

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

EQUIBIT GROUP LTD.

Plaintiff/Moving Party

and

THE ATTORNEY GENERAL OF CANADA, JOHN DOE, JANE DOE,  
SERGEI SACHKOV and KARTIK PATEL

Defendants/Responding Parties

**MOVING PARTY'S SUPPLEMENTARY FACTUM**

**(Motion for Default Judgment, returnable in writing the week of December 19, 2022)**

December 16, 2022

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**AND TO:** **JOHN DOE**

Defendant

**AND TO:** **JANE DOE**

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## PART II - OVERVIEW

1. The Plaintiff, Equibit Group Ltd. (“**Equibit**”), brought a motion for default judgment with notice against the Defendant, Sergei Sachkov, (“**Mr. Sachkov**”) on October 5, 2022. Justice Myers granted default judgment against Mr. Sachkov for liability for breach of contract and deferred the assessment of damages pending the delivery of further evidence.<sup>1</sup>

2. Equibit’s Executive director, Christopher Horlacher (“**Mr. Horlacher**”), swore a supplementary affidavit in support of this motion on December 16, 2022 (the “**Supplementary Horlacher Affidavit**”) and Equibit has retained an expert, Jim Muccilli of Crowe Soberman LLP, to prepare an expert report and damages calculation with respect to the loss of Equibit’s core code as a result of Mr. Sachkov’s actions (the “**Crowe Soberman Report**”).<sup>2</sup>

3. The Crowe Soberman Report calculated Equibit’s potential losses using three alternative damages scenarios. Scenario 1 was the best case, and involved Equibit holding all of its pre-mined tokens,<sup>3</sup> Scenario 2 the mid-range, involving the sale of some tokens which were used to fund future operations, and Scenario 3 the most conservative, assuming that the price of an Equibit token would fluctuate in a similar proportion and pattern as Bitcoin (“**BTC**”):<sup>4</sup>

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<sup>1</sup> [Endorsement of Justice Myers dated October 5, 2022](#), Applicant’s Second Supplementary Default Judgment Motion Record (“**SSDMR**”), Tab 1, Exhibit A; [Endorsement of Justice Myers dated October 19, 2022](#), SSDMR, Tab 1, Exhibit B.

<sup>2</sup> [Crowe Soberman Report](#), Affidavit of Jim Muccilli sworn December 16, 2022, SSDMR, Tab 2, Exhibit B.

<sup>3</sup> Equibit held 660,258 EQB coins when it ceased operations, representing the remainder of holdings (analogous to treasury holdings) from the first mined block less those coins sold to investors through public pre-sales through 2017. See the Crowe Soberman Report, Affidavit of Jim Muccilli sworn December 16, 2022, SSDMR, Tab 4.at Schedule 2, [p. 31](#).

<sup>4</sup> Ibid. at Exhibit “B”, [p. 4](#).

	Low \$	High \$
Scenario 1	106,818,684	111,269,818
Scenario 2	70,083,738	73,004,127
Scenario 3	9,172,425	20,474,164

4. The Crowe Soberman Report provides a comparable analysis with other cryptocurrencies and the opinion of certified business valuator as to the damages that resulted from Mr. Sachkov's actions. For the reasons that follow, pursuant to Mr. Sachkov's breach of contract, Equibit is entitled to damages in the amount of at least \$9,172,425, the most conservative figure estimated by Crowe Soberman LLP, a figure just over Equibit's projected net income in 2019<sup>5</sup> and 2020.<sup>6</sup>

### **PART III - SUMMARY OF FACTS**

#### **Background:**

5. Detailed background facts underlying Equibit's motion for default judgment were primarily set out in its original Factum dated September 21, 2022 and will not be repeated here, save for salient contextual facts, additional detail surrounding Mr. Sachkov's actions, and the resulting damage to Equibit, further to the Endorsement of Justice Myers dated October 5, 2022.<sup>7</sup>

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<sup>5</sup> \$7,109,380 in 2019, [Horlacher Affidavit](#) at para. 22, DMR, Tab 2, p. 22; Horlacher Affidavit, DMR, Tab 2, [Exhibit M](#), p. 189.

<sup>6</sup> \$1,744,711 in 2020, [Horlacher Affidavit](#) at para. 22, DMR, Tab 2, p. 22; Horlacher Affidavit, DMR, Tab 2, [Exhibit M](#), p. 189.

<sup>7</sup> [Endorsement of Justice Myers dated October 5, 2022](#), SSDMR, Tab 1, Exhibit A;

6. Equibit was formed to write the code for a decentralized transfer service which would facilitate the exchange of cryptocurrencies and other blockchain-based securities.<sup>8</sup> These services would be provided through an online, peer-to-peer, Equibit dedicated Network (the “**Network**”). The Network was intended to create a communications protocol for securities issuers and those wanting to make transactions.<sup>9</sup>

7. This Network also contained minable tokens (“**Equibit Tokens**” or “**EQB**”). Equibit Tokens operated in a similar fashion to BTC and would function as a means of payment for processing transactions.<sup>10</sup> Equibit intended to create a system which allowed for the registration, creation, trade and holding of these new Equibit Tokens on the Network.<sup>11</sup>

8. The value of Equibit was derived from the appreciation of its Equibit Token holdings, which stood at 660,258 at the time Equibit was forced to cease operations in April of 2019. This was a direct result of Sachkov’s removal of Equibit’s core code, which caused substantial portions of functionality of the Network to be immediately lost.<sup>12</sup>

### **Equibit’s Launch Plan:**

9. Equibit’s proposed launch in late 2018 had been carefully selected and was crucial for the company, as a considerable amount of funds (Equibit had raised approximately \$2.8M through an angel round of investing and through the first two phases of an initial coin offering) had already

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<sup>8</sup> [SOC](#), para 9, SDMR, Tab 1, p. 11; Horlacher Affidavit, [para 5](#), DMR, Tab 2, p. 17.

<sup>9</sup> [SOC](#), para 9, SDMR, Tab 1, p. 11 ; [Horlacher Affidavit](#), para 5, DMR, Tab 2, p. 17.

<sup>10</sup> [SOC](#), para 10, SDMR, Tab 1, p. 11; [Horlacher Affidavit](#), para 6, DMR, Tab 2, p. 17.

<sup>11</sup> [SOC](#), para 10, SDMR, Tab p. 11; [Horlacher Affidavit](#), para 6, DMR, Tab 2, p. 17

<sup>12</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [para. 5](#).

been spent on operations and the company's technological development leading up to that launch period.<sup>13</sup>

10. This was reflected in Equibit's 2018 financial statement in which a large portion of the company's funds had been allocated towards contractors and developers. At this time, there had been a number of cryptocurrency regulatory changes in Canada which had caused widespread investor hesitation and made raising money a far more difficult task than it had been in previous years.<sup>14</sup>

11. With the limited funds at its disposal, Equibit readily prepared for the anticipated launch of its tokens with the understanding the funds it had spent thus far would be recouped upon the release of its tokens to the market. This would therefore allow Equibit to continue with its development and operations.<sup>15</sup>

12. The plan was to launch the Equibit Tokens to the general public and to create a consumer base of individuals and companies that would use the tokens to carry out business and interact with the network.<sup>16</sup>

13. Equibit was set to produce and retain a steady amount of these Equibit Tokens over the course of several years as they continued to appreciate in value. The network would produce 22 million Equibit Tokens over the course of 55 years, an actively tradeable stockpile of tokens

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<sup>13</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [para. 9](#).

<sup>14</sup> Ibid. at [para. 11](#);

<sup>15</sup> Ibid. at [para. 12](#).

<sup>16</sup> Ibid. at [para. 13](#).

ensuring that Equibit would have a steady source of revenue generated from its buying consumer base.<sup>17</sup>

**Equibit's Goodwill and Industry Anticipation:**

14. Equibit had enjoyed an abundance of goodwill and industry anticipation, and was set to launch into a favorable cryptocurrency market. Prior to its expected launch, Equibit had courted many potential users and clients, which included registered stock exchanges and some of the largest asset managers in the world, including the following:

- (a) The Aequitas NEO Exchange; the Canadian Securities Exchange, and the London Stock Exchange;<sup>18</sup>
- (b) Equibit partnered with IBM and was made a member of their 'PartnerWorld' program for their cloud hosting services in May of 2017, also participating in a co-funded marketing initiative. Mr. Horlacher spoke at events in New York, Detroit, Toronto, Atlanta and Minneapolis.<sup>19</sup>
- (c) Multiple investment funds, including Capital Group, Pantera Capital, OnWave Ventures, Birch First Capital, Information Venture Partners, Weiser Capital, Hummingbird Ventures, High Standard Capital, Voyager Global Advisors, ThreeD Capital Inc., Redpoint Ventures, Paradigm Capital, and Information Ventures;<sup>20</sup>

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<sup>17</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [paras. 14-15](#).

<sup>18</sup> Ibid. at [paras. 7\(b\)-\(d\), Exhibits E-G](#)

<sup>19</sup> Supplementary Horlacher Affidavit sworn December 16, 2022 at [para. 7\(f\), Exhibit I-K](#)

<sup>20</sup> Ibid. at [para. 7\(e\)-\(r\), Exhibit H-W](#)

- (d) KeepKey, an existing cryptocurrency wallet;<sup>21</sup>
- (e) Crypto Valley Venture Capital that named PricewaterhouseCoopers Switzerland Equibit as one of the Top 50 challengers for their Q4 2018 report, produced in partnership with PricewaterhouseCoopers Switzerland. At this event, CV VC Director Ralf Kubli took a close interest in Equibit and called the company and idea a “Rocketship.”;<sup>22</sup>
- (f) Multiple Cryptocurrency exchanges, including Beaxy, Bittrex, HitBTC, and Latoken;<sup>23</sup>

**Mr. Sachkov’s Actions and Damage to Equibit:**

15. Equibit was set to launch its Equibit tokens to the public in 2018. The timing of Mr. Sachkov’s actions against Equibit were particularly damaging, as they derailed its trajectory in the (at that time) favourable cryptocurrency market, which became more heavily scrutinized by securities regulators as time went on.<sup>24</sup>

16. Mr. Sachkov was employed as Equibit’s Senior Developer on March 13, 2017, and his employment was governed by the terms of a written employment agreement.<sup>25</sup> Mr. Sachkov’s role

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<sup>21</sup> Ibid. at [para. 8](#).

<sup>22</sup> Ibid. at [para. 6](#).

<sup>23</sup> Ibid. at [para. 7\(a\), Exhibit D](#)

<sup>24</sup> Supplementary Horlacher Affidavit at [para. 9](#); [Canadian Securities regulators provide additional guidance on securities law implications for offerings of tokens, Canadian Securities Administrators](#), June 11, 2018, Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at Exhibit “Y”.

<sup>25</sup> [Equibit’s Statement of Claim dated August 12, 2020](#) (“SOC”), para 7, Applicant’s Supplementary Default Judgment Motion Record (“SDMR”), Tab 1, 10

required that he develop key software for Equibit (the “**Core Code**”) and regularly provide updates to this code through a repository set up by the company.<sup>26</sup>

17. This code was vital to Equibit.<sup>27</sup> In 2018, Mr. Sachkov began meeting with the Canadian Security Intelligence Services (“**CSIS**”) regarding Equibit, exchanging confidential information about Equibit with CSIS.<sup>28</sup> On or around July 20, 2018, Mr. Sachkov stopped updating the Core Code, retained later versions of this code, and failed to deliver them to Equibit, despite these codes remaining Equibit’s rightful property.<sup>29</sup>

18. Equibit also discovered that the code Mr. Sachkov had previously entered into the repository he had been using was incompatible with the version Equibit possessed.<sup>30</sup>

19. Mr. Sachkov then suddenly resigned from Equibit on August 13, 2018.<sup>31</sup> Upon his resignation, Mr. Sachkov returned the laptop Equibit had provided to him during his employment, but had completely reset the laptop to its factory settings and erased all information in it.<sup>32</sup> Mr. Sachkov also informed Equibit that he had lost the Core Code in his possession.<sup>33</sup>

20. This missing code was essential to Equibit’s operations. Its loss affected Equibit’s viability as a business, and rendered the company unable to function.<sup>34</sup> Mr. Sachkov’s actions have

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<sup>26</sup> [SOC](#), para 13-15, SDMR, Tab 1, 12

<sup>27</sup> [Affidavit of Christopher Horlacher, dated March 30, 2022](#), (“**Horlacher Affidavit**”), para 17, DMR, Tab 2, p. 21

<sup>28</sup> [SOC](#), para 17, SDMR, Tab 1, 12

<sup>29</sup> [SOC](#), para 19, SDMR, Tab 1, p.13

<sup>30</sup> [SOC](#), para 20-21, SDMR, Tab 1, p.13

<sup>31</sup> [SOC](#), para 20-21, SDMR, Tab 1, p.13

<sup>32</sup> [SOC](#), para 21, SDMR, Tab 1, p.13

<sup>33</sup> [SOC](#), para 21, SDMR, Tab 1, p. 13

<sup>34</sup> [Horlacher Affidavit](#) at para. 17-18, DMR, Tab 2, p. 21

completely destabilised Equibit, affected its standing in the blockchain market, the goodwill the company enjoyed, and its ability to raise funds with investors.<sup>35</sup>

21. Due to Mr. Sachkov's actions, Equibit essentially had to start from scratch and would need to redevelop its core code. This required the company to commit a considerable amount of its already depleted resources towards code development in an effort to meet its intended deadlines and assuage investor concerns.<sup>36</sup>

22. Equibit had only limited amount of funds available and was still a start-up. The failed launch set back also lost Equibit industry goodwill and investor confidence, making attempts to secure funding from potential investors an even more difficult endeavor for Equibit given the regulatory environment.<sup>37</sup>

23. In 2017 and 2018, businesses dealing in virtual currency were becoming increasingly regulated. For example, in the summer of 2017, a cryptocurrency token distribution event in Canada was unable to proceed given a lack of direction from the Ontario Securities Commission.<sup>38</sup> In August of 2017, Canadian Securities Administrators published CSA Staff Notice 46-307, providing guidance on the applicability of Canadian securities laws to cryptocurrency offerings and trading.<sup>39</sup>

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<sup>35</sup> [Horlacher Affidavit](#) at para. 17-18, DMR, Tab 2, p. 21

<sup>36</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [para. 18](#).

<sup>37</sup> *Ibid.* at [para. 19](#).

<sup>38</sup> [Kik Excluding Canadians From Kin Token Distribution Event](#) – Jessica Galang, Betaki, September 8, 2017, Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at Exhibit “Y”.

<sup>39</sup> [Canadian Securities regulators provide additional guidance on securities law implications for offerings of tokens, Canadian Securities Administrators](#), June 11, 2018, Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at Exhibit “Y”.

24. In the spring of 2018, the regulatory landscape was tightening, and the CSA was looking into activities of cryptocurrency trading platforms. In June of 2018, the CSA issued Staff Notices 46-308 indicating that token offerings would be more likely be considered to involve securities.<sup>40</sup> This scrutinization by regulators made efforts to raise money more difficult.<sup>41</sup>

25. The added prejudice that Equibit subsequently faced following its failure to launch only exacerbated its ability to raise funds. Unfortunately, as a result, Equibit was unable to secure any other funding for its launch.<sup>42</sup>

26. If Equibit had been able to launch as planned with its EQB cryptocurrency, the company would have been in a position to sell the EQB's to the active market and fund itself, eliminating the company's need to rely on external players or factors to survive.<sup>43</sup>

27. Due to Mr. Sachkov's actions, this did not occur, and by the end of 2018, Equibit had less than \$40,000 in cash left to run the company. With Equibit's funds almost completely depleted, no new funds coming in, and a tainted reputation that deterred any potential future investors, the company no longer had the means to continue its operations.<sup>44</sup>

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<sup>40</sup> [CSA Staff Notice 46-308 Securities Law Implications for Offerings of Tokens](#) published June 11, 2018, Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at Exhibit "Y".

<sup>41</sup> Ibid. at [para. 20](#).

<sup>42</sup> Ibid. at [para. 21](#).

<sup>43</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [para. 21](#).

<sup>44</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [paras. 23-24](#).

**Equibit Ceases Operations:**

28. In November and December of 2018, Equibit began downsizing, laying off personnel and liquidating its assets, such as office equipment and furniture. In January 2019, Equibit announced that it would be shutting down by the end of February.

29. Equibit's remaining employees were able to prepare a test network and eventually a main network that was a token only, without any of the functionality that Mr. Sachkov had created for the core code, i.e., the decentralized transfer service facilitating the exchange of cryptocurrencies. As a result, Equibit's Network could not launch as was originally conceived. The cryptocurrency market had also shifted toward skepticism, making it a more difficult environment to raise funds.<sup>45</sup>

30. Mr. Horlacher stepped down as Equibit's CEO and Marc Godard stepped in as acting CEO. In February of 2019, Equibit's remaining employees were laid off. Due to these factors, Equibit ceased operations in April of 2019.<sup>46</sup>

**PART IV - STATEMENT OF ISSUES, LAW & AUTHORITIES**

**Applicable Legal Principles**

31. The applicable legal principles for default judgment are set out in Equibit's Factum dated September 21, 2022 and will not be repeated in detail here. On this motion, Equibit's claims are supported by the Crowe Soberman Report and the Supplementary Horlacher Affidavit in addition

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<sup>45</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [para. 25](#).

<sup>46</sup> Supplementary Horlacher Affidavit sworn December 16, 2022, SSDMR, Tab 1 at [para. 26](#).

to the original Horlacher Affidavit, The Statement of Claim, and the Employment Agreement of Mr. Sachkov, referenced in the Statement of Claim and exhibited to the Horlacher Affidavit.

### **Calculation of Damages**

32. The Crowe Soberman Report prepared calculations that were point in time specific to December 6, 2022, which took into account the cryptocurrency market capitalization fluctuations in the last two years, i.e. the decrease in currency prices in 2022.<sup>47</sup> The Equibit cryptocurrency was intended to have a total supply of 22 million EQBS after 54 years of network operations.<sup>48</sup>

33. On March 31, 2017, Equibit closed a public pre-sale of EQB, selling 250,000 EQB to investors for USD \$560,000, or USD \$2.24 per EQB. Similarly, on December 8, 2017, Equibit closed a secondary private pre-sale, selling 400,000 EQB to investors for USD \$2,000,000 or USD \$5.00 per EQB. As the developer of the tokens, Equibit was able to participate in a “pre-mine”, securing 660,258 EQBs of the total first block of 1,310,257 EQBs. Equibit later planned to sell an additional 400,000 EQB from its treasury holdings for total proceeds of USD \$4,000,000.<sup>49</sup>

34. As a result of Mr. Sachkov’s actions and the missing core code, Equibit was prevented from collecting revenue from its partners, from mining EQB from its network, and the value of EQB was reduced to nil, preventing Equibit from using the value of its EQB’s to fund research and development and to continue as a viable entity in all material respects. Equibit cannot recover

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<sup>47</sup> Crowe Soberman Report at [p. 5, para. 6.](#)

<sup>48</sup> Crowe Soberman Report at [para. 24.](#)

<sup>49</sup> Crowe Soberman Report at [paras. 25-26.](#)

from the delay to market and loss of market/investor confidence at this point regardless of whether it is now able to restore its code.<sup>50</sup>

35. The Crowe Soberman Report calculates Equibit's alleged losses based on the differential between the expected market capitalization of Equibit's EQB holdings as compared to their current value (0) and uses the generally accepted methodology of market capitalization for valuing crypto assets, i.e. circulating supply multiplied by price.<sup>51</sup>

36. The Crowe Soberman Report contemplates three scenarios, as follows:

**Scenarios 1 and 2:**

37. Scenario 1 assumes that Equibit would have continuously held 660,258 EQBs, its Equibit tokens, that were pre-mined by Equibit in its development round in 2017. Crowe Soberman LLP calculated Equibit's lost market capitalization based on the EQBs held multiplied by the median and average coin price of comparable coins, including Monero, Ethereum, Ravencoin, Uniswap, PancakeSwap, Polymath, and Bitshares as at December 6, 2022 (The point in time valuation date used).<sup>52</sup>

38. Scenario 2 is similar to Scenario 1, except that it assumes that Equibit would have sold 10% of its pre-mined 660,258 EQBs on December 31, 2019, 2020, 2021, and December 6, 2022 in order to fund its operations. By December 6, 2022, Equibit would have a treasury of 433,195 EQB. Scenario 2 relies on the average price and median price of comparable coins to determine

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<sup>50</sup> Crowe Soberman at [para. 27](#).

<sup>51</sup> Crowe Soberman Report at paras. [28, 62-63](#).

<sup>52</sup> Crowe Soberman Report at [p. 4, para. 5\(a\)](#). See [pages 11-19](#) for a detailed breakdown of each comparable coin.

the implicit lost value of Equibit’s holdings, which were then compared to the actual value of EQB’s holdings (nil).

39. For Scenario’s 1 and 2, the Crowe Soberman Report relies on the average prices (the low range) and the median (the high range) of the selected comparable coins as follows, while also adjusting the prices of the comparable coins based on each coin’s share of the network as compared to a benchmark, BTC, as follows:<sup>53</sup>

<i>In USD</i>	06-Dec-22 \$	Total Supply	Coin Total Supply Compared to BTC	Adjusted Price \$	Excluding Outliers \$
Monero USD (XMR-USD)	128.993	18,132,000	0.86	123.444	123.444
Ethereum USD (ETH-USD)	1,251.736	120,520,000	5.74	7,213.983	
Ravencoin USD (RVN-USD)	0.022	21,000,000,000	1,000.00	21.878	21.878
Uniswap USD (UNI7083-USD)	6.289	1,000,000,000	47.62	296.224	296.224
PancakeSwap USD (CAKE-USD)	3.941794	750,000,000	35.71	141.225	141.225
Polymath USD (POLY-USD)	0.185429	1,000,000,000	47.62	9.760	9.760
BitShares USD (BTS-USD)	0.007874	3,600,570,502	171.46	1.729	
Bitcoin UDS (BTC-USD)					
Med	3.942			123.444	123.444
Mean	198.739			1,115.463	118.506

40. For Scenario 1, the Crowe Soberman Report concludes damages of \$106,818,684 at the low range and \$111,269,818 at the high range.<sup>54</sup> For Scenario 2, the Crowe Soberman Report concludes damages of \$70,083,738 at the low range and \$73,004,127 at the high range.

### Scenario 3

<sup>53</sup> See Crowe Soberman Report at [p. 21](#). Bitcoin is a form of cryptocurrency. A cryptocurrency is a digital asset that is designed to function as a medium of exchange using strong cryptography to secure financial transactions, control the creation of additional units, and verify the transfer of assets. *Nelson v. Gokturk* 2021 BCSC 2301 at [para. 7](#).

<sup>54</sup> See Crowe Soberman Report at [para. 76, Schedule 1 and Schedule 2](#).

41. Scenario 3 is the most conservative estimate and considers that the rate of price appreciation per EQB might mirror that of the price appreciation of BTC from December 31, 2018 to December 6, 2022. The 1<sup>st</sup> pre-sale EQB price was used for the low range (\$2.24) and 2<sup>nd</sup> pre-sale EQB price was used for the high range (\$5.00).<sup>55</sup>

42. The appreciation of BTC from December 31, 2018 to December 6, 2022 was 354.29%.<sup>56</sup>



43. When applied to the first and second pre-sale prices, the expected price per EQB ranges from \$USD 10.18 to \$USD 22.71. The expected value of Equibit's holdings as at December 6, 2022 when tied to this benchmark are USD \$6,700,000 to USD \$15,000,000, which are then

<sup>55</sup> See Crowe Soberman Report at [Schedule 4](#).

<sup>56</sup> See chart at [p. 24](#) of the Crowe Soberman Report.

converted using the exchange rate as at December 6, 2022 (1.3652) to arrive at a conclusion of \$9,200,000 at the low range and \$20,500,000 at the high range.<sup>57</sup>

44. Scenario 3 is reasonable as the most conservative estimate, taking into account the fluctuations in the cryptocurrency market from an acceptable and established benchmark, BTC. In the alternative, given that Mr. Sachkov is not entirely to blame for Equibit's loss, damages in the amount of \$1,744,711 are appropriate, representing the lowest potential loss of income for Equibit in 2020.<sup>58</sup>

#### **PART IV - ORDER REQUESTED**

45. Equibit respectfully requests this Court grant the following Order:

- granting the motion for default judgment as against Mr. Sachkov;
- declaring that Mr. Sachkov is liable for Breach of Confidence, Breach of Trust, Breach of Fiduciary duty and Conspiracy, in addition to the breach of contract already ordered in Justice Myers October 5, 2022 Endorsement<sup>59</sup>; and,
- declaring that Mr. Sachkov shall pay the following amounts to Equibit:
  - damages at a range of \$9,172,425 to \$20,474,164 representing the low range of Scenario 3 of the Crowe Soberman Report;

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<sup>57</sup> Crowe Soberman Report at [para. 71](#).

<sup>58</sup> \$1,744,711 in 2020, [Horlacher Affidavit](#) at para. 22, DMR, Tab 2, p. 22; Horlacher Affidavit, DMR, Tab 2, [Exhibit M](#), p. 189.

<sup>59</sup> [Endorsement of Justice Myers dated October 5, 2022](#), SSDMR, Tab 1, Exhibit A.

- In the alternative, damages in the amount of \$1,744,711, representing the lowest potential loss of income for Equibit (in 2020).<sup>60</sup>

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16 day of December, 2022.

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**Vincent DeMarco**

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<sup>60</sup> \$1,744,711 in 2020, [Horlacher Affidavit](#) at para. 22, DMR, Tab 2, p. 22; Horlacher Affidavit, DMR, Tab 2, [Exhibit M](#), p. 189.

**SCHEDULE “A” LIST OF AUTHORITIES**

<b>TAB</b>	<b>CASE</b>
1	<i>Nelson v. Gokturk</i> <a href="#">2021 BCSC 2301</a>

## SCHEDULE "B" STATUTES AND REGULATIONS

### *Rules of Civil Procedure RRO 1990, Reg 194*

#### **Affidavits**

##### *Format*

#### **4.06**

##### *Contents*

(2) An affidavit shall be confined to the statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except where these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 4.06 (2).

#### **Consequences of Noting Default**

**19.02** (1) A defendant who has been noted in default,

- (a) is deemed to admit the truth of all allegations of fact made in the statement of claim; and
- (b) shall not deliver a statement of defence or take any other step in the action, other than a motion to set aside the noting of default or any judgment obtained by reason of the default, except with leave of the court or the consent of the plaintiff. R.R.O. 1990, Reg. 194, r. 19.02 (1).

#### **By Motion for Judgment**

#### **19.05**

(3) On a motion for judgment under subrule (1), the judge may grant judgment, dismiss the action or order that the action proceed to trial and that oral evidence be presented. R.R.O. 1990, Reg. 194, r. 19.05 (3).

#### **Facts Must Entitle Plaintiff to Judgment**

**19.06** A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

#### **Effect of Default Judgment**

**19.07** A judgment obtained against a defendant who has been noted in default does not prevent the plaintiff from proceeding against the same defendant for any other relief

**EQUIBIT GROUP LTD.**  
Plaintiff/Moving Party

-and-

**ATTORNEY GENERAL OF CANADA et al.**  
Defendants/Responding Parties

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**MOVING PARTY'S FACTUM**

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