

**CLASS PROCEEDING**

This is the 2nd affidavit  
of Greg McMullen in this case  
and was made on November 1, 2013

No. T-696-10

**FEDERAL COURT**

BETWEEN:

MARK CUZZETTO

PLAINTIFF

AND:

BUSINESS IN MOTION INTERNATIONAL CORPORATION, ALAN  
KIPPAX and ASHIF MOHAMED

DEFENDANTS

**AFFIDAVIT**

I, Greg McMullen, lawyer, of Vancouver, British Columbia, AFFIRM THAT:

1. I am an associate at Branch MacMaster LLP, co-counsel for the Plaintiff in the within action (the "**Action**"). As such, I have personal knowledge of the facts and matters deposed to in this affidavit except where I state them to be made on information and belief, and as to those facts and matters, I believe them to be true.
2. This is my second affidavit in the Action. The first was affirmed on November 4, 2011, and was made in support of the Plaintiff's motion for the certification of the Action as a class proceeding (the "**McMullen Certification Affidavit**").

**BIM BACKGROUND**

3. A review of our firm's records indicates that on March 24, 2010, a legal assistant with Branch MacMaster LLP wrote to Corporations Canada to request copies of the Certificate of Incorporation and 2008 Annual Filing Report of Business in Motion International Corporation ("**BIM**"). Corporations Canada replied with the requested

records on March 29, 2010. A copy of the letter requesting those records and the response from Corporations Canada is attached as **Exhibit "A"**.

## **BIM INTERNET DOMAINS**

4. In my experience, to register an internet domain name like *bimcorporation.com*, the registrant must provide certain information to the domain registrar, including a technical and administrative contact. This information is stored in a public record called a "**Whois**". Searching the Whois record shows the current registrant. A "**Whois History**" search allows displays the information associated with the domain in the past. Historical Whois information is archived by domain service providers such as *domaintools.com*.

5. On March 13, 2012 and June 28, 2013, I used my account on *domaintools.com* to conduct Whois History searches on various internet domains associated with BIM and Alan Kippax ("**Kippax**"). I performed Whois History searches on *bimcorporation.com*, *ultralifeclub.com*, *ultralifebookings.com*, *earnfirm.com*, *icantbelieveitstrue.com*, and *icbit.com*. I saved the results of those searches and have attached the results as **Exhibit "B"**. In most cases, there were multiple Whois History records available, and in those cases I have included a record demonstrating relevant changes to the Whois History record.

6. In some cases, the registrant is identified as a proxy registration service, which I understand allows an individual to register a domain through a third party. For example, at some point between October 2008 and April 2009, the registrant for *ultralifeclub.com* changed from Kippax to Domains By Proxy Inc. Domains By Proxy Inc. is also the registrant for *ultralifebooking.com*. At some time between January and April 2011, the registrant for *bimcorporation.com* changed from Gregory Simpson to Whois Privacy Protection Service. Printouts from the websites of Domains By Proxy and Whois Privacy Protection Service explaining their services are attached as **Exhibit "C"**.

## **STATUS OF ALAN KIPPAX**

7. On April 26, 2012, I spoke by telephone with Peter Edgett, the Crown prosecutor in Manitoba handling the charges against a number of alleged participants in BIM,

including Kippax (the “**Criminal Proceeding**”). Mr. Edgett advised me that the case is moving forward but has not gone to trial. The Criminal Proceeding is discussed in greater detail in the McMullen Certification Affidavit.

8. On June 28, 2012, Mississauga.com – a news website – reported that Kippax had been charged by the York Regional Police following an investigation into marijuana growing operations in the Toronto, Ontario area. A further story from Mississauga.com on July 4, 2012 reported that Kippax had been denied bail. Copies of the June 28, 2012 and July 4, 2012 stories from Mississauga.com are attached as **Exhibits “D”**,.

9. On August 13, 2013, I reviewed this Court’s reasons in *Kippax v Canada (Citizenship and Immigration)*, 2013 FC 655, in which Madam Justice Gleason denied Kippax’s appeal of a decision denying his release from immigration detention.

10. On September 10, 2013, I spoke by telephone to a representative at the Centre East Corrections Centre in Lindsay, Ontario. The representative confirmed that as of September 10, 2013, Kippax was in detention at the Centre East Corrections Centre.

11. On September 16, 2013, I spoke by telephone with Stephanie Echlin, counsel for the Canada Border Services Agency on Kippax’s file. Ms. Echlin advised me that CBSA intends to remove Kippax from Canada but cannot do so until the resolution of the Criminal Proceeding. Ms. Echlin advised me that a case management conference was to be held in mid-October in the Criminal Proceeding, at which a trial date is expected to be set in the Criminal Proceeding. Ms. Echlin anticipates that the trial in the Criminal Proceeding will not be held before September 2014.

12. As of the date of this affidavit, I have not been contacted by a representative of BIM or Kippax with respect to this action, nor am I aware of anyone in our firm being contacted. I am advised by Mathew Good of Hordo Bennett Mounter LLP, our co-counsel in this action, that he is not aware of anyone at his firm being contacted by a representative of BIM or Kippax with respect to this action.

## MEETING WITH MOHAMED

13. In the McMullen Certification Affidavit, I discussed communication between our firm and counsel for the defendant Ashif Mohamed (“**Mohamed**”).

14. I met with Mohamed and his lawyer, Rolf Piehler of Boghosian & Associates, in Toronto, Ontario on April 28, 2012. During that meeting, Mohamed detailed his involvement as a director of BIM and provided me with documents he obtained during his time as a director of BIM.

15. Mohamed informed me, and I believed to be true, that he made photocopies of the BIM minute book after receiving a letter from the Canada Revenue Agency on January 8, 2010, instructing him to make himself available to the CRA for an interview.

16. Copies of the documents provided by Mohamed are attached as follows:

- **Exhibit “E”** – Letter to Mohamed from CRA – January 8, 2010;
- **Exhibit “F”** - Resolutions of the First Director (Unsigned) – March 13, 2006;
- **Exhibit “G”** - Resignation of Directorship (Wilson) – March 5, 2007;
- **Exhibit “H”** - Acceptance of Directorship (Kippax) – March 5, 2007;
- **Exhibit “I”** - Shareholders’ Resolution - (Transfer of Shares) - March 5, 2007;
- **Exhibit “J”** - Resolution of the Shareholders (Transfer of Shares) – March 6, 2007;
- **Exhibit “K”** - Share Transfer – March 6, 2007;
- **Exhibit “L”** - Resolution of the Directors (Appointment of Officers) – March 6, 2007;
- **Exhibit “M”** - Resignation (Kippax) – March 6, 2007;
- **Exhibit “N”** - Share Transfer – November 4, 2009; and
- **Exhibit “O”** - Meeting of the Directors – November 4, 2009.

## DOE DOCUMENTS

17. On March 6, 2012, a class member (“**Doe**”) who had been a member of Treasure Traders International (“**TTI**”) and BIM met with me at our firm’s offices and provided me with information and documents in support of this motion for default judgment. She was one of the first 100 members of BIM and had information dating back to its inception.

18. Doe provided this information on the condition that her name does not appear in the court record. Doe advised me she would fear for her safety if her name were to appear in the record.

19. I attempted to contact Doe by telephone and by sending a letter by courier to the number and address she had left with our firm. I had hoped to arrange for her to provide *viva voce* evidence anonymously at the hearing of the motion for default judgment. However, the person who answered the telephone advised me that it no longer belonged to Doe, and the couriered letter was returned to our firm.

20. On September 23, 2013, I retained International Genealogical Search (“**IGS**”) to perform a “skip search” to find updated contact information for Doe. As of the date of this affidavit, IGS has been unable to provide updated contact information.

21. During our meeting in March 2012, Doe provided me with the documents listed below, copies of which are attached as exhibits to this affidavit:

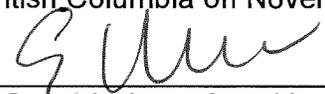
- **Exhibit “P”** - A TTI promotional card titled “You are invited to an Opportunity Adventure!” (undated);
- **Exhibit “Q”** - A BIM brochure promoting the “Official Business In Motion Start Date” (dated June 17, 2006);
- **Exhibit “R”** - A schedule for BIM meetings titled “Meetings Held Every Monday and Wednesday” (undated);
- **Exhibit “S”** - A letter inviting BIM Distributors to the launch of the new BIM Corporate Ladder (dated March 1, 2007);

- **Exhibit "T"** - A letter to BIM Distributors launching the new BIM Corporate Ladder (March 6, 2007);
- **Exhibit "U"** - A BIM promotional brochure titled "Imagine... earning the income you have always wanted!" (dated 2006);
- **Exhibit "V"** - A BIM brochure titled "IMAGINE being in the right place, at the right time!" (undated);
- **Exhibit "W"** - A BIM brochure announcing the "Kelowna Launch Tour" (dated 2008);
- **Exhibit "X"** - A BIM informational brochure titled "How Do We Pay All Those Commissions?" (undated);
- **Exhibit "Y"** - A BIM document titled "Sample Script for Phone Greeting" (undated); and
- **Exhibit "Z"** - Extracts from a BIM "Downline Report" showing individuals who had signed up below Doe and their sequential BIM Distributor numbers, which Doe advised me started at 00001 (undated).

**PURPOSE**

22. I make this affidavit in support of the Plaintiff's motion for default judgment.

AFFIRMED BEFORE ME at Vancouver, )  
British Columbia on November 1, 2013. )

  
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A Commissioner for taking Affidavits for )  
British Columbia )

  
\_\_\_\_\_)  
Greg McMullen )

Emily Unrau  
**BRANCH MACMASTER LLP**  
1410 - 777 Hornby Street  
Vancouver, BC V6Z 1S4  
Telephone: (604) 654-2999  
Fax: (604) 684-3429  
(File No.: X01-026)