGlobe International LLC

(Name of Resulting Florida Limited Company)

The enclosed Certificate of Conversion, Articles of Organization, and fees are submitted to convert an "Other Business Entity" into a "Florida Limited Liability Company" in accordance with s. 608.439, F.S.

Please return all correspondence concerning this matter to:

Erica Woodham

(Contact Person)

ByoGlobe International, LLC

(Firm/Company)

1305 Shotgun Road

(Address)

Sunrise, FL 33326

(City, State and Zip Code)

ewoodham@byoglobe.com

E-mail address: (to be used for future annual report notifications)

For further information concerning this matter, please call:

Erica A. Woodham

(Name of Contact Person)

at (888) 855-5359

(Area Code and Daytime Telephone Number)

Enclosed is a check for the following amount:

- \$150.00 Filing Fees (\$25 for Conversion & \$125 for Articles of Organization) \$155.00 Filing Fees and Certificate of Status \$180.00 Filing Fees and Certified Copy \$185.00 Filing Fees, Certified Copy, and Certificate of Status

STREET ADDRESS:

Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

MAILING ADDRESS:

Registration Section
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

Certificate of Conversion
For
"Other Business Entity"
Into
Florida Limited Liability Company

This Certificate of Conversion **and attached Articles of Organization** are submitted to convert the following **"Other Business Entity"** into a **Florida Limited Liability Company** in accordance with s.608.439, Florida Statutes.

1. The name of the "Other Business Entity" immediately prior to the filing of this Certificate of Conversion is:

ByoGlobe International Corp.

(Enter Name of Other Business Entity)

2. The "Other Business Entity" is a Corp

(Enter entity type. Example: corporation, limited partnership,
general partnership, common law or business trust, etc.)

first organized, formed or incorporated under the laws of Florida

(Enter state, or if a non-U.S. entity, the name of the country)

on 11/10/2010

(Enter date "Other Business Entity" was first organized, formed or incorporated)

3. If the jurisdiction of the "Other Business Entity" was changed, the state or country under the laws of which it is now organized, formed or incorporated:

4. The name of the Florida Limited Liability Company as set forth in the attached Articles of Organization:

ByoGlobe International LLC

(Enter Name of Florida Limited Liability Company)

5. If not effective on the date of filing, enter the effective date: _____

(The effective date: 1) cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State; **AND** 2) must be the same as the effective date listed in the attached Articles of Organization, if an effective date is listed therein.)

6. The conversion is permitted by the applicable law(s) governing the other business entity and the conversion complies with such law(s) and the requirements of s.608.439, F.S., in effecting the conversion.

7. The "Other Business Entity" currently exists on the official records of the jurisdiction under which it is currently organized, formed or incorporated.

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

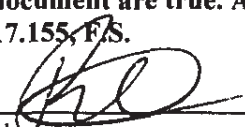
11 APR - 8 PM 12: 02

FILED

Signed this 23 day of March 2011.

Signature of Member or Authorized Representative of Limited Liability Company:

Individual signing affirms that the facts stated in this document are true. Any false information constitutes a third degree felony as provided for in s.817.155, F.S.

Signature of Member or Authorized Representative: 
Printed Name: Richard O'Shea Title: CEO

Signature(s) on behalf of Other Business Entity: Individual(s) signing affirm(s) that the facts stated in this document are true. Any false information constitutes a third degree felony as provided for in s.817.155, F.S. [See below for required signature(s).]

Signature: 
Printed Name: Richard O'Shea Title: CEO

Signature: _____
Printed Name: _____ Title: _____

Signature: _____
Printed Name: _____ Title: _____

Signature: _____
Printed Name: _____ Title: _____

Signature: _____
Printed Name: _____ Title: _____

Signature: _____
Printed Name: _____ Title: _____

If Florida Corporation:

Signature of Chairman, Vice Chairman, Director, or Officer.
If Directors or Officers have not been selected, an Incorporator must sign.

If Florida General Partnership or Limited Liability Partnership:

Signature of one General Partner.

If Florida Limited Partnership or Limited Liability Limited Partnership:

Signatures of ALL General Partners.

All others:

Signature of an authorized person.

Fees:

Certificate of Conversion: \$25.00
Fees for Florida Articles of Organization: \$125.00
Certified Copy: \$30.00 (Optional)
Certificate of Status: \$5.00 (Optional)

ARTICLES OF ORGANIZATION FOR FLORIDA LIMITED LIABILITY COMPANY

ARTICLE I - Name:

The name of the Limited Liability Company is:

ByoGlobe International, LLC

(Must end with the words "Limited Liability Company, the abbreviation "L.L.C.," or the designation "LLC.")

ARTICLE II - Address:

The mailing address and street address of the principal office of the Limited Liability Company is:

Principal Office Address:

Mailing Address:

1305 Shotgun Road

Sunrise, Florida 33326

1305 Shotgun Road

Sunrise, Florida 33326

ARTICLE III - Registered Agent, Registered Office, & Registered Agent's Signature:

(The Limited Liability Company cannot serve as its own Registered Agent. You must designate an individual or another business entity with an active Florida registration.)

The name and the Florida street address of the registered agent are:

Richard O'Shea

Name

1305 Shotgun Road

Florida street address (P.O. Box **NOT** acceptable)

Sunrise

FL 33326

City, State, and Zip

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, F.S..



Registered Agent's Signature (REQUIRED)

(CONTINUED)

ARTICLE IV- Manager(s) or Managing Member(s):

The name and address of each Manager or Managing Member is as follows:

Title:

"MGR" = Manager

"MGRM" = Managing Member

Name and Address:

MGRM

Richard O'Shea

1305 Shotgun Road

Sunrise, FL 33326

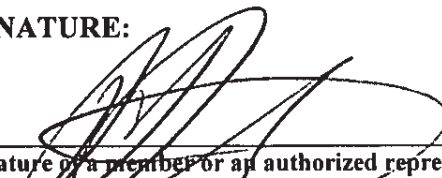
(Use attachment if necessary)

ARTICLE V: Effective date, if other than the date of filing: _____.

(OPTIONAL)

(The effective date: **1**) cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State; **AND 2**) must be the same as the effective date listed in the attached Certificate of Conversion, if an effective date listed therein.)

REQUIRED SIGNATURE:



Signature of a member or an authorized representative of a member.

(In accordance with section 608.408(3), Florida Statutes, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.)

Richard O'Shea

Typed or printed name of signee



ByoGlobe International Corporation, LLC
1305 Shotgun Road
Sunrise, Florida 33323
1.888.855.5359
www.byoglobe.com

March 22, 2010

Division of Corporations
PO Box 6327
Tallahassee, Florida 32314

RECEIVED
11 MAR 22 PM 3:17
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RE: Document Number: W11000016297
Entity Name: BYOGLOBE INTERNATIONAL, LLC
Tracking Number: 900198946759
Pin Number: 6759

Dear Gina:

We are in receipt of your email stating that "the name designated in your document is unavailable since it is the same as, or it is not distinguishable from the name of an existing entity." Richard O'Shea is the owner of the company and we have have the filing. We would like to change it to an LLC filing for ByoGlobe International, LLC. Please let me know what I would need to do to have the name activated under ByoGlobe International, LLC?

Thank you for your attention with the matter.

Sincerely,

Richard P. O'Shea
CEO

Gina

W11-18325

Exhibit “E”

FILED
Jan 19, 2024
Secretary of State

ARTICLES OF DISSOLUTION

Pursuant to section 605.0707, Florida Statutes, this Florida limited liability company submits the following Articles of Dissolution:

The name of the limited liability company as currently filed with the Florida Department of State:

BYOPLANET INTERNATIONAL, LLC

The document number of the limited liability company: L11000042853

The file date of the articles of organization: April 8, 2011

The effective date of the dissolution if not effective on the date of filing: January 19, 2024

A description of occurrence that resulted in the limited liability company's dissolution:

COMPLETION OF BUSINESS PURPOSE

The name and address of the person appointed to wind up the company's activities and affairs:

ANN MAGGARD
125 OLD MONROE ROAD
ATHENS, GA 30606

I/we submit this document and affirm that the facts stated herein are true. I/we am/are aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in section 817.155, Florida Statutes.

Signature: ANN MAGGARD

Electronic Signature of authorized person

Exhibit “F”

L 11 0000 42853

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP

WAIT

MAIL

(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

J. HORNE
APR 15 2024

Office Use Only



200426170092

03/26/24--01004--003 **100.00

FILED
2024 MAR 26 PM 1:15
SOUTH CAROLINA
SOUTH CAROLINA

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: ByoPlanet International, LLC

Name of Limited Liability Company

The enclosed Statement of Revocation of Dissolution for Florida Limited Liability Company and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to:

Ann Maggard

Contact Person

Firm/Company

125 Old Monroe Road

Address

Athens, GA 30606

City, State and Zip Code

amaggard@goodsallife.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Ann Maggard

at (754) 240-4059

Name of Contact Person

Area Code

Daytime Telephone Number

Mailing Address:

Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address:

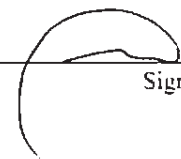
Registration Section
Division of Corporations
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303

FILED
2024 MAR 26 PM 1:15
STATE OF FLORIDA
SECRETARY OF STATE

STATEMENT OF REVOCATION OF DISSOLUTION
FOR
FLORIDA LIMITED LIABILITY COMPANY

Pursuant to section 605.0708, Florida Statutes, this Florida limited liability company revokes its articles of dissolution prior to the expiration of 120 days following the effective date (or file date, if no effective date) of the articles of dissolution.

1. The name of the company is: ByoPlanet International, LLC
2. The document number of the company is L11000042853
3. The effective date the Dissolution was filed is January 19, 2024
4. The revocation of dissolution was authorized on March 11, 2024
5. A copy of the Articles of Dissolution is attached.



Signature of person authorized to submit the revocation of dissolution

Filing Fee: \$100.00
Certified Copy: \$30.00 (optional)

FILED
Jan 19, 2024
Secretary of State

ARTICLES OF DISSOLUTION

Pursuant to section 605.0707, Florida Statutes, this Florida limited liability company submits the following Articles of Dissolution:

The name of the limited liability company as currently filed with the Florida Department of State:

BYOPLANET INTERNATIONAL, LLC

The document number of the limited liability company: L11000042853

The file date of the articles of organization: April 8, 2011

The effective date of the dissolution if not effective on the date of filing: January 19, 2024

A description of occurrence that resulted in the limited liability company's dissolution:

COMPLETION OF BUSINESS PURPOSE

The name and address of the person appointed to wind up the company's activities and affairs:

ANN MAGGARD
125 OLD MONROE ROAD
ATHENS, GA 30606

I/we submit this document and affirm that the facts stated herein are true. I/we am/are aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in section 817.155, Florida Statutes.

Signature: ANN MAGGARD

Electronic Signature of authorized person

Exhibit “G”



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
RPMOS,LLC.

Filing Information

Document Number	L21000391549
FEI/EIN Number	N/A
Date Filed	09/01/2021
Effective Date	09/01/2021
State	FL
Status	INACTIVE
Last Event	VOLUNTARY DISSOLUTION
Event Date Filed	01/19/2024
Event Effective Date	01/19/2024

Principal Address

175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Mailing Address

175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Registered Agent Name & Address

O'SHEA, RICHARD P
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Authorized Person(s) Detail

Name & Address

Title AP

O'SHEA, RICHARD P
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Title AP

O'SHEA, RICHARD
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Title AP

O'SHEA, RICHARD
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Title AP

O'SHEA, RICHARD
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Title AP

O'SHEA, RICHARD
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Title AP

O'SHEA, RICHARD
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Annual Reports

Report Year	Filed Date
2022	01/25/2022
2023	04/15/2023

Document Images

01/19/2024 -- VOLUNTARY DISSOLUTION	View image in PDF format
04/15/2023 -- ANNUAL REPORT	View image in PDF format
01/25/2022 -- ANNUAL REPORT	View image in PDF format
09/01/2021 -- Florida Limited Liability	View image in PDF format

Exhibit “H”

FILED
Jan 19, 2024
Secretary of State

ARTICLES OF DISSOLUTION

Pursuant to section 605.0707, Florida Statutes, this Florida limited liability company submits the following Articles of Dissolution:

The name of the limited liability company as currently filed with the Florida Department of State:

RPMOS,LLC.

The document number of the limited liability company: L21000391549

The file date of the articles of organization: September 1, 2021

The effective date of the dissolution if not effective on the date of filing: January 19, 2024

A description of occurrence that resulted in the limited liability company's dissolution:

COMPLETION OF BUSINESS PURPOSE

The name and address of the person appointed to wind up the company's activities and affairs:

ANN MAGGARD
125 OLD MONROE ROAD
ATHENS, GA 30606

I/we submit this document and affirm that the facts stated herein are true. I/we am/are aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in section 817.155, Florida Statutes.

Signature: ANN MAGGARD

Electronic Signature of authorized person

Exhibit “I”

**Electronic Articles of Organization
For
Florida Limited Liability Company**

L22000517663
FILED 8:00 AM
December 09, 2022
Sec. Of State
amrivers

Article I

The name of the Limited Liability Company is:

GOOD SALT LLC

Article II

The street address of the principal office of the Limited Liability Company is:

175 ROYAL PALM DR
FORT LAUDERDALE, FL. UN 33301

The mailing address of the Limited Liability Company is:

175 ROYAL PALM DR
FORT LAUDERDALE, FL. UN 33301

Article III

The name and Florida street address of the registered agent is:

RPMOS,LLC.
175 ROYAL PALM DR
FORT LAUDERDALE, FL. 33301

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: RICHARD O'SHEA

Article IV

The name and address of person(s) authorized to manage LLC:

Title: AP
RICHARD O'SHEA
175 ROYAL PALM DR
FORT LAUDERDALE, FL. 33301 UN

L22000517663
FILED 8:00 AM
December 09, 2022
Sec. Of State
amrivers

Article V

The effective date for this Limited Liability Company shall be:

12/09/2022

Signature of member or an authorized representative

Electronic Signature: RICHARD O'SHEA

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.

Exhibit “J”



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
GOOD SALT LLC

Filing Information

Document Number	L22000517663
FEI/EIN Number	92-1331675
Date Filed	12/09/2022
Effective Date	12/09/2022
State	FL
Status	INACTIVE
Last Event	VOLUNTARY DISSOLUTION
Event Date Filed	04/25/2024
Event Effective Date	04/25/2024

Principal Address

175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301 UN

Mailing Address

175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301 UN

Registered Agent Name & Address

RPMOS,LLC.
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301

Authorized Person(s) Detail

Name & Address

Title AP

O'SHEA, RICHARD
175 ROYAL PALM DR
FORT LAUDERDALE, FL 33301 UN

Annual Reports

Report Year	Filed Date
2023	04/15/2023

Document Images

04/25/2024 -- VOLUNTARY DISSOLUTION	View image in PDF format
04/15/2023 -- ANNUAL REPORT	View image in PDF format
12/09/2022 -- Florida Limited Liability	View image in PDF format

Florida Department of State, Division of Corporations

Exhibit “K”

C A N A D A
PROVINCE of QUÉBEC
DISTRICT of MONTREAL

500-17-118996-217

**SUPERIOR COURT
(Civil Division)**

BETWEEN:

PROMARK ELECTRONICS INC.

Plaintiff/Cross-Defendant

- v. -

BYOPLANET INTERNATIONAL LLLC.

Defendant/Cross-Applicant

EXAMINATION OF RICHARD P. O'SHEA
Held before Steno CAT Reporting Services on Monday,
November 13, 2023, commencing at 2:00 p.m. (EST)
VIA VIDEOCONFERENCE

.

APPEARANCES:

J. Novak)	
C. Booth)	
H. Steinberg)	For the Plaintiff/Cross-Defendant
E. Shadeed)	For the Defendant/Cross-Applicant

Official Court Reporters:

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Examination by Mr. Novak

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UNDERTAKINGS/UNDER ADVISEMENTS

<u>DESCRIPTION/NUMBERED:</u>	<u>PAGE NO.</u>
<u>Undertaking No. 1 (Under objection):</u> To provide the original document of what is referred to as D-34.	28
<u>Undertaking No. 2:</u> To verify Mr. O'Shea's records and to provide any evidence suggesting that he prepared and signed the letter (Exhibit D-34) in the days following February 17th, 2023.	31
<u>Undertaking No. 3:</u> To verify whether Mr. Sean Corrigan responded to the letter of February 17th, 2023 (Exhibit D-34) demanding payment.	35
<u>Undertaking No. 4:</u> To specify if there were any response from anyone, including Sean Corrigan or Steve Cooper, to Exhibit D-34.	38
<u>Undertaking No. 5:</u> To confirm if there were any email exchanges with Sean Corrigan or Steve Cooper, before or after D-34, in relation to D-34.	38
<u>Undertaking No. 6:</u> To provide any evidence that Exhibit D-31 was actually prepared on or before September 9th, 2021.	58
<u>Undertaking No. 7 (Under Objection):</u> To provide an uncensored copy of Exhibit D-32.	93

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To provide proof that three million dollars were used
December for payroll and business expenses (re: pages
41 and 55 of Exhibit D-32). 105

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of document D-31. 109

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1 --- Upon commencing on Monday, November 13th, 2023, at
2 2:00 p.m.

3 --- RICHARD PATRICK MICHAEL O'SHEA, AFFIRMED
4 175 ROYAL PALM DR. ,
5 FORT LAUDERDALE, FLORIDA,
6 UNITED STATES OF AMERICA
7 33301

8 --- EXAMINATION BY MR. NOVAK:

9 1. Q. Good afternoon, Mr. O'Shea.
10 It is nice to see you again. Hope you
11 are well.

12 I am one of the attorneys for the
13 Plaintiff, Promark Electronics Inc. I will refer to
14 Promark to simplify.

15 I would like you to take out, before
16 we start ---

17 MS. SHADEED: Sorry, Maître Novak, I
18 am just going to interrupt.

19 I think that Mr. O'Shea might have
20 dropped off the call; I don't see him. Let me send
21 him a quick email.

22 He is coming in? Okay.

23 --- (SHORT RECESS)

24 --- (UPON RESUMING)

25 BY MR. NOVAK:

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R. O'Shea
Exam. (Mr. Novak)

1 2. **Q.** Mr. Novak, it is nice to see you
2 again.

3 I am one of the attorneys for Promark
4 Electronics Inc.

5 Just before we begin, because this
6 examination is virtual, is there anybody with you in
7 the room?

8 **A.** There is not.

9 3. **Q.** I think you mentioned you were in
10 California, Mr. O'Shea.

11 Where are you exactly?

12 **A.** In California.

13 4. **Q.** Before this examination,
14 Mr. O'Shea, we received from Dentons, November 10th,
15 2023, a letter that is addressed to me.

16 Do you have a copy of this letter? Is
17 it referred to as "*Re: Responses to request for pre-*
18 *undertakings*".

19 **A.** I do.

20 5. **Q.** Perfect. Do you have the
21 enclosures, Mr. O'Shea, that were ---

22 **A.** Is it 191 pages?

23 6. **Q.** Yes, that is correct.

24 **A.** Yes, I have it.

25 7. **Q.** Before this letter was sent and

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R. O'Shea
Exam. (Mr. Novak)

1 the enclosures, did you review the letter and the
2 enclosures, Mr. O'Shea?

3 **A.** I did review it.

4 8. **Q.** Did you approve the pre-
5 undertakings, the responses?

6 If you are on the cover letter,
7 Mr. O'Shea, if you follow me, please, the pages are
8 numbered on the top next to the logo of Dentons, it
9 says "Page 2".

10 You will note that in page 2, page 3,
11 page 4, page 5, there are answers. Did you review
12 those answers specifically before they were sent to
13 myself?

14 **A.** I did.

15 9. **Q.** Do you agree with the responses
16 that are there before we being?

17 **A.** I do.

18 10. **Q.** I want to refer you to -- your
19 attorney sent us as well, on the same date, what is
20 referred to as the "Amended Defence".

21 Is it the Oral Grounds of Defence
22 dated November 10th, 2023. Do you have a copy of that
23 in front of you, Mr. O'Shea?

24 **A.** I do.

25 11. **Q.** Do you have a copy of the exhibits

November 13th, 2023

R. O'Shea
Exam. (Mr. Novak)

1 that were filed in support of that -- we will call it
2 the "Amended Defence of November 10th, 2023"?

3 Do you have that as well?

4 **A.** I do. What pages are you talking
5 about, the exhibits?

6 12. **Q.** Just to refer you, if you look at
7 page 4 of the Amended Defence, Mr. O'Shea, paragraph
8 15.2 ---

9 **A.** Got them.

10 13. **Q.** It is referring to Exhibit 29, and
11 then it goes all the way, Mr. O'Shea -- the last
12 exhibit that was sent to us is in paragraph 15.19,
13 Exhibit D-38.

14 I am referring you specifically to 29,
15 30, 31, 32, 33, 34, 35, 36, 37, 38. That is what was
16 sent on Friday.

17 Have you reviewed it, Mr. O'Shea,
18 today, those exhibits, D-29 to D-38?

19 **MR. NOVAK:** Mr. O'Shea, perhaps it is
20 easier, they would be in the same package. It is in a
21 singular package of documents that you would have
22 received.

23 **THE WITNESS:** Yes, I do have that.

24 **BY MR. NOVAK:**

25 14. **Q.** Were you involved, Mr. O'Shea, in

November 13th, 2023

R. O'Shea
Exam. (Mr. Novak)

1 the preparation of the Amended Defence?

2 **A.** I was.

3 15. **Q.** Did you approve the contents,
4 Mr. O'Shea, of the Amended Defence before it was sent?

5 **A.** I did.

6 **MS. SHADEED:** Mr. O'Shea, just because
7 I see you are looking at a paper copy, it is the
8 electronic document.

9 Just to make sure that the witness is
10 looking at the correct document, it is the electronic
11 document.

12 **THE WITNESS:** Yes. What page were you
13 talking about? I have got 15 -- You are talking 26 to
14 ---

15 I have got 15, 19 to 16. Would that
16 be further down? It is easier if you just tell me
17 what page.

18 **BY MR. NOVAK:**

19 16. **Q.** I am referring to ---

20 **A.** Here I go. Exhibit D-29, D-30, D-
21 31, D-32, D-33.

22 17. **Q.** Mr. O'Shea, I am referring to the
23 Amended Defence. To be clear, it starts at paragraph
24 1.

25 **A.** Yes.

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R. O'Shea
Exam. (Mr. Novak)

1 18. Q. Do you have it in front of you,
2 Mr. O'Shea? It is dated ---

3 A. I have it on my computer, yes.

4 19. Q. Okay. There are 16 paragraphs,
5 Mr. O'Shea, dated November 10th, 2023 ?

6 A. Okay.

7 20. Q. Do you have that in front of you,
8 Mr. O'Shea?

9 A. I do.

10 21. Q. Very simple question: Did you
11 approve the contents of the Amended Defence before it
12 was sent?

13 A. I did.

14 22. Q. Perfect. So, let's go back,
15 Mr. O'Shea.

16 You seem to have everything
17 electronically, so that will expedite.

18 Let us go back to the letter sent by
19 your counsel, Maître Shadeed, on behalf of the
20 Defendant. It is a letter of November 10th, 2023. It
21 came with the enclosures.

22 The enclosures start at what is called
23 PU, for "Pre-Undertaking", and they are numbered PU-1,
24 and then there is sub-numbering.

25 So, let us start with PU-1(a).

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R. O'Shea
Exam. (Mr. Novak)

1 **MS. SHADEED:** Mr. O'Shea, that is at
2 page 6 of the document.

3 Maître Novak, for the witness, it is
4 easiest to identify it by the page number of the PDF.

5 Mr. O'Shea, that is page 6.

6 **THE WITNESS:** Page 6 of the Amended or
7 the letter?

8 **MS. SHADEED:** Of the letter.

9 **THE WITNESS:** Thank you.

10 **BY MR. NOVAK:**

11 23. **Q.** Do you have in front of you,
12 Mr. O'Shea?

13 **A.** I have it, yes.

14 24. **Q.** The title is: "Supplemental
15 Information Report under the Pink Alternative
16 Reporting Standards of OTC Markets Planet
17 Biotechnology".

18 Do you have it in front of you,
19 Mr. O'Shea?

20 **A.** I do.

21 25. **Q.** I am going to refer you to page 6.
22 It is red, on the bottom. It has eleven pages. On
23 the bottom, in the middle, it should say "Page 6 of
24 11".

25 **A.** Yes, I have page 1 of 2 and page 1

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R. O'Shea
Exam. (Mr. Novak)

1 of 11. Okay. You want me to go to page 6.

2 26. Q. On top, it says: "ByoPlanet
3 International LLC Balance Sheet".

4 A. Okay. I have got it up, yes.

5 27. Q. Wonderful. Thank you.

6 If I understand correctly, this is the
7 balance sheet for ByoPlanet International LLC as of
8 December 31st, 2022, correct?

9 A. That would be a reviewed balance
10 sheet, yes.

11 28. Q. What do you mean, sorry, by
12 "reviewed balance sheet"?

13 A. That that was a reviewed balance
14 sheet. That was just a review. That has not been
15 audited, an internal audit done, so it is a reviewed
16 balance sheet.

17 29. Q. Do you know when this was
18 prepared, Mr. O'Shea?

19 A. I do not.

20 30. Q. On the top left, there is a 02-02-
21 23. I am still on the same document, balance sheet as
22 of December 31st, 2022.

23 A. Okay.

24 31. Q. Under, you see a ---

25 A. Okay.

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R. O'Shea
Exam. (Mr. Novak)

1 32. **Q.** Is there any significance to that?
2 Is that when the document was prepared, pulled out,
3 or you are not sure?

4 **A.** I would assume that would be the
5 date that it was pulled out, as you would say.

6 33. **Q.** Mr. O'Shea, if you look at the
7 same document that you have in front of you, you have
8 multiple numbering on the top -- for example, "1,000
9 bank accounts".

10 Do you see that?

11 **A.** I do.

12 34. **Q.** Right under "bank accounts", there
13 is "1700". And then it says, "Chase checking 0266",
14 correct?

15 **A.** Yes. "1700 Chase checking of
16 account number 0266", yes.

17 35. **Q.** Does that correspond to ByoPlanet
18 International LLC, their Chase account, and the
19 checking number 0266?

20 Is that what I am supposed to
21 understand in that row?

22 **A.** Yes.

23 36. **Q.** Okay. Can you get in front of
24 you, Mr. O'Shea -- you were making reference before to
25 exhibits. I was asking you about D-29 to D-38.

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R. O'Shea
Exam. (Mr. Novak)

1 I would ask you to take out, please,
2 D-32.

3 **A.** D-32 in the Amended?

4 37. **Q.** Yes, that is correct, Mr. O'Shea.

5 **MS. SHADEED:** That is going to be in
6 the other PDF, Mr. O'Shea, starting at page 34.

7 **THE WITNESS:** Okay. Got it.

8 **BY MR. NOVAK:**

9 38. **Q.** Mr. O'Shea, at D-32 is the Chase
10 checking account. Is that the checking account,
11 Mr. O'Shea, that we just saw ending in 0266?

12 Is it the same account or it is a
13 different account, Mr. O'Shea?

14 **A.** I would assume so. I do not see
15 any matching numbers on it to go ahead and refer it
16 to. But that would be sensible, unless there is an
17 account number attached to it.

18 39. **Q.** We had before us, Mr. O'Shea, the
19 balance sheet as of December 31st, 2022. If you can
20 go back to that, please?

21 **A.** I have it.

22 40. **Q.** Did you borrow money?

23 When I say "you", I want to be very
24 clear, you, personally, Mr. Rick O'Shea.

25 Did you borrow money from the

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R. O'Shea
Exam. (Mr. Novak)

1 Defendant?

2 **A.** No.

3 41. **Q.** Okay. Did you loan the Defendant
4 money personally, Mr. O'Shea?

5 **A.** No.

6 42. **Q.** Can you look at item 1801? If you
7 look at the first page of the balance sheet that was
8 provided to us by Counsel in the pre-undertakings.

9 **A.** Yes.

10 43. **Q.** I am under section "Other Current
11 Assets", Mr. O'Shea.

12 To facilitate the transcript, I am
13 going to refer you to the number. Under the number
14 1800, there is a section called "Interco loans".

15 **A.** I see it.

16 44. **Q.** If you scroll down, Mr. O'Shea,
17 you will find 1801, "Due, to, from", and your name
18 appears with an amount of 1.589 million.

19 That is approximate. It is a little
20 bit higher.

21 **A.** Okay.

22 45. **Q.** What does that correspond to,
23 Mr. O'Shea?

24 **A.** Well, that is how we code things
25 for the business development. So, if I am on a task

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R. O'Shea
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1 for business development, that is what it is coded to.

2 1801 is a project.

3 46. Q. What project is 1801, Mr. O'Shea?

4 A. It is an internal project for
5 business development. Same thing with loans to Planet
6 Brands or loans to BioScience.

7 47. Q. Elaborate, Mr. O'Shea, please.

8 For example, 1801, "Due, to, from Rick
9 O'Shea", is that, according to your testimony, an
10 amount that the Defendant owes you or you owe the
11 Defendant or neither?

12 A. Neither. That is a placeholder
13 with my name on it because that is the project that I
14 am working on.

15 And as soon as I am done with that
16 project, the name will be changed to the project.

17 48. Q. What was done? What that done,
18 what you are referring to, that your name was removed
19 and it was referred to the project? Do you know?

20 A. Yes.

21 49. Q. And when was that done,
22 Mr. O'Shea? I want to be fair with you. As of
23 December 31st, 2022, do you remember when it was done?

24 A. No, it is just an internal
25 mechanism, how I do things. I would have to check

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1 with the CPAs and find out when they did that.

2 50. Q. Okay. If we continue to expedite,
3 on the same document, Mr. O'Shea, I am still on the
4 same page, there is "Inventory". Do you see that, if
5 you continue down?

6 I am going to be focused on this
7 document for now.

8 It is under 1300, "Inventory".

9 A. Okay.

10 51. Q. You will see, Mr. O'Shea, what is
11 referred to as "1352, General Parts". Do you have
12 that on your screen? There is a number to the right
13 side, it is a little bit less than 23 million,
14 22,894,000.

15 A. "Inventory, 1300", yes.

16 52. Q. Yes. Do you see "1352, General
17 Parts"?

18 A. I do.

19 53. Q. As I mentioned, it is slightly
20 below 23 million. What does that correspond to,
21 Mr. O'Shea?

22 A. General parts.

23 54. Q. And what does that mean, "general
24 parts"? Because it seems to be a fairly significant
25 amount with regards to the inventory.

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R. O'Shea
Exam. (Mr. Novak)

1 **A.** Parts. General parts. Inventory.

2 Parts inventory.

3 55. **Q.** General parts.

4 **A.** Yes.

5 56. **Q.** Do you know if the Promark parts
6 are part of the 22 million general inventory?

7 **A.** I would assume so, yes.

8 57. **Q.** If we continue in the same
9 section, "1301, Spray Guns".

10 Just for the record, what does that
11 mean "Spray Guns"? It is a little bit over 72,000.

12 **A.** Spray guns are the spray guns that
13 attach to the machines.

14 58. **Q.** In the same document, Mr. O'Shea,
15 I am now under 2420. If you turn the page,
16 Mr. O'Shea, same balance sheet as of December 31st,
17 2022.

18 **A.** Okay.

19 59. **Q.** I am at the bottom of the page,
20 Mr. O'Shea, under "Current liabilities".

21 **A.** 2022.

22 60. **Q.** 2420, sorry. 2420.

23 **A.** 2420. What page number is that?

24 61. **Q.** It's just the following page,
25 Mr. O'Shea. You were looking at the balance sheet.

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1 **A.** Okay, 2420, yes.

2 62. **Q.** There is an inscription, do you
3 see it, "RPMOS Loan". Do you see that?

4 **A.** I do.

5 63. **Q.** And then on the right side, there
6 is an amount, it is a little bit less than 6.4
7 million. Do you see that?

8 **A.** I do.

9 64. **Q.** Mr. O'Shea, what is that exactly?

10 **A.** It is a loan from RPMOS.

11 65. **Q.** What is RPMOS, Mr. O'Shea?

12 **A.** It is a company that invests money
13 in other companies.

14 66. **Q.** When you say, "it is a company
15 that invests money in other companies", is it your
16 company? A company that you control or somebody
17 else's company?

18 **A.** It is a company that I control.

19 67. **Q.** Do you know when this company was
20 incorporated?

21 **A.** The exact date, I do not.

22 68. **Q.** Do you have in front of you,
23 Mr. O'Shea, our exhibits, Plaintiff's exhibits?

24 **MR. NOVAK:** Maître Shadeed, does he
25 have them? Can you put it on the screen?

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1 **THE WITNESS:** I am not the only member
2 of RPMOS. I just want to make sure you are clear on
3 that.

4 **BY MR. NOVAK:**

5 69. **Q.** We are going to look, Mr. O'Shea,
6 at what is registered together.

7 **A.** Okay.

8 **MS. SHADEED:** Mr. O'Shea, the exhibits
9 are in the paper copy, the binders that you have.

10 **THE WITNESS:** Okay.

11 **MS. SHADEED:** Which exhibit, Maître
12 Novak?

13 **MR. NOVAK:** 40, Maître Shadeed.

14 **MS. SHADEED:** 40? That is going to be
15 in the book that is called "Plaintiff's exhibits P-41
16 to P-46". You should have a Volume 2.

17 **THE WITNESS:** Okay.

18 **BY MR. NOVAK:**

19 70. **Q.** Do you see P-40, Mr. O'Shea?

20 **A.** I do.

21 71. **Q.** I see it as the Florida Limited
22 Liability Company RPMOS. Do you see that?

23 **A.** Yes, I do.

24 72. **Q.** It was filed and incorporated on
25 September 1st, 2021, correct, according to this?

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1 **A.** Okay.

2 73. **Q.** Do you see your name, Mr. O'Shea
3 on page 1 and page 2, under all of the authorised
4 people? I just want to make sure you are following.

5 **A.** I am at T-40. Next, it says,
6 "Google Maps Photo of 175 Royal Palm".

7 74. **Q.** No, I think you are in another
8 exhibit, Mr. O'Shea. I want to make sure you are at
9 P-40.

10 P-40 is the Sunbiz. Do you have that
11 in front of you?

12 **A.** I see "RPMOS Incorporated Profile
13 with Sunbiz" at P-40. What tab would I go to?

14 75. **Q.** It's in that tab, Mr. O'Shea. Do
15 you see the principal address, it is your residence?

16 **A.** Yes. P-41 is the Google maps.
17 P-42 is "Wire". How do I get to the document?

18 76. **Q.** I am at, P-40, Mr. O'Shea. If you
19 just stick at P-40, I think you have it in front of
20 you. P-40?

21 **A.** Erica, what document? Okay, I
22 see. I am at ---

23 **MS. SHADEED:** Mr. O'Shea, he is
24 staying in the same exhibit, he is not changing
25 exhibits. Do not change tabs, stay in P-40.

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R. O'Shea
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1 **THE WITNESS:** Okay. I was looking at
2 the table of contents, that is my fault.

3 Okay, I have got to go to Volume 2,
4 bear with me two seconds. Go ahead, yes.

5 77. **Q.** P-40, Mr. O'Shea, we saw was the
6 Sunbiz.

7 **A.** Okay.

8 78. **Q.** I am asking you just to confirm.
9 I understand that RPMOS, the address is your house,
10 that is correct?

11 **A.** That is correct.

12 79. **Q.** 175 Royal Palm?

13 **A.** That is correct.

14 80. **Q.** Just let me finish, please,
15 Mr. O'Shea.

16 Do you see your name under the
17 "Officers" section? "Authorised people"? Then you
18 have "AP, AP, AP", Mr. O'Shea, correct? Do you see
19 that?

20 **A.** Yes.

21 81. **Q.** Perfect. Now I am on a separate
22 exhibit.

23 **MS. SHADEED:** Maître Novak, just to be
24 clear so that it is clear on the transcript, the
25 witness had testified previously that he was not the

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1 only member of RPMOS.

2 I do not now if you intend on asking
3 questions on that? You said you were going to address
4 the topic and then seemed to have moved over it.

5 Just to make it clear that that was
6 the witness' testimony.

7 **MR. NOVAK:** Maître Shadeed, I do not
8 think you need to repeat the witness' testimony. I am
9 going to ask you not to do that.

10 The witness spoke, we have his
11 transcript. We will see that the documents say. And
12 yes, I do intend to go through that.

13 I am going to refer Mr. O'Shea to
14 D-31.

15 **BY MR. NOVAK:**

16 82. **Q.** Mr. O'Shea, these are the Exhibits
17 that were filed by Dentons in support of what we call
18 the Amended Defence of November 10th, 2023. It is
19 Exhibit D-31.

20 **MS. SHADEED:** These would be,
21 Mr. O'Shea, on your computer now, D-31.

22 **THE WITNESS:** What page?

23 **MS. SHADEED:** The document with 130
24 pages. I will get you the page number.

25 **MR. NOVAK:** Mr. Bolduc, if we can go

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R. O'Shea
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1 off record for ten seconds, please?

2 ---(Off record)

3 ---(Upon resuming)

4 **BY MR. NOVAK:**

5 83. **Q.** Mr. O'Shea, this is D-31. It is
6 going to be much faster this way.

7 Mr. O'Shea, to facilitate the
8 examination, we are going to share our screen. You
9 will see on the top right this is D-31.

10 Mr. O'Shea, you made reference to
11 RPMOS. Is this the same RPMOS you see here in the
12 first paragraph that is allegedly lending money?

13 You see the date, September 9th, 2021.

14 There is an amount of \$3,000,000 USD right across.

15 And it appears, based on this
16 document, that RPMOS is the Lender to the Defendant of
17 \$3,000,000.

18 Is that correct?

19 **A.** That is correct.

20 84. **Q.** And that is the same RPMOS that
21 you referred to in the balance sheet as of December
22 31st, 2022 we saw, "2420 RPMOS Loan", a little bit
23 less than 6.4 million.

24 It is the same RPMOS?

25 **A.** Yes.

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1 85. **Q.** Thank you. I am now going to
2 refer you to the balance sheet.

3 We are going to get up on the screen
4 for you the balance sheet, which was the document we
5 have reviewed before, on the bottom, "2420 RPMOS
6 Loan".

7 How is that calculated, Mr. O'Shea?

8 **A.** In what aspect, how is it
9 calculated?

10 86. **Q.** How did whoever prepared this
11 document get to an amount of 6.397 million and some
12 change? How did that happen? What was it based on?

13 **A.** That would be on loans that were
14 taken in plus interest.

15 87. **Q.** We are going to go, Mr. O'Shea, to
16 the following page, which is page 8.

17 On page 8, there is a section with
18 regards to "Distributions, Equity" under "3030". You
19 have it in the screen, Mr. O'Shea. This is the same
20 balance sheet as of December 31st, 2022 provided by
21 counsel.

22 You will see there are different
23 names, "3033. Barrett Distributions", then it is
24 followed by "O'Shea Distributions", "Wasena
25 Distributions", "Distributions - Other".

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1 "Barrett Distributions", does that
2 refer to John Barrett?

3 **A.** It does.

4 88. **Q.** Who is John Barrett, Mr. O'Shea?

5 **A.** John Barrett is one of the
6 partners.

7 89. **Q.** One of the partners for what, for
8 the Defendant, Mr. O'Shea, or another entity?

9 **A.** For the Defendant. It's right
10 here, he took a distribution.

11 90. **Q.** Okay. Does John Barrett know
12 about the present lawsuit, Mr. O'Shea?

13 **A.** He does.

14 91. **Q.** Is he aware as well of the
15 documents that were sent on November 10th, 2023?

16 **A.** I am sorry, re-say that? Does he
17 know about the documents sent back and forth as an
18 investor?

19 92. **Q.** Not the documents sent back and
20 forth, Mr. O'Shea, the documents that were ordered by
21 the Court and that Maître Shadeed provided on November
22 10th, 2023.

23 Do you know if he is aware of those
24 documents, meaning that you have shared those
25 documents with Spiegel Sohmer?

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1 **A.** I have not shared those documents
2 with him. I keep him up to date verbally.

3 **Q.** But my question is different,
4 Mr. O'Shea.

5 Do you know if Mr. John Barrett is
6 aware that on November 10th, 2023, Maître Shadeed,
7 pursuant to a Court order, shared documents with
8 Spiegel Sohmer? Is he aware of that?

9 **A.** He is aware of that.

10 **Q.** Thank you. In the "Distribution"
11 section, Mr. O'Shea, next to "O'Shea Distributions",
12 it is slightly over 4.3 million.

13 What does that relate to?

14 **A.** That is a distribution back in
15 September of 2020 of 4.333 million dollars.

16 **Q.** Okay. It is in September 2020,
17 Mr. O'Shea?

18 **A.** Yes.

19 **Q.** Is there any specific reason why
20 it is reflected in the balance sheet of December 31st,
21 2022 you see on the top of the page?

22 **A.** They would always remain on the
23 balance sheet.

24 **Q.** And the \$15,000,000 at
25 "Distributions - Other", what does that relate to,

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1 Mr. O'Shea, please?

2 **A.** \$15,000,000 distribution to the
3 partners in 2020 of September.

4 98. **Q.** When you say "partners", are you
5 referring to people that are different than Barrett,
6 O'Shea, Wasena?

7 **A.** Those are the partners.

8 99. **Q.** So, let me understand, please, why
9 is it under "Other" as opposed to Barrett, O'Shea,
10 Wasena?

11 **A.** Well, rather than, I guess, list
12 them all, they thought it was straight forward enough
13 to go ahead and list "Others" as Barrett, O'Shea,
14 Wasena.

15 100. **Q.** But the distributions to others,
16 Mr. O'Shea, just so I understand, are they to other
17 people other than Barrett, O'Shea and Wasena? Is that
18 your testimony?

19 **A.** That is my testimony.

20 101. **Q.** I am going to refer you,
21 Mr. O'Shea, now to Exhibit D-34.

22 If we go to the top of the page, you
23 will see that this was provided as an answer to the
24 pre-undertaking, meaning it was an enclosure in Maître
25 Shadeed's November 10th letter and it was also an

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1 exhibit.

2 There are two pages; we are going to
3 scroll down for you just so you can see on the screen.

4 This is the first page. It is
5 addressed to Sean Corrigan and it is signed by
6 yourself, Richard O'Shea, on behalf of RPMOS LLC.

7 I am just going to the bottom of page
8 2, if you go down. Is this intentional, Mr. O'Shea,
9 or is there material missing from the second page? It
10 is just hard to see on your copy.

11 **A.** I think that could be double-sided
12 paper.

13 102. **Q.** Okay. We are going to go to the
14 top of the document, Mr. O'Shea, I want to try and
15 identify.

16 **A.** Okay.

17 103. **Q.** It says, "Via Federal Express and
18 Certified Mail, ByoPlanet International LLC", and
19 there are two addresses, 1 Shotgun Road, Florida, and
20 1 Monroe Road, Athens.

21 And the "Re" says:

22 *"Demand for payment on Amended and*
23 *Restated Line of Credit Secured*
24 *Demand Promissory Note dated June*
25 *22d, 2022".*

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1 I did not understand why, but there is
2 no date, Mr. O'Shea. Is there a specific reason why
3 there is no date?

4 A. No, there is no reason for that at
5 all. No, I don't know why there is no date.

6 104. Q. Okay.

7 A. But I know what date it was sent.

8 105. Q. When was it sent, Mr. O'Shea?

9 A. February 17th.

10 106. Q. Of what year?

11 A. Of 2023.

12 107. Q. And how was this document
13 retrieved, Mr. O'Shea? Was it a photocopy of the
14 original or a picture on your phone?

15 A. It was probably a scanned
16 document.

17 108. Q. Did you scan it, Mr. O'Shea?
18 Because you do not seem sure.

19 A. No, I scanned it.

20 109. Q. So, was it a scanned document,
21 Mr. O'Shea, or was it a picture you took with your
22 phone?

23 A. No, it is a scanned document.

24 110. Q. Do you have the original at your
25 office?

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1 **A.** It is a scanned document from --
2 using my phone.

3 **Q.** Okay. Was it with an envelope,
4 Mr. O'Shea? The reason why I am asking is you will
5 see on the document --

6 As you said, it was double-sided. So,
7 I am just trying to figure out how it was retrieved
8 from whatever you copied it from.

9 Do you still have the original
10 document at your office?

11 **A.** I believe I do.

12 **Q.** I would ask as an undertaking,
13 Mr. O'Shea, if you can provide that quickly to Maître
14 Shadeed, the original is what is referred to as D-34.

15 **MS. SHADEED:** Maître Novak, to be
16 clear, you are asking for Mr. O'Shea to send us in the
17 mail the actual, physical, original document?

18 I don't know if we can ask him or the
19 company to provide or to get rid of the original
20 document. I would suspect that they need that in
21 their records.

22 I understand where you are going,
23 Maître Novak, you want to verify the authenticity. I
24 am just wondering if there is another way to do this
25 without actually providing the original.

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1 **MR. NOVAK:** Maybe, Maître Shadeed.
2 But for the time being, I am going to continue on my
3 line of questioning, and I am going to maintain for
4 the original.

5 We can always discuss off record if
6 there is an easier way to verify.

7 **MS. SHADEED:** Okay. I am going to
8 raise an objection then, just on the basis --

9 You understand where I am going with
10 this, Maître Novak. I just do not think that we can
11 ask the company to get rid of its original corporate
12 records.

13 But I understand that the purpose is
14 to verify the authenticity. Perhaps we can discuss
15 offline if there is a way to get you the confirmation
16 that you are looking for.

17 **--- Undertaking No. 1 (Under objection):**

18 To provide the original document of
19 what is referred to as D-34.

20 **BY MR. NOVAK:**

21 113. **Q.** Mr. O'Shea, why do you have the
22 original in your possession?

23 **A.** I did not say that I did. I said
24 that I assumed that I have it. So, I would have to go
25 look for it.

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1 114. Q. Mr. O'Shea, let's be clear for a
2 second.

3 What did you copy or take a picture
4 of?

5 A. Clearly, the original document.
6 You asked me, if I had it, where was it. I am going
7 to have to locate that, in what office and what file
8 did I put it in.

9 115. Q. Okay. Did you see, when Maître
10 Shadeed asked you these documents, when was it
11 produced as D-34, did you see the envelope of this
12 letter?

13 You said it was sent on February 17th,
14 2023. Did you see the envelope that it came in,
15 Mr. O'Shea?

16 A. It was not sent to me.

17 116. Q. I understand that, Mr. O'Shea.

18 But you are President and CEO of
19 ByoPlanet International LLC. So, I am asking you,
20 have you seen the envelope that this letter came in in
21 your capacity as CEO and President of the Defendant?

22 Right? It is addressed to the
23 Defendant? You see that?

24 A. Yes, it is addressed to : "Attn:
25 Sean Corrigan", so ---

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1 117. Q. I understand. And so, I am asking
2 you, have you seen, or have you ever seen the envelope
3 that this letter came in?

4 A. No, I did not see the envelope
5 that this letter came in.

6 118. Q. Is it your testimony today,
7 Mr. O'Shea, that you signed this letter on February
8 17th, 2023, or it is your testimony that you sent the
9 letter on February 17th, 2023?

10 A. I am not sure of the question,
11 sir.

12 119. Q. I think it is pretty clear,
13 Mr. O'Shea. I will break it down for you, two parts.

14 When did you prepare and signed this
15 letter that we seen on the screen as Exhibit D-34?

16 My colleague will go up so you can see
17 the top of the page to be fair to you and will go down
18 so you can see the bottom of the letter where you
19 signed "Very truly yours".

20 So, my question is, when did you
21 prepare and appose your signature on Exhibit D-34?

22 A. I would assume shortly before it
23 was sent.

24 120. Q. I do not want you to assume,
25 Mr. O'Shea. Do you not know offhand?

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1 **A.** No, I do not know offhand. It was
2 back in February, so I would have to go and check my
3 records.

4 121. **Q.** I am going to ask you to do that,
5 Mr. O'Shea, as undertaking number 2, to check your
6 records and to provide us with any evidence suggesting
7 that you prepared and signed the letter in the days
8 following February 17th, 2023.

9 **A.** Understood.

10 --- **Undertaking No. 2:**

11 To verify Mr. O'Shea's records and to
12 provide any evidence suggesting that
13 he prepared and signed the letter
14 (Exhibit D-34) in the days following
15 February 17th, 2023.

16 122. **Q.** And I am going to ask you as a
17 second question, because I thought it was clear, just
18 so I understand, are you stating today, Mr. O'Shea,
19 that this letter was sent by you on behalf of RPMOS on
20 February 17th, 2023?

21 **A.** Yes.

22 123. **Q.** How do you know that, Mr. O'Shea?

23 **A.** How do I know that?

24 124. **Q.** How do you know that date? It is
25 a very specific date, February 17th, 2023.

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1 **A.** Because that was the date that it
2 was sent.

3 **Q.** Are you reading off notes,
4 Mr. O'Shea, on your screen? It is just a question. I
5 am trying to figure out how you know for certain it
6 was sent on February 17th, 2023.

7 **A.** No, I am not reading any notes. I
8 know when it was sent. It did not have a date on it.

9 I have been researching the case, so I
10 have the date in my head, February 17th.

11 **Q.** Did you advise your attorneys?
12 And here is what I am asking before Maître Shadeed
13 objects.

14 In your Amended Defence -
15 --(To Ms. Shadeed)

16 **MR. NOVAK:** And you can take a look at
17 it, Maître Shadeed, as well at the same time. I am
18 going to refer you to the paragraph that makes
19 reference to D-34.

20 **BY MR. NOVAK:**

21 **Q.** This is the Amended Defence. We
22 will put it on the screen for you.

23 If you look at paragraph 15.8, and
24 that is why I am asking you the question, there is no
25 date here, right?

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1 You can read it again to yourself,
2 Maître Shadeed can read it, she drafted it, but there
3 is no date in reference to Exhibit D-34.

4 I am going to ask you a different way.

5 When this was sent, did you share with
6 Maître Shadeed the date of Exhibit D-34? Is this
7 something that was discussed and that you were able to
8 figure out, on what date you allege it was sent?

9 **A.** No.

10 128. **Q.** So, when did you discover that,
11 according to your testimony, it was sent on February
12 17th, 2023?

13 **A.** When I was doing my research.
14 There was no date on that, so I wanted to go back and
15 check.

16 129. **Q.** And what exactly did you verify,
17 just so I understand, Mr. O'Shea, to get that specific
18 date of February 17th, 2023?

19 **A.** Because I also sent an email to
20 Sean as well.

21 130. **Q.** And what was the email,
22 Mr. O'Shea, that you sent?

23 **A.** That document that you have been
24 looking at.

25 131. **Q.** So, on the same date, you sent an

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1 email to Mr. Corrigan with the same letter included?

2 **A.** I emailed it to him and sent it
3 FedEx.

4 132. **Q.** You emailed him a copy of D-34 is
5 what you are saying, the actual letter?

6 **A.** Yes.

7 133. **Q.** So, your testimony is that this
8 letter was sent by email to Mr. Corrigan on February
9 17th, 2023.

10 **A.** Yes.

11 134. **Q.** Did Mr. Corrigan respond to your
12 email?

13 **A.** I did not check on that.

14 135. **Q.** I will ask you as an undertaking,
15 please, to verify whether Mr. Sean Corrigan, the
16 apparent recipient of Exhibit D-34, responded to your
17 letter demanding payment.

18 Mr. O'Shea, had you spoken to
19 Mr. Corrigan on or around February 17th, 2023,
20 verbally advising him that he was going to receive a
21 letter demanding payment of approximately 6.6 million
22 USD?

23 **A.** I do not recall if we spoke
24 verbally or electronically.

25 --- **Undertaking No. 3:**

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1 To verify whether Mr. Sean Corrigan
2 responded to the letter of February
3 17th, 2023 (Exhibit D-34) demanding
4 payment.

5 136. Q. On the bottom of the letter,
6 Mr. O'Shea, my colleague will show you very shortly,
7 there is: "Mighty as a Bear LLC, John H. Barrett".

8 Is that the same Mr. Barrett that we
9 saw on the balance sheet?

10 A. That is correct.

11 137. Q. What is "Mighty as a Bear LLC"?

12 A. That is his investment company,
13 personal investment company.

14 138. Q. And what is ByoPlanet -- Same line
15 of questioning. There is, on both pages, "ByoPlanet
16 Property Investing LLC". It is not the same name,
17 according to this document, as the Defendant.

18 And "ByoPlanet International
19 Integrated Services LLC Attn: Steve Cooper", is there
20 any reason --

21 Let me start with the first question.

22 What are those entities, Mr. O'Shea?

23 A. Those are other entities that I
24 own.

25 139. Q. Okay. And who is Steve Cooper in

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1 reference to those entities?

2 **A.** He is a vice-president that is at
3 the office.

4 140. **Q.** "A vice-president that is at the
5 office".

6 **A.** Yes, he was a vice-President of
7 ByoPlanet International at the time.

8 141. **Q.** Can you just explain to me, in
9 reference to this specific demand for payment in
10 excess of 6.6 million USD, why is he copied? Why are
11 those entities copied?

12 **A.** Those entities are copied because
13 he is a vice-present of ByoPlanet International, so I
14 wanted to go ahead and make sure that he understood
15 and that everyone understood and was in copy.

16 142. **Q.** Okay. Did Mr. Steve Cooper
17 respond to this letter that you state was sent by
18 email to Mr. Corrigan?

19 It was sent, according to you, by
20 Federal Express and certified mail on February 17th,
21 2023. Did you get a response from Mr. Steve Cooper?

22 **A.** I would have to go look on that as
23 well.

24 143. **Q.** We will ask, for the record, as an
25 undertaking, to verify, to be clear, we ask for

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1 Mr. Corrigan --

2 I ask you as a larger undertaking, if
3 there was any response from anyone, whether it be Sean
4 Corrigan, Steve Cooper, or anybody else, to this
5 Exhibit D-34. That is the first undertaking for this
6 request.

7 And I will also ask, Mr. O'Shea,
8 specifically with regards to Sean Corrigan and Steve
9 Cooper, if there were any emails exchanges with
10 regards to Exhibit D-34, whether before or after,
11 essentially discussions about the demand for payment,
12 Mr. O'Shea.

13 **MS. SHADEED:** Is this all part of the
14 same undertaking?

15 **MR. NOVAK:** I would say two separate
16 undertakings, Maître Shadeed.

17 **MS. SHADEED:** U-4 and U-5.

18 U-4 is, was there any response from
19 anyone, including Sean Corrigan or Steve Cooper to
20 Exhibit D-34.

21 And then confirm if there were any
22 email exchanges with Sean Corrigan or Steve Cooper
23 before or after D-34, in relation to D-34.

24 **MR. NOVAK:** That is correct, Maître
25 Shadeed.

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Exam. (Mr. Novak)1 --- **Undertaking No. 4:**

2 To specify if there were any response
3 from anyone, including Sean Corrigan
4 or Steve Cooper, to Exhibit D-34.

5 --- **Undertaking No. 5:**

6 To confirm if there were any email
7 exchanges with Sean Corrigan or Steve
8 Cooper, before or after D-34, in
9 relation to D-34.

10 **BY MR. NOVAK:**

11 144. **Q.** What is your relationship,
12 Mr. O'Shea, with John H. Barrett?

13 **A.** Partners.

14 145. **Q.** In what business, Mr. O'Shea?
15 Just so it is clear for the Court record, please.

16 **A.** We are in multiple businesses
17 together.

18 146. **Q.** Do you know those businesses
19 offhand, Mr. O'Shea?

20 **A.** I do. He is one of the partners
21 in Good Salt. He is also one of the partners in
22 RPMOS. And he is also one of the partners in Jorb
23 Ventures.

24 147. **Q.** Are there any other businesses,
25 according to your testimony, that Mr. Barrett is

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1 involved with and that you are also involved with?

2 **A.** He is also involved in Clean
3 Republic. He is also involved in Armatrexx Stream.

4 148. **Q.** Can you repeat the last one, I am
5 sorry, Mr. O'Shea, please?

6 **A.** Well, it is work in progress, but
7 it has not been filed yet. It is another entity that
8 we are working on.

9 149. **Q.** Mr. O'Shea, we are going to go
10 back on the screen now to the pre-undertakings that
11 were enclosed with Maître Shadeed's letter of November
12 10th, 2023.

13 We are going to put on the screen PU-
14 1(b)(j).

15 **A.** Do we have the number for that,
16 Erica?

17 150. **Q.** It is on your screen, Mr. O'Shea,
18 you will see PU-1(b)(j).

19 **A.** I am on two different devices. I
20 am on my cell phone and also on my computer so I can
21 get through these things faster.

22 **MS. SHADEED:** I understand. Because
23 he is on a cell phone, it is quite small.

24 It is on the document that has 191
25 pages, at page 71.

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1 **THE WITNESS:** Thank you. Okay.

2 **BY MR. NOVAK:**

3 151. **Q.** Mr. O'Shea, let us look at the
4 first line, "Bill of Sale". It is dated May 11th,
5 2023. Do you see that?

6 **A.** I do.

7 152. **Q.** What is this bill of sale, your
8 testimony, your understanding of this?

9 **A.** It is a bill of sale for products.

10 153. **Q.** Okay. It is between whom and
11 whom?

12 **A.** RPMOS and ByoPlanet International
13 Holdings and Good Salt.

14 154. **Q.** Okay. You see in the first
15 paragraph, Mr. O'Shea, it says:

16 *"... its respective successors and*
17 *assigns, the following assets*
18 *described on Exhibit A-1 and A-*
19 *2..."*

20 Do you follow me? In the first
21 paragraph. I want to go there after together.

22 **A.** Okay.

23 155. **Q.** Do you see that on your screen? I
24 am not sure what screen you are looking at, but I want
25 to make sure.

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1 **A.** I do. It is on your screen as
2 well, thank you.

3 156. **Q.** Perfect. We are going to go to A-
4 1 and A-2, Mr. O'Shea.

5 **A.** Okay.

6 157. **Q.** Let us start with A-1. I read it
7 five or six times just to make sure that I understood.

8 I do not see any exclusion of
9 Promark's inventory in the Exhibit A-1 assets. Do you
10 see something?

11 **A.** In the exhibits?

12 158. **Q.** In this document, Mr. O'Shea.
13 This is Exhibit A-1. We just saw in the bill of sale
14 it says:

15 *"The assets transferred to Good
16 Salt LLC by RPMOS..."*

17 And then it lists 1 and 2. I mean,
18 you can look at 1, Mr. O'Shea, it seems pretty
19 straightforward, by you can read it:

20 *"Equipment Inventory & Supplies..."*

21 I am reading to you aloud:

22 *"All inventory of material and
23 supplies, all furniture, signage,
24 fixtures..."*

25 It goes on, it continues, and then it

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1 says ---

2 **A.** Those are identified in another
3 document .

4 159. **Q.** But not this document, Mr. O'Shea?
5 Just so I understand.

6 **A.** The whole encompassing aspect of
7 the sale is everything but the Promark parts and the
8 Promark pending lawsuit is what is left behind.

9 So, this bill of sale was for
10 everything but those. And also, there were some other
11 UCC items as well from VAR, I believe, a forklift or
12 something along those lines.

13 160. **Q.** Okay, Mr. O'Shea. I just want to
14 understand because maybe I do not see that.

15 Do you see that somewhere in number 1
16 what you just testified to? You seem to be suggesting
17 --

18 And I want to be clear because we are
19 going to go into great detail. You seem to be
20 suggesting ---

21 **A.** It could be those other exhibits,
22 but I know that it surely exists because I know that
23 there are two documents that call out what was left
24 behind, that we could not buy.

25 So, it was not included in the sale.

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1 161. Q. Okay. But you agree with me? If
2 you do not, that is okay, you can tell me, "I do not
3 agree with you".

4 I am looking at the assets that were
5 transferred pursuant to the bill of sale and I am
6 trying to follow your testimony.

7 A. The assets are in ByoPlanet
8 International because they say that they are still in
9 ByoPlanet International along with VAR and some other
10 things as well.

11 So, they say it in another document.

12 162. Q. In another document. Okay.

13 A. Well, probably in other exhibits.

14 But go ahead.

15 163. Q. No, no, that is your testimony,
16 Mr. O'Shea. I am not going to cut you off. I am just
17 trying to understand your testimony.

18 I want to know if I was missing
19 something in Exhibit A-1. This is Exhibit A-1. We
20 are going back to the bill of sale, Mr. O'Shea.

21 You see here:

22 *"... the receipt of which is hereby*
23 *acknowledge, and undersigned does*
24 *hereby grant, sell, transfer,*
25 *assign, convey and deliver onto*

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1 does not say that in 1 and it does not say that in 2.

2 **A.** Yes, there is a section that calls
3 out the Promark parts and lawsuit remained with
4 ByoPlanet International.

5 166. **Q.** Okay. So, your testimony,
6 Mr. O'Shea, now, so we are clear, is that you are
7 saying the Promark inventory was not transferred to
8 Good Salt? Is that your testimony?

9 **A.** That is correct, it was not
10 transferred to Good Salt.

11 167. **Q.** And your testimony is that it was
12 also not taken by RPMOS?

13 **A.** It was not taken by RPMOS, that is
14 correct.

15 168. **Q.** Okay, Mr. O'Shea.

16 **A.** It lives in ByoPlanet
17 International.

18 169. **Q.** I heard you, Mr. O'Shea. We are
19 going to look together at the balance sheet at the end
20 of what you provided to us as March 2023.

21 **A.** Okay.

22 170. **Q.** We will put that on the screen.

23 **A.** What page is that, Erica, please?

24 **MS. SHADEED:** That would be, give me
25 one second, at page 118.

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1 **THE WITNESS:** Okay.

2 **MS. SHADEED:** It is the document that
3 says D-36 on the top righthand corner.

4 **THE WITNESS:** I got it, D-36. I have
5 got it.

6 **BY MR. NOVAK:**

7 171. **Q.** Mr. O'Shea, this is the balance
8 sheet that was provided to us by Maître Shaded as
9 part of the Amended Defence.

10 **A.** Okay.

11 172. **Q.** There is no inventory, Mr. O'Shea.

12 **A.** Okay.

13 173. **Q.** There is no more inventory in the
14 Defendant. Do you see that at line 1300?

15 **A.** Just because there is no dollar
16 amount does not mean there is no inventory. It's
17 defective parts; how can you put a value to it,
18 towards nothing?

19 174. **Q.** That is your testimony,
20 Mr. O'Shea?

21 **A.** That is my testimony.

22 If you want to come see the parts,
23 come to Athens, Georgia, and come do a hard count of
24 the parts. They are there.

25 175. **Q.** What is in Athens, Georgia,

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1 Mr. O'Shea?

2 **A.** Our facility is there. I am
3 sorry, the Boost is in Gainesville, Georgia, where
4 their parts are living currently in pallets that we
5 are paying rent on.

6 176. **Q.** Whose parts and in which facility,
7 Mr. O'Shea?

8 **A.** There are parts -- the Promark
9 parts live in Georgia, in a warehouse.

10 177. **Q.** Mr. O'Shea, let me understand your
11 testimony.

12 Are you stating today that the
13 apparent inventory that is apparently still with the
14 Defendant is worth zero dollars in 2023?

15 **A.** That is correct, it is worth zero
16 dollars. They are defective parts.

17 178. **Q.** Mr. O'Shea, let us look at the
18 balance sheet as of 2022. That is PU-1(a).

19 I believe you testified earlier, and I
20 do not want to repeat what you said, but we will go
21 down together to the section of "Inventory".

22 **A.** Okay.

23 **MS. SHADEED:** Mr. O'Shea, you can
24 review the entire balance sheet and not just what is
25 up on the screen.

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1 **BY MR. NOVAK:**

2 179. **Q.** Absolutely. I would encourage
3 you, Mr. O'Shea, because here -- let's go to the top
4 of the document.

5 **A.** What page number is that, Erica?

6 **MS. SHADEED:** Just give me one second.

7 **THE WITNESS:** Sorry.

8 **MS. SHADEED:** That is going to be in
9 the other document that 191 pages. It is starting at
10 page 6 -- no, sorry, pages 11-12.

11 **THE WITNESS:** I got it.

12 **MS. SHADEED:** And you can review the
13 entire balance sheet and not just the portions that
14 are being put up on the screen.

15 **THE WITNESS:** Thank you. You are
16 pointing me toward?

17 **BY MR. NOVAK:**

18 180. **Q.** I am pointing you towards
19 "Inventory". You see that? "General parts, 22
20 million".

21 I thought I heard you say at the
22 beginning of your testimony that it includes Promark
23 parts.

24 So, just explain to me how do we
25 reconcile what you are alleging as defective parts, at

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1 the end of 2022, as 22 million and suddenly, after the
2 transfer to Good Salt, it is zero dollars.

3 **A.** It is not suddenly. What it is --
4 how it is entered there is at wholesale cost of what
5 we paid for it.

6 Now you take me to another balance
7 sheet that is much more recent, and we valued it at
8 zero because they are defective parts.

9 Two different worlds that you are in.
10 181. **Q.** And who owns those ---

11 **A.** Brand new car, totalled car. Two
12 different worlds.

13 182. **Q.** Mr. O'Shea, who owns those parts,
14 according to your testimony, those Promark parts?

15 **A.** ByoPlanet International owns those
16 parts.

17 183. **Q.** Are you certain, Mr. O'Shea?

18 **A.** I am positive.

19 184. **Q.** Okay. We are going to look on the
20 screen, I am going to ask my colleague to do a small
21 Google search for you and put up the byoplanet.com
22 website.

23 **A.** Okay.

24 185. **Q.** We are going to go to "About".

25 You can do the same exercise, I did it yesterday, "Who

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1 we are".

2 **A.** Okay.

3 186. **Q.** Let us go to the bottom of the
4 left page, Mr. O'Shea. Just on the bottom there.

5 **A.** Okay.

6 187. **Q.** Can you explain to me? It says --
7 This is the ByoPlanet website, it says:

8 *"Good Salt, LLC, (DBA*
9 *ByoPlanet)..."*

10 **A.** Okay.

11 188. **Q.** What does that mean, Mr. O'Shea?
12 Is it ByoPlanet or is it Good Salt?

13 **A.** It's Good Salt doing business as
14 ByoPlanet. ByoPlanet is a brand name, just like Coca
15 Cola or Pepsi. We have the trademark name to it.

16 189. **Q.** Okay. Does Good Salt operate LLC
17 in parallel to the Defendant or it replaced it? I am
18 just trying to understand when you say, "doing
19 business as ByoPlanet".

20 **A.** It is using the brand name of
21 ByoPlanet.

22 190. **Q.** Okay.

23 **A.** Good Salt is its own company.

24 191. **Q.** Okay. But does ByoPlanet LLC
25 still operate, Mr. O'Shea? I am trying to understand

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1 what you are saying.

2 Here, and just follow me, it seems to
3 suggest that ByoPlanet is operating as Good Salt LLC.

4 **A.** No, it is not. It says it is
5 operating as Good Salt LLC (DBA) ByoPlanet. We ---

6 192. **Q.** So, what happened --

7 Sorry, Mr. O'Shea, continue.

8 **A.** No, go ahead.

9 193. **Q.** What happened to the Defendant?
10 Just for your understanding, the Defendant is
11 ByoPlanet International LLC.

12 **A.** That is correct.

13 194. **Q.** What happened to it, Mr. O'Shea?

14 **A.** What do you mean, "what happened
15 to it?"

16 195. **Q.** Well, I am on the website,
17 Mr. O'Shea, and it is pretty straightforward, it says,
18 "Good Salt, LLC, (Doing Business as ByoPlanet)", it
19 does not say, "ByoPlanet International LLC".

20 It used to, but not anymore.

21 **A.** Yes, ByoPlanet International is --
22 has Promark parts and a lawsuit in it.

23 196. **Q.** Okay. But what happened to it,
24 Mr. O'Shea? Does it operate or not?

25 **A.** It does not -- it got foreclosed

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1 on. It does not have anything to operate with, it ran
2 out of money.

3 197. Q. Okay. Does it have employees,
4 Mr. O'Shea?

5 A. It does not.

6 198. Q. So all of ByoPlanet's employees
7 went where, Mr. O'Shea?

8 A. They went on to -- some left.
9 Many left. And some have been hired on by Good Salt.

10 199. Q. For example, Sean Corrigan, we saw
11 his name, does he still work for Good Salt?

12 A. Sean Corrigan does work for Good
13 Salt.

14 200. Q. What about Steve Cooper?

15 A. Steve Cooper still works for Good
16 Salt. He has been employed by Good Salt.

17 201. Q. What about yourself, Mr. O'Shea?

18 A. I am employed by Good Salt.

19 202. Q. Okay. So, what I understand from
20 your testimony is that the Defendant does not operate.

21 I want to understand, I do not want to be cute.

22 Do they operate or do they not
23 operate? I am just trying to clarify based on your
24 testimony.

25 And if I am wrong, tell me. I

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1 understand ByoPlanet International LLC does not
2 operate anymore.

3 **A.** Well, they have a few contracts
4 out there that could come through, that could
5 resurrect it. But as of now, it is sitting there,
6 idle, not with any employees inside of it.

7 203. **Q.** There used to be a warehouse,
8 Mr. O'Shea?

9 First of all, do you remember
10 testifying on October 4th, 2022? I deposed you, do
11 you remember that, Mr. O'Shea, in this same file?

12 **A.** Yes.

13 204. **Q.** I do not need to go through your
14 testimony, we will see one or two points.

15 Do you remember testifying to the fact
16 that ByoPlanet International LLC had a warehouse in
17 Georgia?

18 **A.** Yes.

19 205. **Q.** Does ByoPlanet International LLC
20 still lease space or not anymore?

21 **A.** Not anymore.

22 206. **Q.** Have those leases been transferred
23 to Good Salt LLC?

24 **A.** They have.

25 207. **Q.** Okay. Mr. O'Shea, I just want to

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1 understand. We spoke about, and we will go back to
2 it, the bill of sale.

3 We are going back now in the exhibits,
4 and I will have my colleague pull it up for you.

5 If you look at PU-1(b)(j) ---

6 **MS. SHADEED:** Page 71 of 191.

7 **THE WITNESS:** Okay.

8 **BY MR. NOVAK:**

9 208. **Q.** I want to understand, Mr. O'Shea.

10 Here, I see a bill of sale. Are you suggesting under
11 oath, today, Mr. O'Shea, that RPMOS LLC lent money to
12 ByoPlanet International LLC?

13 **A.** Yes.

14 209. **Q.** Do you agree with me, and maybe
15 you do not, Mr. O'Shea, that RPMOS never distributed,
16 disbursed, or transferred any money -- and we are
17 going to go through it together -- to the Defendant
18 ByoPlanet International LLC?

19 **A.** I do not understand your question.

20 Are you saying that they do not have a bank account,
21 or you are saying the partners of Good Salt LLC --

22 What are you trying to say?

23 210. **Q.** Let us start with the first,

24 Mr. O'Shea. Does RPMOS have a bank account?

25 **A.** No, it does not need one.

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1 211. Q. That is what I thought.

2 Mr. O'Shea, how did the money leave
3 RPMOS if it does not have a bank account?

4 A. It comes from the investors.

5 212. Q. You have no traces of funds -- and
6 correct me if I am wrong -- from RPMOS to the
7 Defendant, do you?

8 A. It does not -- That money is
9 tagged as a disbursement for RPMOS.

10 213. Q. Mr. O'Shea, answer my question,
11 please. I am not asking for your explanation as to
12 how it is tagged. I am just asking you, did any money
13 leave RPMOS to the Defendant?

14 A. If RPMOS does not have a bank
15 account, that would be no. But it was tagged as from
16 RPMOS.

17 214. Q. Mr. O'Shea, let us look together
18 at the agreement between RPMOS and the Defendant, the
19 initial one. We are going to start with the exhibits
20 in the Ds. I believe D-32 is the beginning.

21 MS. SHADEED: Are you asking for the
22 agreement?

23 MR. NOVAK: That is correct.

24 BY MR. NOVAK:

25 215. Q. D-31, Mr. O'Shea.

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1 **A.** D-31. What page number is that?

2 **MS. SHADEED:** 13.

3 **THE WITNESS:** Of the letter.

4 **MS. SHADEED:** Of the letter. It is
5 the one that starts with "Important Notice" up top,
6 the promissory note.

7 **THE WITNESS:** Okay, I got the balance
8 sheet here. "Line of Credit".

9 **BY MR. NOVAK:**

10 216. **Q.** Yes, Mr. O'Shea. Do you see that,
11 "Line of Credit Secured Demand Promissory Note"?

12 **A.** Yes.

13 217. **Q.** Exhibit D-31? We are going to go
14 down. Do you see the date, Mr. O'Shea, September 9th,
15 2021?

16 **A.** Yes, I see November 6th, 2021.

17 218. **Q.** I have September 9th, 2021,
18 Mr. O'Shea. Can you try ---

19 **MS. SHADEED:** We might be on a
20 different document, Mr. O'Shea. It is the package
21 that starts with "Amended Summary Statement of Grounds
22 of Defence".

23 **THE WITNESS:** Okay, I see it,
24 September 9th.

25 **BY MR. NOVAK:**

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1 219. Q. Mr. O'Shea, were you aware that
2 September 9th was eight days after the incorporation
3 of the alleged Lender, RPMOS? Are you aware of that
4 today?

5 A. Okay.

6 220. Q. Are you aware of that, Mr. O'Shea
7 or am I the first person to tell you that eight days
8 after it was incorporated, P-40, it enters into this
9 agreement for \$3,000,000?

10 A. Okay.

11 221. Q. Meaning are you learning that now
12 or you knew about that before, Mr. O'Shea?

13 A. I do not know the exact date it
14 was officially verified with Sunbiz, but I will
15 believe you.

16 222. Q. Okay. When was this agreement
17 actually prepared, Mr. O'Shea?

18 A. I do not know on what exact date
19 it was prepared, but I am going to assume prior to
20 September 8th or 9th.

21 223. Q. Do you know that as a fact,
22 Mr. O'Shea?

23 A. Well, that is what the document
24 says, September 9th. So, I am going to assume that it
25 is before September 8th or September 9th.

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1 224. Q. I do not want you to assume,
2 Mr. O'Shea. It is fair to say, "I do not know
3 offhand", and then I will ask you to verify. Unless
4 you do.

5 If you know offhand, that is fair. If
6 you do not, please tell me. Do not assume.

7 A. I do not know offhand.

8 225. Q. I am going to ask you as an
9 undertaking to provide any evidence that this document
10 was actually prepared on or before September 9th,
11 2021. I am referring to Exhibit D-31.

12 **Undertaking No. 6:**

13 To provide any evidence that Exhibit
14 D-31 was actually prepared on or
15 before September 9th, 2021.

16 Mr. O'Shea, if you look at the first
17 paragraph, it states that:

18 *"... unconditionally promises to*
19 *pay to the order of RPMOS [...] the*
20 *amount of Three Million Dollars*
21 *(\$3,000,000.00) (the 'Principal*
22 *Sum') [...] together with*
23 *interest..."*

24 Do you see that?

25 A. I do.

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1 226. Q. Do you see also the section,
2 Mr. O'Shea, in the same paragraph:

3 "Create a line of credit agreement
4 between Maker and Lender whereby
5 Maker may borrow up to
6 \$3,000,000.00 from Lender [...]"

7 Correct?

8 A. Yes.

9 227. Q. Do you agree with me, Mr. O'Shea,
10 that that never happened because the Lender had no
11 bank account, correct?

12 A. No, that is not how it works in
13 the United States of America. We can go ahead and put
14 money into companies, you do not need a bank account
15 representing that company.

16 228. Q. So, your testimony today,
17 Mr. O'Shea, is that in the US, you can not lend the
18 money from the Lender, but prepare an agreement that
19 says that the Lender lent the money.

20 MS. SHADEED: That is not what he
21 said. That is not what he said, Maître Novak. Do not
22 misconstrue what the witness said.

23 MR. NOVAK: I thin, it is exactly what
24 he said.

25 MS. SHADEED: That is not what he

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1 said.

2 **BY MR. NOVAK:**

3 229. **Q.** Clarify for me, please,
4 Mr. O'Shea. How can it be that a document says ---

5 **A.** Can I ask you a question?

6 230. **Q.** No, Mr. O'Shea.

7 **A.** If I paid Promark for parts from
8 another account, a holding account, that was not part
9 of ByoPlanet International LLC, would you guys reject
10 the money and say, "Thank you"?

11 Or you would take the money and say,
12 "Thank you, ByoPlanet International has not paid that
13 bill yet. Still, send me another wire transfer for
14 the same amount of money, but make sure it comes from
15 ByoPlanet International. Until then, we will not
16 credit your account."?

17 231. **Q.** Mr. O'Shea, I am not here to
18 answer your questions, I am here to ask questions.
19 I would like you to answer my question.

20 Please explain to me how there is a
21 document that says that the Lender will provide a line
22 of credit of \$3,000,000 -- it says from the Lender --
23 but in fact that is not what happened.

24 I want to follow your testimony.

25 **MS. SHADEED:** I think that the witness

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1 has testified that there is an incorrect assumption in
2 there.

3 But, Mr. O'Shea, go ahead and explain
4 or correct whatever needs to be done.

5 **BY MR. NOVAK:**

6 232. **Q.** It seems to be the correct
7 assumption, Mr. O'Shea, when I read the document.
8 Please.

9 **MS. SHADEED:** Mr. O'Shea?

10 **THE WITNESS:** The funds come from
11 another account where it represents the money for
12 RPMOS.

13 **BY MR. NOVAK:**

14 233. **Q.** On what basis, Mr. O'Shea? Are
15 there agreements between RPMOS and these other
16 entities?

17 **A.** There are agreements with the
18 partners in RPMOS.

19 234. **Q.** Agreements suggesting what,
20 Mr. O'Shea?

21 **A.** That these funds are being used to
22 represent RPMOS.

23 235. **Q.** And why are they being used to
24 represent RPMOS?

25 **A.** Because they come from individuals

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1 who are making an investment in RPMOS.

2 236. Q. Okay. What is that investment,
3 Mr. O'Shea? Did someone invest money in RPMOS?

4 A. The partners invest money into
5 RPMOS.

6 237. Q. Did they transfer money to RPMOS?

7 A. You do not need to transfer money
8 into a bank account to have it represent where it is
9 going to.

10 If I buy a -- that is not how it
11 works. I can take money from a personal account and
12 send it under --

13 Would you not take the money? If I
14 sent you personal funds, would you not take it and
15 credit it toward ByoPlanet International?

16 Or would you take that for yourself
17 and say, "ByoPlanet still owes me money, International
18 owes me money"?

19 238. Q. Mr. O'Shea, I think I was pretty
20 clear with you. If I was not, I will be a little more
21 clear: I am not here to answer your questions.

22 I see that this question you keep on
23 repeating to me, money --

24 Do you understand what the purpose of
25 this agreement is? If we go to the top, do you

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1 understand what it is, Mr. O'Shea? It is called a
2 "Line of Credit Secured Demand Promissory Note".

3 **A.** Yes.

4 239. **Q.** Are you aware of what the purpose
5 of this "Line of Credit Secured Demand Promissory
6 Note" was?

7 **A.** Yes.

8 240. **Q.** Are you aware that RPMOS
9 foreclosed, according to these documents, on the
10 Defendant assets?

11 **A.** Yes.

12 241. **Q.** Does that mean that RPMOS took all
13 of the Defendant assets?

14 **A.** No.

15 242. **Q.** Why not, Mr. O'Shea?

16 **A.** Because there were UCC with VAR
17 and a forklift, and there were parts from Promark and
18 also a lawsuit that is pending with a countersuit
19 attached to it.

20 All that was left in ByoPlanet
21 International LLC.

22 243. **Q.** Okay. But was the collateral over
23 all of the inventory, Mr. O'Shea, meaning the
24 security? It is a "Line of Credit Secured Demand
25 Promissory Note". Was the security over all of the

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1 Defendant assets?

2 We will go to paragraph 8, Mr. O'Shea,
3 please.

4 **A.** Minus the parts, the lawsuit and
5 the UCC, Var and a forklift.

6 **MS. SHADEED:** Mr. O'Shea, read the
7 document that they have on the screen because they are
8 referring specifically --

9 I just want to make sure that you are
10 not conflating multiple things. We are still always
11 at D-31.

12 I think the question -- and correct me
13 if I am wrong, Maître Novak -- pertains specifically
14 to the collateral described in D-31.

15 Was that the question?

16 **MR. NOVAK:** That is correct, yes.

17 **MS. SHADEED:** So, specifically under
18 this agreement at D-31 ---

19 **THE WITNESS:** What page number,
20 please?

21 **MS. SHADEED:** It would be at Section
22 8, page 13.

23 **THE WITNESS:** Page 13, okay. And what
24 are we looking for again, I am sorry? Collateral
25 security.

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1 **MS. SHADEED:** I think the question is
2 related to Section 8, so if you want to read the
3 section before answering?

4 **BY MR. NOVAK:**

5 244. **Q.** My question, Mr. O'Shea, you keep
6 on talking about exclusions.

7 I am asking you, this agreement, the
8 apparent loan of \$3,000,000 that is referenced to in
9 paragraph as "collateral security agreement", was
10 there an exclusion, Mr. O'Shea, in reference to
11 Promark?

12 I am only interested in Promark.

13 **A.** It says that for the collateral,
14 so anything that we could collateralise. Since the
15 Promark parts did not have any value to them, we did
16 not collateralise them.

17 They are worth nothing to anybody
18 because they are defective parts.

19 The nature of it, Mr. Novak, was to
20 collateralise against assets that had value.

21 245. **Q.** Okay. But, Mr. O'Shea, this is
22 September 2021, if I follow your testimony.

23 **A.** Okay.

24 246. **Q.** When was that decision made that
25 the Promark parts or goods could not be, as you say, I

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1 think it was your words, "collateralised"?

2 **A.** That would be after this. That
3 would be a judgement call. I would have to go back
4 and check.

5 247. **Q.** But in this collateral,
6 Mr. O'Shea, that is my question, in paragraph 8, were
7 there exclusions with regards to Promark?

8 **A.** No, not in this document. No.

9 248. **Q.** And not in the security agreement
10 either, correct?

11 **A.** I would have to go back and read
12 the Security Agreement.

13 **MS. SHADEED:** It is at Exhibit D-33,
14 if you do want to go look at it.

15 **BY MR. NOVAK:**

16 249. **Q.** Let us look at it together,
17 Mr. O'Shea, D-33, please.

18 **A.** Page number?

19 **MS. SHADEED:** That would be 94.

20 **THE WITNESS:** Okay.

21 **BY MR. NOVAK:**

22 250. **Q.** Mr. O'Shea, if we go to the
23 security agreement, and I am at paragraph 1(i), I,
24 again, do not see any exclusion. On the contrary, I
25 see all inventory, according to 1.1(i).

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1 **A.** Yes, this is for everything that
2 is at 125 Old Monroe in Athens, Georgia.

3 251. **Q.** Meaning what, Mr. O'Shea? I am
4 sorry, what does that mean to you?

5 **A.** That this is the collateral at
6 that location. I do not see the other location. Do
7 you have the other location where the boards and parts
8 are?

9 252. **Q.** What are you saying, Mr. O'Shea,
10 just so I understand. Because it is that location, it
11 does not include ---

12 **A.** I am reading it here as it reads.
13 Because you are persistent on "as it reads", but it
14 is reading right here that everything is at 125 Old
15 Monroe, Athens, Georgia.

16 253. **Q.** And what does that mean,
17 Mr. O'Shea?

18 **A.** That means exactly what it says:
19 *"...located at or affixed to real*
20 *estate located at 125 Old Monroe,*
21 *Athens, Georgia, instruments,*
22 *(including promissory notes),*
23 *document (whether tangible or*
24 *electronic), accounts (including*
25 *receivables)..."*

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1 254. Q. Yes, I notice that as well.

2 A. ... money, deposit... letters,
3 letter of credit... So ---

4 255. Q. So, what is the significance,
5 Mr. O'Shea, just so I follow?

6 A. It is collateralised against
7 everything that is at 125. Well, the Promark parts are
8 not at 125 Old Monroe Road.

9 256. Q. Let us look at your answers to
10 your previous examination of October 4th, 2022. I am
11 going to refer you to P-27.

12 A. What page number is that?

13 MS. SHADEED: That is going to be the
14 physical book.

15 BY MR. NOVAK:

16 257. Q. We will put it on the screen for
17 you, Mr. O'Shea, as well. P-27.

18 A. While you guys get your audio
19 thing, can we take a bio break since we have been on
20 for an hour and 30 minutes?

21 258. Q. Yes.

22 --- (SHORT RECESS)

23 --- (UPON RESUMING)

24 BY MR. NOVAK:

25 259. Q. Before the break, Mr. O'Shea, we

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1 were on Exhibit D-33, and you had testified as to
2 Section 1.1 "Collateral". And you stated that Promark
3 inventory was not in the 125 Monroe Road, Athens,
4 warehouse.

5 **A.** That is correct. The Promark
6 product was not in 125. There might be some parts in
7 there, but not the majority share of it.

8 260. **Q.** Mr. O'Shea, I am trying to
9 understand. Are there parts or are there not? You
10 first said no, now you say there might be.

11 **A.** No, I said there is a small amount
12 of parts that will be a 125.

13 261. **Q.** Why is there a small amount of
14 parts now, Mr. O'Shea? Before the break, you said,
15 "There are no parts".

16 **A.** No, I never said there were no
17 parts; I said they did not have any value to them.

18 But you are talking about physical
19 parts. There is a small amount of physical parts, I
20 assume, in 125 Old Monroe Road.

21 262. **Q.** Why do you assume that,
22 Mr. O'Shea?

23 **A.** Because I am going to assume that
24 there are parts from Promark in that building.

25 The majority of the parts are in

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1 another warehouse off of the site, in Gainesville,
2 which you now very well because your team shipped them
3 there.

4 263. Q. Mr. O'Shea, are you saying that
5 the collateral encompasses the Promark parts at Old
6 Monroe that are there or not?

7 A. I am saying to you what I am
8 reading right here, it is saying 125 Old Monroe Road,
9 Athens, Georgia.

10 264. Q. Yes, I can read, Mr. O'Shea. But
11 I want to know, does that include the Promark parts at
12 that location or not?

13 A. You are pointing me to this, and I
14 am reading it to you verbatim. What it says in this
15 agreement is the collateral at 125 Old Monroe Road.
16 It does not include the other warehouse where the
17 Promark parts live currently.

18 265. Q. Okay. Again, I can read,
19 Mr. O'Shea. Does it include ---

20 A. I am not being cheeky and saying
21 that you would not be able to read. I am sure you are
22 a phenomenal degree with a law degree. I am not
23 saying that.

24 I am just telling you how I read it
25 here.

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1 You are asking me, and I am reading
2 it, saying that the majority of the parts are not at
3 125 Old Monroe Road, Athens, Georgia.

4 266. **Q.** Mr. O'Shea, I understand. Let me
5 ask you again : Are the Promark parts that are at 125
6 Old Monroe Road, Athens, Georgia, included or excluded
7 in this collateral?

8 **A.** I would say they would probably be
9 included at the time, yes.

10 267. **Q.** Okay.

11 **A.** You can have less than 100 parts
12 out of tens of thousands of parts in 125 Old Monroe
13 Road. Mainly, they were being used because we were
14 testing.

15 268. **Q.** I understand, Mr. O'Shea,
16 hypothetical. But are you testifying that there were
17 100 parts, or you are just giving an example that is
18 not relevant through your testimony?

19 **A.** I am giving you a bird's-eye view
20 or a roundabout number or a gist of how many parts
21 would be there.

22 If that is not helpful, then I will
23 say that I am -- Yes.

24 **MS. SHADEED:** Mr. O'Shea, if you do
25 not know the exact number of parts ---

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1 **THE WITNESS:** I do not know the exact
2 number.

3 **MS. SHADEED:** It is in the record,
4 Maître Novak.

5 **THE WITNESS:** I apologise.

6 **MS. SHADEED:** We can confirm the exact
7 number of parts, it is not a problem.

8 No need to guess, Mr. O'Shea, in terms
9 of what the number is.

10 **THE WITNESS:** I was just giving a
11 ballpark.

12 **MR. NOVAK:** Let us get it on the
13 screen, Maître Shadeed, because I do think it is a
14 major problem if the witness is saying a couple of
15 hundreds.

16 **BY MR. NOVAK:**

17 269. **Q.** This is P-27, Mr. O'Shea. I do
18 not know if you have a copy as well. Let us slow it
19 here, let us go back in time.

20 This is a letter from Maître Shadeed
21 on November 9th, 2022.

22 Just to refresh your memory,
23 Mr. O'Shea, this was after your October 4th, 2022
24 examination; you see that in the first paragraph of
25 Maître Shadeed's letter.

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1 **A.** Okay.

2 **Q.** There were undertakings, after the
3 examination of October 4th, 2022, that were provided.

4 I am going to go to U-16, Mr. O'Shea.

5 I will read it to you aloud, but you can see for
6 yourself, if you would like.

7 The undertaking is to provide a list
8 of Promark inventory in the Gainesville, Georgia,
9 warehouse, as well as what is in the Old Monroe Road
10 warehouse.

11 And then you see that Maître Shadeed
12 has provided essentially a table. Do you see that,
13 Mr. O'Shea, "Old Monroe warehouse" on the bottom of
14 U-16?

15 We will try to increase the screen for
16 you.

17 **A.** I see it. What date is that?

18 **Q.** This is November 2022, Mr. O'Shea.

19 **A.** That number has significantly
20 changed. I am sorry, I went off with more current
21 information.

22 **Q.** Can you explain that to me,
23 Mr. O'Shea? What do you mean by "changed"?

24 **A.** Those parts were moved back to
25 Gainesville.

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1 273. Q. And when was that done,
2 Mr. O'Shea?

3 A. I will have to check, but it was
4 done.

5 274. Q. Why were they moved, Mr. O'Shea?

6 A. They are not being used. If we
7 are not going to be using them, then we moved them to
8 where all the other parts live.

9 275. Q. Where do all the other ---

10 A. They are defective.

11 276. Q. Mr. O'Shea, I hear you, you will
12 prove your position in Court. But for the purpose of
13 today, if you could just answer my questions, please.

14 Where were they moved to?

15 A. I am just saying the reason why we
16 moved them is that we were not going to use them. I
17 will not bring up the word again, my apologies.

18 277. Q. But where were they moved,
19 Mr. O'Shea? You still have not answered my question,
20 please.

21 A. To Gainesville.

22 278. Q. Your testimony now, today, 2023,
23 November 13th, is that all of the Promark inventory
24 was moved to a Gainesville warehouse?

25 A. To the best of my knowledge, yes.

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1 279. Q. Let us go back to the previous
2 collateral, Mr. O'Shea. That was D-33, at the top of
3 the page, Mr. O'Shea.

4 You started making a distinction
5 between the two warehouses. If we go back down to
6 point 1, you kept on repeating yourself, and I said
7 that I can read English, if you remember -- you kept
8 on repeating "125 Old Monroe Road".

9 Is it your testimony today that the
10 collateral excluded all of the inventory at the
11 Gainesville warehouse?

12 A. That is not my testimony at all.
13 You asked me to look at this and I read it. I said
14 that it said, "all property located at 125 Old Monroe,
15 Athens, Georgia".

16 280. Q. Mr. O'Shea, let us look at the
17 bottom of the document. If I am not mistaken, you
18 signed it. There are 15 pages.

19 Again, this was received from your
20 lawyer.

21 As a Secured Party in this
22 arrangement, it says:

23 "Named: Richard O'Shea
24 Title: Member. RPMOS."

25 Did you know, when you were signing

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1 this, Mr. O'Shea, what security you were getting over
2 the Defendant?

3 **A.** Erica, what page is that?

4 **MS. SHADEED:** It is 94 of the PDF. It
5 is the signature page at the end of the Security
6 Agreement.

7 **THE WITNESS:** At the end of page 15 of
8 15?

9 **MS. SHADEED:** Yes.

10 **BY MR. NOVAK:**

11 281. **Q.** Correct, Mr. O'Shea. That is your
12 signature?

13 **A.** That is my signature.

14 282. **Q.** So, let us go back to 1.1, please.

15 **A.** Okay.

16 283. **Q.** Just so I understand, Mr. O'Shea -
17 - and again, you have made the distinction several
18 times -- did the collateral include the Gainesville
19 location or was it excluded?

20 **A.** For clarity, you pointed me to
21 this, and I read "real estate property located at 125
22 Old Monroe Road, in Athens, Georgia". Right?

23 I was reading exactly what it said.

24 It did not include the other location.

25 Now, what is the question? Are you

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1 saying, in my heart of hearts, was it my intention to
2 include the other warehouse as well, the other items
3 in the warehouse as well?

4 284. Q. I am not ---

5 A. I am not following. What are you
6 asking?

7 285. Q. Mr. O'Shea, I am not interested in
8 the heart of hearts. I am just trying to understand
9 your testimony.

10 Is your testimony today that the
11 collateral that RPMOS took as the secured Lender
12 included all inventory in the Monroe location and the
13 Gainesville or just the Monroe?

14 MS. SHADEED: I think the witness'
15 question is, does your question pertain to what is
16 written on the document or are you asking for
17 something else?

18 THE WITNESS: Thank you.

19 MS. SHADEED: What is his
20 understanding?

21 THE WITNESS: Thank you very much.

22 MS. SHADEED: That is all he wants to
23 clarify. Because if it is what is written on the
24 documents, Mr. O'Shea just read the document.

25 But if your question is broader, he

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1 will answer the question. He is just trying to
2 clarify what you are asking.

3 **BY MR. NOVAK:**

4 286. **Q.** My question is, Mr. O'Shea ---

5 **A.** Without getting browbeaten.

6 287. **Q.** You tried several times to make a
7 distinction for Promark about the Monroe property.

8 I am trying to understand from your
9 testimony. Let's move this document aside.

10 You signed as RPMOS secured Lender.
11 Is it your testimony today that the collateral
12 included inventory at both Defendant's warehouses or
13 only one of them?

14 **A.** It is my testimony, as Erica so
15 kindly reiterated, that what it reads and what you are
16 asking are two different things.

17 Are you asking me my opinion or what
18 it reads on this definition?

19 288. **Q.** I am not asking for your opinion,
20 Mr. O'Shea. Was it contemplated to include both
21 locations? Was it intended to include both locations?
22 That is what I am asking you, Mr. O'Shea.

23 **A.** In my opinion, I would say yes, it
24 would encompass both locations. But as it is written,
25 it is written as 125 Old Monroe Road, Athens, Georgia.

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1 289. Q. Okay. Let us continue that.

2 Was it intended to include the Promark
3 inventory at the Gainesville location, Mr. O'Shea, if
4 I follow your testimony that it should have included
5 both in 1.1(1).

6 A. I would assume yes.

7 290. Q. Mr. O'Shea, I want to look with
8 you, now we are going to focus on the Amended Defence
9 and exhibits.

10 I am going to ask my colleague to put
11 on the screen the Amended Defence. These are some of
12 the amendments, Mr. O'Shea, as of Subsection C that we
13 are going to be focused on.

14 A. Okay.

15 291. Q. Let us start with paragraph 15.4.

16 It reads:

17 *"Since September 2021, ByoPlanet*
18 *has borrowed from RPMOS [...] a*
19 *total of USD \$6 million."*

20 Why since September 21, Mr. O'Shea?

21 Where is that date taken from?

22 A. What date? I am sorry, I am
23 trying to read the small screen and it is very
24 difficult. When I make it big ---

25 MS. SHADEED: You can put it,

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1 Mr. O'Shea, on your own screen. It is the document
2 that is 130 pages long.

3 **THE WITNESS:** Yes.

4 **MS. SHADEED:** If you go up to the
5 start and you go to page 4 of the document, paragraph
6 15.4.

7 **THE WITNESS:** Thank you for steering
8 me, Erica. If you could continue to do that, that
9 would be extremely helpful. I am trying to work two
10 devices and now I am back on one device. My apologies.
11 Again? I am so sorry. Go ahead.

12 **BY MR. NOVAK:**

13 292. **Q.** Paragraph 15.4:

14 *"Since September 2021, ByoPlanet*
15 *has borrowed from RPMOS LLC [...] a*
16 *total of USD \$6 million."*

17 **A.** Yes.

18 293. **Q.** Where did you get September 2021,
19 Mr. O'Shea?

20 **A.** That would be when we made our
21 first deposit from RPMOS into ByoPlanet International.

22 294. **Q.** That is September 2021?

23 **A.** That is September 2021 if it says
24 September 2021, yes. I would have to go back and look
25 at the bank statements, but I believe that is correct.

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1 295. Q. Mr. O'Shea, I am going to put up
2 your previous testimony in P-26. I will read it to
3 you, it is pages 117, 118, 119.

4 I am going to put it larger so you can
5 see, Mr. O'Shea.

6 A. I cannot see anything on this.

7 MS. SHADEED: This is a hard copy, the
8 one that says "P", P-26. The pages are numbered. You
9 can see they are four by fours. There is 116 and 117.

10 BY MR. NOVAK:

11 296. Q. I will read it to you, Mr. O'Shea,
12 you can consult with it after, and your attorney can
13 follow. It is pretty straightforward.

14 A. P-26.

15 MS. SHADEED: He has almost got the
16 document, we can wait a second.

17 THE WITNESS: Let me just get to the
18 document. I have got the document, P-26.

19 BY MR. NOVAK:

20 297. Q. At the bottom of 117, it starts,
21 Mr. O'Shea, I asked you similar questions to the one I
22 just posed you, line 21 and it follows at page 117.

23 Let me know when you are there,
24 Mr. O'Shea, I am going to read it to expedite, please.

25 A. I have got it.

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1 298. Q. I ask you the question, on line
2 21:

3 *"During the payment plan period..."*

4 I was referring to Exhibit P-3, you
5 will see that just above in lines 10 to 15 on page
6 117.

7 I asked you, lines 21 to 25:

8 *"During the payment plan period, so*
9 *that is between June twenty twenty-*
10 *one (2021) to December twenty*
11 *twenty-one (2021) during the period*
12 *of time that the Defendant was*
13 *supposed to make the payment of six*
14 *million dollars (\$6,000,000.00).*

15 It continues on 118, line 1:

16 *"... if the Defendant took out*
17 *loans, whether to help it with cash*
18 *flow or otherwise?"*

19 You answer:

20 *"If it took out loans for..."*

21 Then I ask my question:

22 *"The Defendant, specifically the*
23 *Defendant ByoPlanet International*
24 *LLC?"*

25 You answer:

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1 *"Whether we gave loans or took out*
2 *loans?"*

3 That was your question. I said:

4 *"Took our loans, borrowed money."*

5 You stated:

6 *"Well, I mean, those are borrowed*
7 *money, yes. There was - it was*
8 *borrowing money from me."*

9 And I asked you:

10 *"It was borrowing money from you?"*

11 You said:

12 *"Yes."*

13 I asked then the question:

14 *"When was the Defendant borrowing*
15 *money from yourself, Mr. O'Shea?"*

16 And you said:

17 *"Well, from - when was it?"*

18 And I repeated:

19 *"Well, you said 'it was borrowing*
20 *money from me', so I am asking when*
21 *it was borrowing money, yes?"*

22 And then you responded:

23 *"Late December twenty twenty-one*
24 *(2021)"*

25 Mr. O'Shea, do you see that?

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1 **A.** Okay.

2 **Q.** You never mentioned on October
3 4th, 2022, when I asked you about the loans, you never
4 mentioned RPMOS. Why not?

5 **A.** Well, RPMOS is a company that
6 Barrett and I have, so maybe I figured that -- I am
7 one with RPMOS.

8 **Q.** I don't know what that means,
9 Mr. O'Shea, I am sorry. What do you mean, you are one
10 with RPMOS?

11 **A.** Because I am a partner in RPMOS.
12 So, if you say that -- if you referred
13 to your law firm, would you say that that is your law
14 firm, or would you refer to it as "that is a law firm
15 I work at"?

16 So, you know, that ---

17 **Q.** I am just asking the question.

18 **A.** I am hypothecating right now. I
19 do not know.

20 **Q.** Do you know that in this
21 examination, Mr. O'Shea, that you never mentioned --
22 and this is October 4th, 2022.

23 You never mentioned once that there
24 was an apparent loan of six million dollars.

25 **MS. SHADEED:** He did mention it, there

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1 was a loan. He mentioned it here.

2 **MR. NOVAK:** Please, do not interrupt
3 the question. Particularly so ---

4 **THE WITNESS:** 117, 25. Six million
5 dollars. That is what it says:

6 *"... during the period of time that*
7 *the Defendant was supposed to make*
8 *the payments of six million dollars*
9 *(\$6,000,000.00)."*

10 Am I on the right page here?

11 **MS. SHADEED:** That is the question.
12 Mr. O'Shea, that is the question that was asked of
13 you.

14 When there is a "Q-", that means there
15 is a question being asked of you, and "A-" is your
16 answer, just so you can follow along.

17 **THE WITNESS:** Thank you. But I am in
18 the correct area so I can follow along?

19 **BY MR. NOVAK:**

20 303. **Q.** You are, Mr. O'Shea.

21 **A.** Okay.

22 304. **Q.** This was your examination of
23 October 4th, 2021.

24 **A.** Okay.

25 305. **Q.** How come you did not mention that

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1 there was an alleged loan of six million dollars
2 between RPMOS and the Defendant, ByoPlanet
3 International LLC?

4 That is my question, Mr. O'Shea.

5 **A.** Did you ask me the question?

6 306. **Q.** I think I asked you right here,
7 Mr. O'Shea. Do you read the same lines I just read to
8 you?

9 **A.** Before you get sharp, let's go
10 ahead and -- Is it 118? The question is: "*The*
11 *Defendant specifically... ByoPlanet International.*"

12 Where are you so I can follow along
13 and so I can answer the question properly?

14 307. **Q.** I am at the bottom of page 117,
15 Mr. O'Shea.

16 **A.** Okay.

17 "*During the payment plan period, so*
18 *that is between June twenty twenty-*
19 *one (2021) to December twenty*
20 *twenty-one (2021), during the*
21 *period of time that the Defendant*
22 *was supposed to make the payment of*
23 *six million dollars*
24 *(\$6,000,000.00)."*

25 Okay.

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1 308. Q. And then it continues on the top
2 of page 118, Mr. O'Shea, I then ask you a very
3 specific question:

4 "... if the Defendant took out
5 loans, whether to help it with
6 cashflow or otherwise?"

7 And then I refer specifically to the
8 Defendant ByoPlanet International LLC, lines 4 and 5.

9 Then you ask me:

10 "Whether we gave loans or took out
11 loans?"

12 I say:

13 "Took out loans, borrowed money?"

14 A. Okay.

15 309. Q. You asked again for clarity:

16 "... borrowed money, yes. [...] it
17 was borrowing money from me.

18 Q- It was borrowing money from
19 you?"

20 You said, "Yes". And then I asked you
21 the time period, and you said, "late December 2021",
22 Mr. O'Shea.

23 But you did not mention RPMOS, you did
24 not mention September 2021, and you did not mention
25 two, three, four or five million dollars.

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1 Why not?

2 **A.** I do not recall. I guess I was
3 off -- my timing was off by a few months, you know,
4 less than 60 days or whatever days, how many
5 mathematical days that is.

6 310. **Q.** Mr. O'Shea ---

7 **A.** What is the question you are
8 trying to ask me?

9 311. **Q.** I asked you the question,
10 Mr. O'Shea, I think, two or three times. I do not
11 have an additional question.

12 **A.** Okay.

13 312. **Q.** I think you are answering ---

14 **MS. SHADEED:** I think the question,
15 Mr. O'Shea, that he is asking you is, why did you not
16 mention RPMOS. That is Maître Novak's question right
17 now.

18 **THE WITNESS:** Thank you.

19 **MS. SHADEED:** If you have an answer,
20 you can provide the answer.

21 **THE WITNESS:** Thank you. I do not. I
22 do not know. I was not being nefarious, I was just
23 talking as RPMOS and pretty much as me and my partner.

24 **BY MR. NOVAK:**

25 313. **Q.** Let us return back, Mr. O'Shea, to

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1 the ---

2 **A.** It's my funds. So, my funds are
3 my funds, in my opinion. If I do not fund the
4 company, it goes down, it is closing the doors, and we
5 are not having this discussion.

6 314. **Q.** Do you have anything else,
7 Mr. O'Shea, on that topic? Did you want to continue,
8 or can we move on?

9 **A.** We can move on.

10 315. **Q.** We will go back to the Amended
11 Defence, we were at paragraph 15.4.

12 **A.** Okay.

13 316. **Q.** Now let us go to 15.5, please. At
14 the same time, I will read it:

15 *"Copies of ByoPlanet's bank*
16 *statement evincing the transfers*
17 *that make up the USD \$6 million*
18 *loaned to it by RPMOS are*
19 *communicated..."*

20 And then we have, Mr. O'Shea, Exhibit
21 D-32. I will ask you to get a copy of Exhibit D-32.

22 I am going to put it on the screen for
23 you, Mr. O'Shea. Of course, you can refer to it on
24 your screens as well.

25 **MS. SHADEED:** Page 34.

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1 **THE WITNESS:** 34. Okay.

2 **BY MR. NOVAK:**

3 317. **Q.** If we make it a little bit
4 smaller, on the top, you will see, Mr. O'Shea, the
5 exhibit number, on the top right.

6 **A.** Okay.

7 318. **Q.** You will see Exhibit D-32. What
8 is this?

9 **A.** I have got it.

10 319. **Q.** What is this, Mr. O'Shea, that I
11 am looking at?

12 **A.** It is a Chase JPMorgan checking
13 summary.

14 320. **Q.** For the Defendant?

15 **A.** That is what it says, ByoPlanet
16 International LLC, yes.

17 321. **Q.** Is there a specific reason that
18 the account is -- I am just asking you. Is that in
19 Athens as opposed to Florida, for example? It's just a
20 question. Is there a reason?

21 **A.** This could be an operating
22 account.

23 322. **Q.** Let us go down.

24 **A.** There is no particular reason.

25 323. **Q.** Mr. O'Shea, let us go down. Who

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1 censured -- because it is essentially all censured,
2 Mr. O'Shea. I do not know if you agree with me, but
3 the majority of the document is censured in black.

4 **A.** Okay.

5 324. **Q.** Did you censure it or is that your
6 request -- and I would like you to answer -- for your
7 attorneys to censure it for the purpose of Exhibit
8 D-32?

9 **A.** I told my attorneys to censure it.

10 325. **Q.** So, the version you provided to
11 your attorneys was not censured; is that a fair
12 statement?

13 **A.** That is not a fair statement. I
14 would have to go ahead and check, but it was going to
15 be --

16 It is censured. Either we censured
17 it, or they censured it, but I believe that it should
18 have been censured before it left.

19 I told our attorneys we were going to
20 censure it.

21 **MS. SHADEED:** Maître Novak, if you
22 want, and I do not want to testify for the witness,
23 but the version we ---

24 **MR. NOVAK:** Please don't. Please
25 don't.

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1 **MS. SHADEED:** --- received was
2 uncensured.

3 Just to avoid any ambiguity and
4 confusion here because I do not want something to get
5 lost and being misconstrued, the version we received
6 was uncensured.

7 **BY MR. NOVAK:**

8 326. **Q.** Okay. That is perfect,
9 Mr. O'Shea. I am going to ask you, given that your
10 attorney already has it, as an undertaking to provide
11 us with an uncensured copy to be able to follow along
12 ---

13 **MS. SHADEED:** We are going to ---

14 **MR. NOVAK:** Let me finish, Maître
15 Shadeed.

16 **MS. SHADEED:** Yes, go ahead.

17 **MR. NOVAK:** The judge will decide.

18 I would like an uncensured copy to be
19 able to understand the deposits that are made during
20 the period of time when you allege that RPMOS
21 deposited or sent six million dollars.

22 We will ask that as an undertaking in
23 reference to Exhibit D-32.

24 Go ahead, Maître Shadeed.

25 **MS. SHADEED:** And we will object to

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1 that on the basis that Exhibit D-32 is there to evince
2 the transfers.

3 The transfers of the total six million
4 dollars have been indicated. All other incoming
5 transfers in and out of the operations are in no way
6 relevant and are protected confidential information.

7 We will object to that one.

8 --- **Undertaking No. 7 (Under Objection):**

9 To provide an uncensored copy of
10 Exhibit D-32.

11 **MR. NOVAK:** Let me just ask the
12 witness.

13 **BY MR. NOVAK:**

14 327. **Q.** Mr. O'Shea, do you agree with
15 Maître Shadeed's comments in regard to the first
16 portion, that all of the transfers that have been made
17 from RPMOS --

18 If you are not sure, you can take out
19 the Defence, that is what it says. We can go back to
20 it if you would like.

21 But that is what Maître Shadeed just
22 said, all of the transfers for the six million dollars
23 between the Lender and the Defendant are uncensored.

24 Do you agree with that statement?

25 **A.** I agree with that statement. She

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1 just said that.

2 328. Q. I understand, but Maître Shadeed
3 is not testifying today, only you are, Mr. O'Shea.

4 I just wanted to clarify for the
5 record that you agreed to that before we go one by
6 one.

7 Let us go through what is uncensored
8 in D-32. What is that, "05/27 2000..."

9 MS. SHADEED: Maître Novak, what page?
10 We are at page 3 of the 60-page document.

11 THE WITNESS: Yes, 05/27 is a deposit
12 for 666,666. Six sixes. A little rough on the sixes.

13 BY MR. NOVAK:

14 329. Q. Okay. And who sent that,
15 Mr. O'Shea?

16 A. I did.

17 330. Q. You personally or RPMOS?

18 A. RPMOS. I personally sent it, my
19 funds, to go ahead and fund my company RPMOS.

20 331. Q. Okay. Fair enough.

21 If we continue, Mr. O'Shea, now I am
22 going to bring you to the next uncensored, which I
23 believe is on page 14 of 60, Mr. O'Shea; this is the
24 period of June 1st, 2022 to June 30th, 2022, 06/16,
25 333,333 in green.

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1 that came from a trust that you control?

2 **A.** It came out of a revocable trust
3 that I control.

4 339. **Q.** Okay.

5 **A.** Same thing, is it not?

6 340. **Q.** Mr. O'Shea, I am not here to
7 answer questions, I thought I was clear. I just want
8 to know your testimony.

9 I am continuing along in the same
10 exhibit, Mr. O'Shea, I am trying to find the next
11 uncensored. It is on page 47 of 60.

12 **A.** 47 of 60.

13 341. **Q.** 665,000, 09/01. Is that the same
14 answer, it came from the revocable trust, Rick O'Shea
15 revocable trust?

16 **A.** What page are you?

17 342. **Q.** Page 47 of 60, Mr. O'Shea.

18 **A.** You skipped over on purpose the
19 September 9th deposit for two million, on 41? Or do
20 you want me to go to 47 and then come back?

21 343. **Q.** Mr. O'Shea, my understanding from
22 that is that is specifically says it is from your
23 personally, correct?

24 **A.** On 47, yes.

25 344. **Q.** I mean, my question ---

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1 **A.** On 09/01.

2 **Q.** My questions related to the
3 Lender. I am trying to see, Mr. O'Shea, in reference
4 to your Oral Grounds of Defence, if the Lender
5 actually transferred any money. So, I am going one by
6 one and the ones that I am unaware of.

7 09/01, page 47 of 60, I asked you a
8 previous question, comes from -- now I know your
9 answer. Is it the same answer, it comes from the Rick
10 O'Shea revocable trust?

11 **A.** That is correct.

12 **Q.** Okay.

13 **A.** For the purpose of RPMOS.

14 **Q.** "For the purpose". That is what
15 you want to add, Mr. O'Shea, "for the purpose of
16 RPMOS"? I did not want to cut you off.

17 **A.** That is exactly what it is for.

18 **Q.** And in these bank statements, do
19 you agree with me that RPMOS is not mentioned? Is
20 that a fair statement?

21 **A.** In the bank statements, that would
22 be a fair statement, yes.

23 **Q.** Mr. O'Shea, let us look at the
24 year 2021. I am going to refer you in the section of
25 page 55. Page 55.

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1 Let's go to the date, Mr. O'Shea.
2 RPMOS, we saw at P-40, was only incorporated September
3 1st, 2021. I just want to see the transactions with
4 you in 2021, please.

5 Let's start on page 55. This is
6 Mighty as Bear, it transfers a million dollars,
7 Mr. O'Shea, on 11/19.

8 A. Yes.

9 350. Q. That is November 21st, is that
10 correct?

11 A. That would be November 19th.

12 351. Q. 2021?

13 A. I don't know if it is 2021 or not,
14 I only have 11/19.

15 352. Q. Let's go to the top of the page,
16 Mr. O'Shea, November ---

17 A. Let me see. November 2021, yes.

18 353. Q. Was there other money, Mr. O'Shea,
19 that was given in 2021, from your memory? Do you
20 know?

21 **MS. SHADEED:** Feel free to review the
22 document, Mr. O'Shea, if you cannot remember offhand.

23 **THE WITNESS:** I cannot remember
24 offhand, but from the document, it does not look like
25 there were funds transferred after that.

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1 **BY MR. NOVAK:**

2 354. **Q.** Let's go, Mr. O'Shea, to page 41
3 for the year 2021. If we go up to the top,
4 Mr. O'Shea, just so you know the date, this is
5 September 2021, September 9th.

6 If you go down, Mr. O'Shea. Do you
7 agree with me, is it September 9th, page 41?

8 **A.** Yes.

9 355. **Q.** September 9th, it is two million
10 dollars that were transferred?

11 **A.** That is correct.

12 356. **Q.** And then we saw on page 55 -- I am
13 just combining them, Mr. O'Shea.

14 **A.** Okay.

15 357. **Q.** On page 55, it is a million
16 dollars. If I combine the two between September to
17 December, are you saying that the Defendant had
18 already borrowed three million dollars?

19 **A.** Two million and one million,
20 correct, is three million dollars.

21 358. **Q.** Your testimony today, Mr. O'Shea,
22 is that between September to December 2021, the
23 Defendant had already approached three million dollars
24 of the line of credit, is that your testimony?

25 If not, clarify for me, please.

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1 **A.** There were the other deposits as
2 well. On 08/04... oh, that is a different year. I am
3 in 2022.

4 You are in ---
5 359.

6 **Q.** September to December, Mr. O'Shea,
7 2021. September, October, November, December.

8 **A.** Yes. So, I am going backwards.

9 As I read this, there was a one
10 million from Mighty Bear and two million from RPMOS,
11 yes, Rick O'Shea.

12 **Q.** Again, you agree with me, it is a
13 fair statement, that based on your testimony, you are
14 saying that the Defendant borrowed three million
15 dollars from September to December 2021?

16 **A.** That is what this bank statement
17 says, yes.

18 **Q.** But what do you say, Mr. O'Shea?
19 Do you have a different version, or do you have the
20 same version?

21 **A.** I have the same -- Well, I am
22 looking at the bank statements, and it states very
23 clearly that there was a deposit made on 09/99 and
24 then another one made on...

25 Sorry, I am leafing through here
because of...

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1 Where is the other one million-dollar
2 payment?

3 362. **Q.** Page 41 and page 55, Mr. O'Shea.
4 If I combine one million and two million, it is three
5 million.

6 **A.** Yes, that is correct.

7 363. **Q.** I want to understand from your
8 testimony. Is it your testimony that the Defendant
9 borrowed, between September 2021 to December 2021, an
10 amount of \$3,000,000 USD?

11 **A.** That is correct.

12 364. **Q.** What did the Defendant do with
13 that money, Mr. O'Shea, the three million dollars?

14 **A.** That would be paying pay roll and
15 also paying SG&A.

16 365. **Q.** Sorry? What was the second part,
17 payroll and?

18 **A.** SG&A. Just typical SG&A. We are
19 at a burn rate of about, at that time, a half a
20 million a month.

21 366. **Q.** So, you are saying those funds
22 were used for payroll and to maintain operations?

23 **A.** Yes. It is the cost of doing
24 business and the course of doing business.

25 367. **Q.** Do you have any proof of that,

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1 Mr. O'Shea, that the three million dollars was used as
2 you describe, for those two purposes?

3 **A.** Of course, we do.

4 368. **Q.** I would like, as an undertaking,
5 Mr. O'Shea, whatever evidence or proof you have to
6 demonstrate that -- I want to be specific, in
7 reference to the deposits on page 41 and 55 of Exhibit
8 D-32 -- the three million dollars was used by the
9 Defendant as you described, for those two purposes.

10 Whatever evidence or proof you have,
11 please.

12 **MS. SHADEED:** I am going to object. I
13 do not see the relevance here, and I am really trying
14 to understand, Maître Novak.

15 The goal is not to object for no
16 reason, but you are asking the witness to provide
17 evidence of the use of capital injected in the normal
18 course of business?

19 What are you looking for here?

20 **MR. NOVAK:** I am looking to
21 corroborate Mr. O'Shea's testimony that the Defendant,
22 in a period, I believe, three months, borrowed three
23 million dollars.

24 **MS. SHADEED:** Okay, you have it right
25 here, the money coming. Now you are asking for ---

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1 The witness testified that it was used
2 in the normal course of business, to payroll and items
3 like that.

4 You are looking for what exactly, that
5 employees were actually paid during this period?

6 **MR. NOVAK:** From the funds that
7 Mr. O'Shea is referring to. He says ---

8 **MS. SHADEED:** You know very well that
9 once go in at this point in time, there is not going
10 to be an indication that so and so employee was paid
11 with funds that came in on this date.

12 I am just trying to understand.

13 **MR. NOVAK:** Absolutely. It would be
14 in the uncensored version of what you have in your
15 office, you would see the money going out for that
16 purpose, which we do not.

17 **MS. SHADEED:** But your question here
18 pertains specifically to say, "I want to see that this
19 particular fund, the one that we are looking on the
20 screen right here, I want to see exactly this two
21 million-dollar..."

22 **MR. NOVAK:** Three million.

23 **MS. SHADEED:** Sorry. Or the one
24 million. Whatever it is, whichever item. The one
25 million plus the two million is in cash, Maître Novak.

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1 Once it goes in, there will be
2 payments that will payments that are made in the
3 normal course of business here. There is no way to
4 identify that the cash was specifically the one that
5 you can see from the deposit here.

6 And apart from the relevance of this,
7 I am just going to object on the basis that --

8 One, I do not see the relevance.

9 Two, what you are asking for is
10 impossible.

11 **MR. NOVAK:** It is very possible,
12 Maître Shadeed. I want to move on. I heard your
13 objection.

14 **MS. SHADEED:** No, but can you explain
15 to me exactly what you are looking for then? Maybe
16 there is a misunderstanding on my part.

17 You are looking for -- Can you re-
18 explain what it is exactly?

19 **MR. NOVAK:** Maître Shadeed, your
20 witness, the witness testified that the three million
21 dollars between September to December 2021 were used
22 for payroll and were used to business expenses, as he
23 stated, because of the burn rate.

24 I would like proof of that, that it
25 was used for those purposes.

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1 I do not care that there is a million
2 dollars or two million dollars in the bank statements.

3 It is not from RPMOS, it is not from the Lender. It
4 does not make reference to the six million dollars
5 that was lent.

6 I want to attest that the three
7 million dollars was used by the Defendant and not
8 distributed to Mr. Rick O'Shea.

9 That is the line of question ---

10 **THE WITNESS:** Why don't you just ask
11 me the question, did I take any distributions after we
12 put money in?

13 **MS. SHADEED:** There you go.

14 **BY MR. NOVAK:**

15 369. **Q.** I am not interested, Mr. O'Shea,
16 in asking you the question. I want to see it from the
17 documents.

18 **MS. SHADEED:** No, because you do not
19 want the answer? You don't want the answer?

20 **THE WITNESS:** Because you do not want
21 the answer.

22 **MR. NOVAK:** Maître Shadeed, with all
23 due respect, let's move on.

24 **MS. SHADEED:** Okay. I am going to
25 raise the same objection because it is same as the

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1 first objection that was raised, it is just indirectly
2 phrases in another way.

3 You are asking for the unredacted
4 version of the bank account. To me, it is the same
5 objection.

6 **THE WITNESS:** I have not taken a
7 distribution since 2020, September, if that helps you.

8 --- **Undertaking No. 8 (Under Objection):**

9 To provide proof that three million
10 dollars were used December for payroll
11 and business expenses (re: pages 41
12 and 55 of Exhibit D-32).

13 **BY MR. NOVAK:**

14 370. **Q.** Mr. O'Shea, let us look at Exhibit
15 D-31, please.

16 **A.** What number is that?

17 371. **Q.** D-31.

18 **MS. SHADEED:** It's in the document
19 "Amended Summary Statement of Ground of Defence" at
20 page 13 of the PDF.

21 **THE WITNESS:** Okay.

22 **BY MR. NOVAK:**

23 372. **Q.** I have, Mr. O'Shea, what you have
24 on your screen, September 9th, 2021, three million
25 dollars.

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1 **A.** Okay.

2 **Q.** If we continue to the next, there
3 is a second version, on page 8 of 21, June 22, 2022.

4 I have a question for you, Mr. O'Shea.
5 Do you have any evidence or any proof on your end
6 that this document was prepared on or around June 22d,
7 2022?

8 "Amended and Restated Line of Credit"
9 increased to \$4,000,000 USD.

10 **A.** What page is that on?

11 **Q.** Page 8 of 21, Mr. O'Shea.

12 **MS. SHADEED:** Mr. O'Shea, I think I
13 might have pointed you to the wrong number of the PDF.

14 It would be --

15 Sorry, which exhibit are we at?

16 **MR. NOVAK:** D-31.

17 **THE WITNESS:** Page 20.

18 **MS. SHADEED:** It's on page ---

19 **THE WITNESS:** Okay, I have got it,
20 "Amended Reinstated Line of Credit Secured Demande
21 Promissory Note", yes.

22 **BY MR. NOVAK:**

23 **Q.** Yes. So, this is June 22, 2022.

24 Do you have any proof that it was prepared on or
25 around June 22, 2022?

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1 **A.** It says the date in the lefthand
2 corner.

3 376. **Q.** I see that there is a date,
4 Mr. O'Shea. I am just asking you, do you have any
5 proof that that is the date it was prepared and
6 signed?

7 **A.** It is dated right there.

8 377. **Q.** So, that is your testimony,
9 Mr. O'Shea? We will move on. That is your proof,
10 that the document is dated June 22d, 2022?

11 **A.** The document ---

12 **MS. SHADEED:** Maître Novak, be fair
13 with the witness, he has answered your question. If
14 you are asking something else --

15 You can ask follow-up questions, but
16 he has testified that the reason it is June 22 is
17 because that is the date that in indicated on the
18 document. The answer is relatively straightforward.

19 **BY MR. NOVAK:**

20 378. **Q.** Mr. O'Shea, do you see that the
21 June 22, seems to have been changed? Do you see that
22 or that just a typo?

23 **A.** I don't see it as being changed.
24 It could be, you know -- It looks like a 2 to me. Two
25 twos?

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1 379. Q. Do you remember when you received
2 a copy of this document to sign, Mr. O'Shea? Your
3 signature is on page 14 of 21.

4 A. Let me get to it. Okay. Yes, I
5 see my signature.

6 380. Q. Mr. O'Shea, do you have any emails
7 that you would have received on June 22d, 2022 to sign
8 this document? Do you have that in your system or
9 your research?

10 A. I would assume so.

11 381. Q. Can you pull that out for us,
12 please, as an undertaking, the day you received this
13 document to sign by email, please?

14 Do you know any significance,
15 Mr. O'Shea, of the numbers on the bottom of the left?
16 12341999? Does that mean anything?

17 A. No. It could be some legal
18 coding.

19 --- **Undertaking No. 9:**

20 To provide any written proof of the
21 date of reception of document D-31.

22 Q. If we continue on page 15 of 21,
23 this is --

24 A. Okay.

25 382. Q. 15 of 21, September 19th, 2022,

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1 six million dollars.

2 **A.** I got "Promissory Note" of
3 September 19th. Yes, we have got the same.

4 383. **Q.** Are there any other -- We saw the
5 three, I will just repeat to you, Mr. O'Shea:
6 September 9th, 2021, three million dollars, according
7 to the document; June 22, 2022, based on your
8 testimony, four million USD; and September 19th, 2022,
9 six million dollars.

10 **A.** Okay.

11 384. **Q.** Is there anything else in terms of
12 alleged loans between RPMOS and the Defendant that you
13 are aware of?

14 **A.** There is not that I am aware of.

15 385. **Q.** What happened between the four
16 million and the six million, Mr. O'Shea, do you know?

17 You can look at the document, the four
18 million dollars is on page 8 of 21, "Amended and
19 Reinstated Line of Credit".

20 **A.** Okay. What is the question?

21 386. **Q.** What happened?

22 **A.** What do you mean, "what happened"?

23 387. **Q.** Why did RPMOS give more than four
24 million dollars, Mr. O'Shea?

25 **A.** Because ByoPlanet International

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1 needed more money, they are burning capital.

2 388. Q. Based on what document,
3 Mr. O'Shea? Is it the June 22, 2022 for four million
4 or is it what you have on your screen, the "Demand
5 Promissory Note"?

6 A. I am not sure I understand the
7 question. The value received -- Are you asking me
8 where the money went?

9 389. Q. No, I am asking you on what basis
10 did RPMOS apparently lend more than four million
11 dollars USD.

12 And to be clear, if we go back to the
13 previous document that you said was, according to the
14 document, June 22, 2022, this document, I see four
15 million, Mr. O'Shea.

16 So, I am just asking you the question,
17 is there another document in which it is amended to
18 six million dollars?

19 A. I would have to go back and look.
20 This is telling me that this is a six million-dollar
21 note.

22 MS. SHADEED: I think, Mr. O'Shea, you
23 are still on -- the note on the screen that they have
24 is four million dollars.

25 Mr. O'Shea is looking at the note from

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1 six million dollars later on, at page 15.

2 **BY MR. NOVAK:**

3 390. **Q.** I am just trying to understand,
4 Mr. O'Shea. I see "Amended and Reinstated Line of
5 Credit".

6 **A.** Yes. And that page is?

7 391. **Q.** 15 of 21, Mr. O'Shea. Four
8 million.

9 **A.** I have got it. Right, it says the
10 Maker made three million dollars on September 9th.
11 And then on June 22d, it is asking for another million
12 dollars to make the four million.

13 392. **Q.** Correct.

14 **A.** It extended the credit line from
15 three million to four million.

16 393. **Q.** Is here a document extending the
17 credit -- maybe that is easier -- from four million to
18 six million? That is my question. Do you have that?

19 **A.** I believe we do? It is not in
20 these documents.

21 **MS. SHADEED:** Is that a question or a
22 statement, Mr. O'Shea?

23 **THE WITNESS:** That is a question.

24 **BY MR. NOVAK:**

25 394. **Q.** Mr. O'Shea, I cannot answer

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1 questions for you.

2 **MS. SHADEED:** We can take it as an
3 undertaking, Maître Novak. The document is in the
4 record, it was jut on the screen two seconds ago. If
5 it is a question, we can take it as an undertaking.

6 **MR. NOVAK:** You really have to refrain
7 from answering questions for the witness.

8 **MS. SHADEED:** I am not answering. He
9 asked a question. I am trying to say, if he does not
10 know the answer to the question, we can take it as an
11 undertaking to avoid confusion.

12 **MR. NOVAK:** There is no confusion, I
13 did not ask for an undertaking.

14 So, let us ask the witness the
15 question you answered for him.

16 **BY MR. NOVAK:**

17 395. **Q.** Is this, Mr. O'Shea, your
18 testimony, 15 of 21, that this is the document that
19 increases the four million to six million? And it
20 seems to be, according to this document, dated
21 September 19th, 2022.

22 Is that your testimony?

23 **A.** That is how it reads, so ---

24 396. **Q.** I can read, Mr. O'Shea, but is
25 that your testimony, please?

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1 I do not want to refer to what Maître
2 Shadeed said. I am asking you what I believe she
3 said, I want to make sure it is your testimony.

4 Did the four million increase to six
5 million based on this September 19th, 2022 line of
6 credit secured?

7 Do you want to read it? Do you want
8 to take more time, Mr. O'Shea?

9 **A.** That is what it reads, so I am
10 going to go by face value, saying yes. That is how it
11 reads, that is how it is.

12 397. **Q.** I understood.

13 Let us look -- because I want to try
14 and accelerate -- D-34. You have seen it before
15 together.

16 There is no reference, Mr. O'Shea, to
17 what we just saw seconds ago, September 2022. Zero
18 reference in this demande for payment of over 6.6
19 million dollars.

20 My question for you is easy: Why not?

21 **A.** I mean, it is pretty simplistic.
22 It was either an oversight or maybe it was a typo, but
23 in the grand --

24 Let me look at this thing.

25 398. **Q.** Please do.

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1 **A.** The money outstanding was six
2 million dollars. Maybe it was a four million-dollar
3 note raised to a six million-dollar note. That was
4 the theme of the understanding of this letter.

5 **Q.** But do you agree with me, and
6 maybe you do not, that there is, in this letter, and
7 that is what I am trying to understand, no reference
8 to the line of credit of September 2022.

9 Do you agree with that, or you do not?
10 And if you do not, that is fine, tell me why.

11 **A.** Well, clearly, when I wrote this -
12 - because I wrote this to Sean -- I was assuming the
13 six million dollars there was identifying that it was
14 the six million dollars that was outstanding.

15 **Q.** Okay, Mr. O'Shea. Let us look at
16 D-35, please.

17 **A.** What number is that?

18 **Q.** D-35, it is a letter of March
19 16th, 2023.

20 **A.** What page?

21 **MS. SHADEED:** Page 111.

22 **THE WITNESS:** Thank you. Okay.

23 **BY MR. NOVAK:**

24 **Q.** This is a letter dated March 16th,
25 2023. You signed it, on page 2 of 7.

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1 **A.** Okay.

2 403. **Q.** Did you prepare this letter,
3 Mr. O'Shea, or did you request that an attorney
4 prepare it? Just a basic question because it seems to
5 have been prepared and written by an attorney.

6 **A.** It is prepared by an attorney.

7 404. **Q.** I know that the previous D-34, you
8 said you prepared and signed.

9 Just go to the top, Mr. O'Shea, the
10 first paragraph, please?

11 **A.** Okay.

12 405. **Q.** I read the first paragraph,
13 Mr. O'Shea. And when you will read through it, you
14 will come to realise that the September 2022 line of
15 credit, the document we looked at before together, it
16 is not mentioned where you say that it was raised from
17 four million to six million.

18 Is there any reason why?

19 It only refers to June 22, 2022 as the
20 last line of credit.

21 **A.** Okay.

22 406. **Q.** Is there a reason, Mr. O'Shea?

23 **A.** I do not know the reason.

24 407. **Q.** Mr. O'Shea, I also read this
25 letter. This was a proposal to retain certain

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1 collateral in complete satisfaction of debt.

2 We will look at paragraph 2 on the
3 first page, Mr. O'Shea.

4 We spent a lot of time talking about
5 collateral, and I asked you a series of questions.
6 You can see the borrowed has breached the Loan
7 Agreement. And then it continued, it says the
8 Security Agreement -- it defines it as the collateral.

9 And then it goes on:

10 *"For the avoidance of doubt, the*
11 *collateral shall not include any*
12 *equity interest..."*

13 And then it continues.

14 But again, Mr. O'Shea, there is no
15 mention of Promark's inventory. How do you explain
16 that?

17 **A.** Well, if you continue to go down,
18 you will see that the statement of collateral is
19 transferred in connection with strict foreclosure on
20 March 23rd.

21 408. **Q.** Yes, Mr. O'Shea? Where are you?
22 I want to follow you, please.

23 **A.** Schedule 1 on page 117. It is
24 right there in Schedule 1, what was left behind for
25 ByoPlanet International.

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1 409. Q. And where do you see ---

2 A. Page 117, you can continue to keep
3 on going down, Schedule 1, follow inventory supply by
4 Promark.

5 410. Q. Mr. O'Shea, I want to understand.
6 Is it your testimony that Schedule 1 is supposed to
7 be read as the exclusions?

8 A. Yes, they are the exclusions.

9 411. Q. When RPMOS took over and
10 foreclosed, do you know if they foreclosed on
11 Promark's inventory? Did you read it in the
12 foreclosure documents?

13 A. They did not foreclose. RPMOS did
14 not foreclose on the Promark parts.

15 412. Q. And that is your statement? That
16 is your testimony today, Mr. O'Shea?

17 A. That is my testimony today.

18 413. Q. What else was excluded,
19 Mr. O'Shea?

20 A. Also VAR Technologies. Also ---

21 414. Q. What is VAR Technologies,
22 Mr. O'Shea?

23 A. VAR Technologies is a software.
24 So, VAR Technologies and also Wells Fargo with the UCC
25 financed statements should be attached to that. Wells

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Exam. (Mr. Novak)

1 Fargo, as well, as a forklift.

2 415. Q. Sorry? If you could just repeat,
3 Mr. O'Shea? Wells Fargo was?

4 A. It's a forklift. Forklift.

5 416. Q. And what happened with that?

6 A. It was left behind in ByoPlanet
7 International.

8 417. Q. Is there a specific reason why it
9 was left behind in a company that is not operating
10 according to your previous testimony?

11 A. It was being returned its UCC to
12 ByoPlanet International.

13 418. Q. Mr. O'Shea, let us look at Exhibit
14 D-37, please.

15 A. Exhibit D-37.

16 MS. SHADEED: Page 119 of the same
17 document.

18 THE WITNESS: Okay.

19 BY MR. NOVAK:

20 419. Q. I am going to refer you,
21 Mr. O'Shea, to what is called the "Asset Purchase and
22 Sale Agreement between RPMOS and Good Salt".

23 A. Okay.

24 420. Q. Look at paragraph 2, Mr. O'Shea,
25 "Purchase Price and Payment".

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R. O'Shea
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1 second, if you do not mind.

2 430. Q. Mr. O'Shea, are you with me? I
3 know you are reading, I just want to make sure,
4 Exhibit A-1, paragraph 1.

5 A. I have just found it. It is on
6 page 124, Erica?

7 MS. SHADEED: Yes. Well, Exhibit A-1
8 is 124.

9 THE WITNESS: Okay. You want me to
10 read 1 and 2?

11 BY MR. NOVAK:

12 431. Q. Just 1, Mr. O'Shea, because we
13 have ten minutes, and I want to finish in that time.
14 You see:

15 *"Including the Foreclosed*
16 *Collateral described in Schedule*
17 *1."*

18 It says:

19 *"Including the Foreclosed*
20 *Collateral described in Schedule*
21 *1."*

22 Do you see that? I just want you to
23 follow.

24 A. Yes.

25 432. Q. Then, let us look at Schedule 1

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1 together.

2 **MS. SHADEED:** Page 126.

3 **THE WITNESS:** 126. We are at Exhibit
4 A-2, Schedule 1.

5 **BY MR. NOVAK:**

6 433. **Q.** Yes, Schedule 1, Mr. O'Shea. You
7 will notice on the bottom of Schedule 1: "*The*
8 *following assets are excluded...*" Do you see that,
9 Mr. O'Shea?

10 *"The following assets are excluded*
11 *from the Foreclosed Collateral..."*

12 And then you have 1, 2, 3, 4, but not
13 more 5, Mr. O'Shea, no more exclusive of inventory.

14 What happened? Was there a change
15 that was made?

16 **A.** Hold on. Where is the date of
17 this?

18 434. **Q.** Mr. O'Shea, this is the "Asset
19 Purchase Agreement", Schedule 1.

20 **A.** Yes, I am asking what the date is.

21 435. **Q.** No, I know, but I am trying to be
22 fair with you. According to the first page, it says
23 May 10th, 2023. It's the last document, Mr. O'Shea,
24 it's when the assets are transferred from RPMOS to
25 Good Salt.

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Exam. (Mr. Novak)

1 There is no exclusion for inventory,
2 Mr. O'Shea, despite what is alleged in the Oral
3 Grounds of Defence.

4 Please explain that to me. What
5 happened?

6 **A.** We are on page 126. I have to
7 find out the date.

8 436. **Q.** It is on the screen as well,
9 Mr. O'Shea. If you would like, I could put it larger,
10 you will see it ends at 4.

11 **A.** No, I am trying...

12 437. **Q.** Mr. O'Shea, do you want to amend
13 the Defence to make reference to this document, that
14 it is not excluded, or are you maintaining your
15 position that the inventory was excluded?

16 **A.** The inventory was 100 percent
17 excluded from the sale. It was left in ByoPlanet
18 International, where it still remains along with the
19 lawsuit.

20 438. **Q.** So, that is your testimony,
21 Mr. O'Shea? Because I do not see that.

22 **A.** That is my testimony.

23 439. **Q.** Okay.

24 **MS. SHADEED:** Maître Novak, just to be
25 clear, for the record, you are referring to one

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R. O'Shea
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1 specific document at this point in time, right? You
2 are asking the witness to comment on one specific
3 document?

4 **MR. NOVAK:** I am asking the witness to
5 comment on the most important document.

6 **MS. SHADEED:** Well, that is your view
7 that it is the most important document.

8 But just to be clear for the record,
9 the question pertains specifically to one specific
10 document, why it is not mentioned in D-37.

11 The witness answered what his view is
12 generally speaking, but that is different from the
13 comments on one specific document.

14 **MR. NOVAK:** That is different, Maître
15 Shadeed, from the "Asset Purchase and Sale Agreement".

16 I do not know if you want to continue ---

17 **THE WITNESS:** All the parts were in
18 Schedule 1 of the other document which lists all the
19 Promark parts that were left behind.

20 **BY MR. NOVAK:**

21 440. **Q.** Mr. O'Shea, I heard your
22 testimony. You will be surprised that we do not
23 agree. I am just asking you the question to
24 understand.

25 It was not in the document. I heard

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R. O'Shea
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1 what you had to say.

2 **MS. SHADEED:** He answered specifically
3 with respect to the one document that you put on the
4 screen. Yes, D-36, he answered the question.

5 But if your question pertains to a
6 broader -- all of the documents, maybe he will have a
7 different answer.

8 But just to be clear that the question
9 pertained to D-36 specifically. Excuse me, not D-36
10 but D-37.

11 **MR. NOVAK:** 37, yes.

12 **BY MR. NOVAK:**

13 441. **Q.** Let us go to the Defence, please,
14 Mr. O'Shea, at paragraph 15.12, if we continue
15 downwards.

16 **A.** 15.12. Where are we?

17 **MS. SHADEED:** You are in the same
18 document of 130 pages long. Just in case it is too
19 small on the screen, it is at page 5 of that document.

20 **THE WITNESS:** Page 5, okay.

21 **BY MR. NOVAK:**

22 442. **Q.** I want to read, Mr. O'Shea ---

23 **MS. SHADEED:** Sorry, page 6. Go
24 ahead.

25 **BY MR. NOVAK:**

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1 443. Q. 15.13 and 15.14. You could read
2 them together, you can read them separately. They
3 both refer to D-37, Mr. O'Shea. Do you see that,
4 Mr. O'Shea?

5 A. I am on 15 what?

6 444. Q. 15.13, Mr. O'Shea, and 15.14.

7 A. 15.13.

8 445. Q. And 15.14. They both refer to D-
9 37. Do you see that?

10 A. Okay.

11 446. Q. Is there a document subsequent to
12 D-37 that excludes the inventory?

13 A. There is a document that excludes
14 the inventory.

15 MS. SHADEED: Is there a document that
16 you are referring to, Mr. O'Shea, that you want to
17 point Mr. Novak to?

18 THE WITNESS: I would have to go ahead
19 and dig it back up again. I will have to go look for
20 it.

21 BY MR. NOVAK:

22 447. Q. If we continue, Mr. O'Shea, in the
23 same Oral Grounds of Defence, continue downwards,
24 please, to paragraph 15.17?

25 It says:

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1 *"In light of the foregoing, neither*
2 *ByoPlanet's claim against Promark,*
3 *as detailed in its Cross-*
4 *Application [...], nor the*
5 *Components supplied by Promark*
6 *pursuant to Supply Agreement were*
7 *transferred from ByoPlanet to RPMOS*
8 *in the context of its strict*
9 *foreclosure nor could they have*
10 *been subsequently sold by RPMOS to*
11 *Good Salt pursuant to the Asset*
12 *Purchase and Sale Agreement (D-*
13 *37)."*

14 Is there something, for the second
15 part of D-37, when it says, "nor could they"? Are you
16 referring to something specific, Mr. O'Shea?

17 Because I read D-37; there are most
18 certainly not excluded in D-37.

19 So, what is meant by, "nor could they
20 have been subsequently sold"? Do you have a comment
21 for that, Mr. O'Shea, the latter part of paragraph
22 15.17?

23 **A.** They could not have been sold
24 because RPMOS did not own them, they were owned by
25 ByoPlanet International.

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1 448. Q. Okay. Mr. O'Shea, what happened
2 to the apparent share exchange and reorganisation -- I
3 am on paragraph 15.18 -- with Plandai, as defined in
4 the Oral Ground of Defence?

5 I am referring you, to expedite, to
6 paragraphs 15.18 and 15.19.

7 What happened?

8 A. 15.19, Plandai, okay.

9 449. Q. What happened, Mr. O'Shea, between
10 shares ---

11 A. We rescinded the deal.

12 450. Q. Why do you say "we", Mr. O'Shea?
13 "We" or "Plandai"?

14 A. It was mutually agreed by Plandai
15 and Good Salt to go ahead and rescind the deal.

16 451. Q. Why was it mutually agreed,
17 Mr. O'Shea?

18 A. Well, there was a filing problem
19 in 2016 when Plandai was answering to the SEC; that
20 was not resolved. So, when FINRA had it, they would
21 not do a name change or give us any other kinds of
22 data until Plandai got their shell in good working
23 order.

24 I was under the premise and promise
25 that the Plandai shell was in good working order.

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1 During the due diligence process,
2 FINRA raised its hand and said that this was
3 outstanding.

4 So, when it was outstanding, Tad went
5 back to the SEC to get a ruling. SEC said they were
6 not going to go ahead and rule on it. And FINRA was
7 not going to rule on it.

8 So, it was a little bit of a
9 stalemate. And it was best for us to go ahead and
10 rescind the deal.

11 452. **Q.** Mr. O'Shea, I have, in paragraph
12 15.19, Exhibit D-38 -- Can you look at it? Because it
13 does not say anything of what you just said.

14 This is a letter of July 31st, 2023
15 from Mailander Law Office Inc.

16 **A.** That is exactly what I just said.
17 It says that we rescinded the deal.

18 453. **Q.** No, it does not say ---

19 **A.** It says it right there, we
20 rescinded the deal.

21 454. **Q.** No, Mr. O'Shea, it does not say
22 that. It says Plandai rescinded the deal, not "we".
23 There is no reference to "we". It is a letter from
24 them to you. Maybe you want to re-read the letter,
25 Mr. O'Shea.

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1 **A.** It is a letter consummating the
2 discussion that Tad and I had. So...

3 455. **Q.** So, that is your testimony,
4 Mr. O'Shea?

5 **A.** Yes. And it is backed up by the
6 Internet, sir.

7 456. **Q.** What was saw on the Internet,
8 Mr. O'Shea, and I am glad you brought that up, is that
9 Good Salt failed to pay consideration and therefore it
10 was rescinded. Do you not agree with that?

11 **A.** I do not agree with that.

12 457. **Q.** So, let us read it together,
13 Mr. O'Shea.

14 **A.** I read it. Go ahead, read it to
15 me again.

16 458. **Q.** Mr. O'Shea, let us read the second
17 paragraph together. Because now you are referring to
18 the Internet -- that is what it says on the Internet,
19 we will plead that at trial.

20 **A.** No, I am talking about the
21 Internet of Investor Hub where you have other
22 investors talking about 2016's filing, and that is why
23 you would not get a name change, and that is why the
24 shell was damaged.

25 So, there is consideration to go ahead

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1 and be made when you buy a shell.

2 And when you go on the premise that
3 the shell is clean and you find out later that it is
4 not clean, yes, you rescind the deal because I am not
5 paying for an improper clean shell.

6 459. Q. So, when it says in the second
7 paragraph, and I will go to the end: "*to rescind the*
8 *contract with prejudice based on the failure of*
9 *consideration*", do you agree with that or you do not
10 agree with that, Mr. O'Shea? Because it does not seem
11 ---

12 A. We were not paying for the shell.
13 It's a damaged shell. It still is as it sits today.

14 460. Q. Did you respond to this July 31st,
15 2023 Notice of Rescission?

16 A. Received?

17 461. Q. This letter is dated July 31st,
18 2023. It states ---

19 A. If I responded to Tad, it was
20 received. If not, I did not need to respond because I
21 was on the phone with him.

22 462. Q. Mr. O'Shea ---

23 A. This consummates the deal that we
24 are not longer pursuing Plandai.

25 463. Q. Okay. And it rescinds -- if I

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1 understand, it puts the party, according to paragraph
2 3, with the rescission of the contract --

3 I am just reading it, I am not
4 agreeing to it:

5 *"... it is essential to restore the*
6 *parties to their original positions*
7 *before entering into the agreement,*
8 *also known as the 'status quo*
9 *ante'."*

10 Is that your understanding, that the
11 purpose of this letter after the rescission is to
12 restore Good Salt and Plandai to their former
13 position?

14 **A.** Yes.

15 464. **Q.** Did Good Salt return to RPMOS or
16 did RPMOS return to ByoPlanet all of the assets,
17 Mr. O'Shea, after this failed deal?

18 **A.** No, it is Good Salt. There was no
19 talk of ByoPlanet or RPMOS in that statement.

20 465. **Q.** Okay. At the bottom of the
21 letter, Mr. O'Shea, who is Timothy Daley, Esquire,
22 Musick, Peeler & Garrett?

23 **A.** I would believe that would be
24 Tad's legal. Tad's legal.

25 466. **Q.** Mr. O'Shea, I have a last question

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1 for you because you mentioned the Internet and then
2 you said it is a forum.

3 I want to put on the screen for you
4 Exhibit P-34. If you are able to find it as well?

5 **MS. SHADEED:** That is in the book.

6 **THE WITNESS:** I got it.

7 **BY MR. NOVAK:**

8 467. **Q.** We will not go through all ---

9 **A.** P-34, okay.

10 468. **Q.** Mr. O'Shea, this is a letter that
11 I sent to your attorneys at Dentons, Maître Shadeed in
12 particular, on March 31st, 2023.

13 There are a number of assertions,
14 Mr. O'Shea, and there are newspapers articles. And
15 then we ask you to respond to us.

16 You can see, Mr. O'Shea, pages 1, 2
17 and 3; do you have a copy of that in front of you?

18 **A.** *"Plandai announces entry into*
19 *material share agreement with Good Salt LLC", yes.*

20 469. **Q.** We asked for some documents, you
21 will see that on the bottom of page 2, Mr. O'Shea:

22 *"Promark hereby formally requests*
23 *that ByoPlanet's*
24 *responds/communicates to the*
25 *undersigned..."*

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1 It is a letter that I sent to Maître
2 Shadeed. Do you see that, Mr. O'Shea?

3 **A.** Closing of the binding...
4 agreement... Plandai...

5 **MS. SHADEED:** Maître Novak, are you in
6 the letter right now or the articles? I think
7 Mr. O'Shea is in the letters.

8 **THE WITNESS:** I am in the article.

9 **BY MR. NOVAK:**

10 470. **Q.** Just the letters, Mr. O'Shea.

11 **MS. SHADEED:** Just the letters.

12 **BY MR. NOVAK:**

13 471. **Q.** You can leave the articles aside.

14 There are three pages of the letter. Can you look at
15 that, please, before I ask my question?

16 **A.** Where would it be?

17 **MS. SHADEED:** P-34, Mr. O'Shea.

18 **THE WITNESS:** I got P-34, but I mean -
19 - I am on P-34. What page of P-34?

20 **BY MR. NOVAK:**

21 472. **Q.** The first page of D-34,
22 Mr. O'Shea. Do you see a letter of Spiegel Sohmer on
23 the top left, March 21st, 2023?

24 **A.** I have got March 20th. This is
25 what I have got. Hold on.

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1 **MS. SHADEED:** Look on the screen,
2 Mr. O'Shea; this is what the document should look
3 like, the document that you are looking at.

4 **THE WITNESS:** I have got it. I have
5 got it. Thank you.

6 **BY MR. NOVAK:**

7 473. **Q.** Wonderful. There are three pages,
8 Mr. O'Shea. Do you have that in front of you?

9 **A.** Yes.

10 474. **Q.** Have you seen this letter before
11 today, Mr. O'Shea?

12 **A.** Yes.

13 475. **Q.** Do you remember when you received
14 this letter, Mr. O'Shea?

15 **A.** I would probably be assuming that
16 I received it when you sent it.

17 476. **Q.** Fair enough.

18 Was there a reason why the Defendant
19 ByoPlanet did not respond to this letter or, I will be
20 more clear, did not provide the requested documents,
21 Mr. O'Shea?

22 **A.** I do not know that we did not
23 provide the requested documents.

24 477. **Q.** You did not, Mr. O'Shea. Just to
25 be clear, you did not provide those documents until

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R. O'Shea
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1 the Court order which was provided on Friday.

2 So, you had no knowledge that those
3 documents were not provided, or you are just not sure?

4 **A.** I am not sure.

5 478. **Q.** And my question for you, to better
6 understand, Mr. O'Shea, is, do you remember providing
7 those documents to your attorney or you do not?

8 **A.** I would have to read through this
9 in more detail to find out what documents you are
10 talking about.

11 479. **Q.** Mr. O'Shea, I want to follow your
12 testimony. Given that ByoPlanet, I believe you said,
13 Mr. O'Shea, and correct me if I am wrong, has no
14 employees -- is that still correct?

15 **A.** ByoPlanet International has no
16 employees.

17 480. **Q.** Okay. Are the individuals that
18 are coming to trial, Mr. O'Shea, and I do not know if
19 you are able to provide clarity, they are not coming
20 on their capacity as employees of ByoPlanet
21 International LLC?

22 **A.** They are not.

23 481. **Q.** Thank you, Mr. O'Shea.

24 **MS. SHADEED:** Correction, Maître
25 Novak. I can tell you the capacity within which they

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1 are coming to testify before you are getting into a
2 legal question now.

3 They are coming in their capacity to
4 testify as to the facts when they were former
5 ByoPlanet employees.

6 We have no problem with confirming
7 that at this moment in time they are not employed by
8 ByoPlanet, but their testimony will relate to,
9 evidently, facts at which point in time they were
10 employees of ByoPlanet.

11 **MR. NOVAK:** Maître Shadeed, I think
12 you will plead that and you will make your
13 representations. I was just asking the witness.

14 **MS. SHADEED:** I am just trying to
15 understand what the pleading is. If there is an issue
16 right now --

17 Maybe we can go off record because I
18 do not think that this is --

19 **MR. NOVAK:** There are major issues, if
20 Mr. O'Shea wants to listen or not, but that could be
21 separate.

22 Let me just finish the examination.

23 Subject to receipt of the undertaking,
24 and I can discuss with Maître Shadeed after, the
25 examination is suspended.

November 13th, 2023

R. O'Shea
Exam. (Mr. Novak)

1

2

Certified True and Correct/ Le Tout Exact Et Conforme

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4

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6

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M. Bolduc, Official Court Reporter/Sténographe

8

Officiel

9

(Québec Bar Association Member No. 336707-0)

10

Exhibit “L”

FILED
Apr 25, 2024
Secretary of State

ARTICLES OF DISSOLUTION

Pursuant to section 605.0707, Florida Statutes, this Florida limited liability company submits the following Articles of Dissolution:

The name of the limited liability company as currently filed with the Florida Department of State:

GOOD SALT LLC

The document number of the limited liability company: L22000517663

The file date of the articles of organization: December 9, 2022

The effective date of the dissolution if not effective on the date of filing: April 25, 2024

A description of occurrence that resulted in the limited liability company's dissolution:

COMPLETION OF BUSINESS PURPOSE

The name and address of the person appointed to wind up the company's activities and affairs:

ANN MAGGARD
125 OLD MONROE ROAD
ATHENS, 30606

I/we submit this document and affirm that the facts stated herein are true. I/we am/are aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in section 817.155, Florida Statutes.

Signature: ANN MAGGARD

Electronic Signature of authorized person

Exhibit “M”

Watercraft

STATE WATERCRAFT VESSELS

FL2868PA - FL

Owner: RICHARD OSHEA
Address: 175 ROYAL PALM DR FORT
LAUDERDALE, FL 33301

Vessel Number: FL2868PA **Registration Date:** 03/17/2020
Registration State: FL **Hull Number:** YAMA1350A010
Propulsion Type: PWC **Hull Material:** FIBERGLASS
Fuel Type: GAS **Vessel Service Type:** PLEASURE
Make: YAM **Vessel Build Year:** 2010
Registered Length: 10

FL6908PK - FL

Owner: RICHARD OSHEA
Address: 175 ROYAL PALM DR FORT
LAUDERDALE, FL 33301

Vessel Number: FL6908PK **Registration Date:** 05/23/2019
Registration State: FL **Hull Number:** HPSA1481A505
Propulsion Type: PWC **Hull Material:** FIBERGLASS
Fuel Type: GAS **Vessel Service Type:** PLEASURE
Make: HON **Vessel Build Year:** 2005
Registered Length: 10

FL2868PA - FL

Owner: RICHARD OSHEA
Address: 175 ROYAL PALM DR FORT
LAUDERDALE, FL 33301

Vessel Number: FL2868PA **Registration Date:** 05/23/2019
Registration State: FL **Hull Number:** YAMA1350A010
Propulsion Type: PWC **Hull Material:** FIBERGLASS
Fuel Type: GAS **Vessel Service Type:** PLEASURE
Make: YAM **Vessel Build Year:** 2010
Registered Length: 10

FL7137MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL7137MH **Registration Date:** 11/29/2017
Registration State: FL **Hull Number:** HPSB0371J102
Propulsion Type: PWC **Hull Material:** FIBERGLASS
Fuel Type: GAS **Vessel Service Type:** PLEASURE
Make: HPS **Vessel Build Year:** 2002
Registered Length: 10

FL8336MG - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL8336MG
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10
Registration Date: 11/29/2017
Hull Number: HPSA2669J102
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL8393MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL8393MH
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10
Registration Date: 11/29/2017
Hull Number: HPSB1063J102
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL8336MG - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL8336MG
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10
Registration Date: 07/06/2016
Hull Number: HPSA2669J102
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL7137MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL7137MH
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10
Registration Date: 08/26/2015
Hull Number: HPSB0371J102
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL8393MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL8393MH
Registration State: FL
Registration Date: 08/26/2015
Hull Number: HPSB1063J102

Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10

Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL7137MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL7137MH
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10

Registration Date: 08/07/2013
Hull Number: HPSB0371J102
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL8393MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL8393MH
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10

Registration Date: 08/07/2013
Hull Number: HPSB1063J102
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL7137MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL7137MH
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: HPS
Registered Length: 10

Registration Date: 04/10/2012
Hull Number: HPSB0371J102
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2002

FL7231ML - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL7231ML
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: YAM
Registered Length: 10

Registration Date: 04/10/2012
Hull Number: YAMA3098K304
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2004

FL7675HE - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number:	FL7675HE	Registration Date:	04/10/2012
Registration State:	FL	Hull Number:	KAW68465F090
Propulsion Type:	PWC	Hull Material:	FIBERGLASS
Fuel Type:	GAS	Vessel Service Type:	PLEASURE
Make:	KAW 1	Vessel Build Year:	1990
Registered Length:	7		

FL8393MH - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number:	FL8393MH	Registration Date:	04/10/2012
Registration State:	FL	Hull Number:	HPSB1063J102
Propulsion Type:	PWC	Hull Material:	FIBERGLASS
Fuel Type:	GAS	Vessel Service Type:	PLEASURE
Make:	HPS	Vessel Build Year:	2002
Registered Length:	10		

FL7230ML - FL

Owner: RICHARD OSHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number:	FL7230ML	Registration Date:	04/10/2012
Registration State:	FL	Hull Number:	YAMA3085K304
Propulsion Type:	PWC	Hull Material:	FIBERGLASS
Fuel Type:	GAS	Vessel Service Type:	PLEASURE
Make:	YAM	Vessel Build Year:	2004
Registered Length:	10		

FL7230ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number:	FL7230ML	Registration Date:	04/18/2011
Registration State:	FL	Hull Number:	YAMA3085K304
Propulsion Type:	PWC	Hull Material:	FIBERGLASS
Fuel Type:	GAS	Vessel Service Type:	PLEASURE
Make:	YAM	Vessel Build Year:	2004
Registered Length:	10		

FL9771NN - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL9771NN
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: JKA
Registered Length: 7
Registration Date: 04/18/2011
Hull Number: KAW62487H990
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 1990

FL7231ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL7231ML
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: YAM
Registered Length: 10
Registration Date: 04/18/2011
Hull Number: YAMA3098K304
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2004

FL7231ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL7231ML
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: YAM
Registered Length: 10
Registration Date: 02/09/2009
Hull Number: YAMA3098K304
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2004

FL0902MB - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL0902MB
Registration State: FL
Propulsion Type: STERN
Fuel Type: GAS
Make: JTC
Registered Length: 33
Registration Date: 02/09/2009
Hull Number: JTC31817G899
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 1999

FL7230ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL7230ML
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: YAM
Registered Length: 10
Registration Date: 02/09/2009
Hull Number: YAMA3085K304
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2004

Registered Length: 10

FL9771NN - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL9771NN	Registration Date: 02/09/2009
Registration State: FL	Hull Number: KAW62487H990
Propulsion Type: PWC	Hull Material: FIBERGLASS
Fuel Type: GAS	Vessel Service Type: PLEASURE
Make: JKA	Vessel Build Year: 1990
Registered Length: 7	

FL9771NN - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL9771NN	Registration Date: 02/19/2008
Registration State: FL	Hull Number: KAW62487H990
Propulsion Type: PWC	Hull Material: FIBERGLASS
Fuel Type: GAS	Vessel Service Type: PLEASURE
Make: JKA	Vessel Build Year: 1990
Registered Length: 7	

FL7231ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL7231ML	Registration Date: 02/19/2008
Registration State: FL	Hull Number: YAMA3098K304
Propulsion Type: PWC	Hull Material: FIBERGLASS
Fuel Type: GAS	Vessel Service Type: PLEASURE
Make: YAM	Vessel Build Year: 2004
Registered Length: 10	

FL7230ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326

Vessel Number: FL7230ML	Registration Date: 02/19/2008
Registration State: FL	Hull Number: YAMA3085K304
Propulsion Type: PWC	Hull Material: FIBERGLASS
Fuel Type: GAS	Vessel Service Type: PLEASURE
Make: YAM	Vessel Build Year: 2004
Registered Length: 10	

FL0902MB - FL

Owner: RICHARD O SHEA

Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL0902MB
Registration State: FL
Propulsion Type: STERN
Fuel Type: GAS
Make: JTC
Registered Length: 33
Registration Date: 02/19/2008
Hull Number: JTC31817G899
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 1999

FL9771NN - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL9771NN
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: JKA
Registered Length: 7
Registration Date: 08/31/2007
Hull Number: KAW62487H990
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 1990

FL7231ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL7231ML
Registration State: FL
Propulsion Type: PWC
Fuel Type: GAS
Make: YAM
Registered Length: 10
Registration Date: 01/04/2007
Hull Number: YAMA3098K304
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 2004

FL0902MB - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL0902MB
Registration State: FL
Propulsion Type: STERN
Fuel Type: GAS
Make: JTC
Registered Length: 33
Registration Date: 01/04/2007
Hull Number: JTC31817G899
Hull Material: FIBERGLASS
Vessel Service Type: PLEASURE
Vessel Build Year: 1999

FL7230ML - FL

Owner: RICHARD O SHEA
Address: 15587 SW 20TH ST DAVIE, FL
33326
Vessel Number: FL7230ML
Registration State: FL
Propulsion Type: PWC
Registration Date: 01/04/2007
Hull Number: YAMA3085K304
Hull Material: FIBERGLASS

Fuel Type: GAS
Make: YAM
Registered Length: 10

Vessel Service Type: PLEASURE
Vessel Build Year: 2004

Exhibit “N”

M21000015933

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP WAIT MAIL

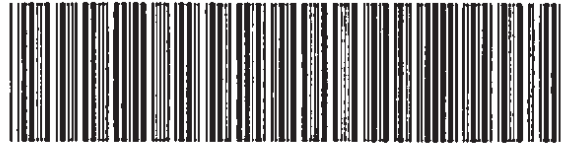
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

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2021 NOV 22 PM 12:32

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

APPLICATION BY FOREIGN LIMITED LIABILITY COMPANY FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA

IN COMPLIANCE WITH SECTION 605.0902, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO REGISTER A FOREIGN LIMITED LIABILITY COMPANY TO TRANSACT BUSINESS IN THE STATE OF FLORIDA:

1. MIGHTY AS A BEAR, LLC
(Name of Foreign Limited Liability Company; must include "Limited Liability Company," "L.L.C." or "LLC.")

(If name unavailable, enter alternate name adopted for the purpose of transacting business in Florida. The alternate name must include "Limited Liability Company," "L.L.C." or "LLC.")

2. ILLINOIS (Jurisdiction under the law of which foreign limited liability company is organized)
3. (FEI number, if applicable)

4. NOT APPLICABLE
(Date first transacted business in Florida, if prior to registration.)
(See sections 605.0904 & 605.11905, F.S. to determine penalty liability)

5. 2920 NE 52nd STREET, FT. LAUDERDALE, FL, 33308 (Street Address of Principal Office)
6. 2920 NE 52nd STREET, FT. LAUDERDALE, FL, 33308 (Mailing Address)

7. Name and street address of Florida registered agent: (P.O. Box NOT acceptable)

Name: JOHN H. BARRETT
Office Address: 2920 NE 52nd STREET
FT. LAUDERDALE, Florida 33308
(City) (Zip code)

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2021 NOV 22 PM 12:32
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Registered agent's acceptance:
Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

John H. Barrett /gk
(Registered agent's signature)

8. For initial indexing purposes, list names, title or capacity and addresses of the primary members/managers or persons authorized to manage [up to six (6) total]:

<u>Title or Capacity:</u>	<u>Name and Address:</u>	<u>Title or Capacity:</u>	<u>Name and Address:</u>
<input checked="" type="checkbox"/> Manager	Name: <u>John H Barrett</u>	<input type="checkbox"/> Manager	Name: _____
<input checked="" type="checkbox"/> Member	Address: <u>2920 NE 52nd STREET</u>	<input type="checkbox"/> Member	Address: _____
<input type="checkbox"/> Authorized Person	<u>FT. LAUDERDALE, FL 33308</u>	<input type="checkbox"/> Authorized Person	_____
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____
<input type="checkbox"/> Manager	Name: _____	<input type="checkbox"/> Manager	Name: _____
<input type="checkbox"/> Member	Address: _____	<input type="checkbox"/> Member	Address: _____
<input type="checkbox"/> Authorized Person	_____	<input type="checkbox"/> Authorized Person	_____
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____
<input type="checkbox"/> Manager	Name: _____	<input type="checkbox"/> Manager	Name: _____
<input type="checkbox"/> Member	Address: _____	<input type="checkbox"/> Member	Address: _____
<input type="checkbox"/> Authorized Person	_____	<input type="checkbox"/> Authorized Person	_____
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Important Notice: Use an attachment to report more than six (6). The attachment will be imaged for reporting purposes only. Non-indexed individuals may be added to the index when filing your Florida Department of State Annual Report form.

9. Attached is a certificate of existence, no more than 90 days old, duly authenticated by the official having custody of records in the jurisdiction under the law of which it is organized. (If the certificate is in a foreign language, a translation of the certificate under oath of the translator must be submitted)

10. This document is executed in accordance with section 605.0203 (1) (b), Florida Statutes. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.

John H. Barrett /gt
Signature of an authorized person

JOHN H. BARRETT
Typed or printed name of signee

File Number

1107722-6



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that I am the keeper of the records of the Department of Business Services. I certify that

MIGHTY AS A BEAR, LLC. HAVING ORGANIZED IN THE STATE OF ILLINOIS ON NOVEMBER 01, 2021. APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A DOMESTIC LIMITED LIABILITY COMPANY IN THE STATE OF ILLINOIS.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 16TH day of NOVEMBER A.D. 2021 .



Authentication # 2132001810 verifiable until 11/16/2022
Authenticate at: <http://www.ilsos.gov>

Jesse White

SECRETARY OF STATE