

AMENDED THIS 10 Nov 2023 PURSUANT TO  
MODIFIÉ CONFORMÉMENT À

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L'ORDONNANCE DU

DATED/FAIT LE 26 Oct 2023

REGISTRAR GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-23-00697772-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

REGISTRAR GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

B E T W E E N:

AIMIA INC.

Plaintiff

- and -

CHRISTOPHER MITTLEMAN, MITHAQ CAPITAL SPC, and MILKWOOD  
CAPITAL (UK) LTD.

Defendants

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

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Lawyers for the Defendant,  
Milkwood Capital (UK) Ltd.

## CLAIM

1. The Plaintiff, Aimia Inc. (**Aimia** or the **Company**) claims against the Defendants as follows:

- (a) A declaration that the Defendants, Mithaq Capital SPC (**Mithaq**), Milkwood Capital (UK) Ltd. (**Milkwood**), and Christopher Mittleman are joint actors or are acting jointly or in concert (**Joint Actors**) under the *Securities Act*, R.S.O. 1990, c. S. 5 and the regulations and instruments adopted thereunder (**Securities Act**);
- (b) An order requiring the Joint Actors to correct their public disclosure so as to disclose:
  - (i) that they are or were acting jointly and in concert; and
  - (ii) the collective shareholdings of the Defendants during their joint actorship.
- (c) A declaration that the Joint Actors have breached the early warning disclosure requirements set out in National Instruments 62-103 and 62-104;
- (d) A declaration that Mithaq and Milkwood breached the take-over bid regime set out in National Instrument 62-104 and acquired shares unlawfully;
- (e) A declaration that Mithaq and Milkwood purchased shares of Aimia in breach of the moratorium provisions set out in section 5.3 of National Instrument 62-104;
- (f) An order under section 105 of the *Securities Act* requiring Milkwood and Mithaq to sell the shares they acquired while in breach of the moratorium provisions set out in section 5.3 of National Instrument 62-104 on the open market;

- (g) An order under section 105 of the *Securities Act* confirming that Milkwood and Mithaq were, and remain, prohibited from voting the shares they acquired while in breach of the moratorium provisions set out in section 5.3 of National Instrument 62-104;
- (h) A declaration that Mithaq cannot proceed with any take-over bid (including the proposed take-over bid announced October 5, 2023) unless and until it rectifies its disclosures and the Joint Actors sell the shares that they acquired unlawfully;
- (i) A declaration that all of the Joint Actors had and continue to have material non-public information;
- (j) A final order prohibiting Mr. Mittleman from:
  - (i) using or divulging Confidential Information contrary to the Confidentiality Provision of the Letter Agreement on the terms therein;
  - (ii) engaging in the activities listed in the Non-Disparagement Provision of the Letter Agreement on the terms therein; and
  - (iii) engaging in the activities listed in the Standstill Provision of the Letter Agreement on the terms therein, including providing investment management services in respect of shares of Aimia.
- (k) A declaration that Christopher Mittleman has breached the Letter Agreement and that Mithaq and Milkwood participated in that breach;
- (l) Damages for the costs incurred by Aimia as a result of the Defendants' unlawful conduct in an amount to be determined at trial;

- (m) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (n) The costs of this proceeding, plus all applicable taxes; and
- (o) Such further and other relief pursuant to section 105 of the *Securities Act* as this Honourable Court may deem just.

## **A. OVERVIEW**

2. Following an internal investigation, Aimia brought this action to stop the Defendant, Christopher Mittleman, a former insider with access to a range of sensitive, confidential and non-public information, from breaching his confidentiality and standstill obligations.

3. On April 17, 2023 and April 27, 2023, Aimia obtained injunctive relief requiring Mr. Mittleman to make disclosure in respect of his actions.

4. Through the delivery of this evidence and further evidence obtained throughout the course of this proceeding, Aimia learned for the first time that that the Defendants were joint actors under the *Securities Act* and jointly (a) planned to take control of Aimia; (b) took advantage of non-public information known to Mr. Mittleman about Aimia; (c) coordinated purchases of Aimia shares; (d) jointly acquired shares in Aimia in excess of 20% as early as January 2023; (e) unlawfully failed to make a mandatory take-over bid despite crossing the 20% threshold; and (f) actively worked to oust the management of Aimia. None of this was disclosed to the market despite the Joint Actors' obligations to do so.

5. The plan to take control of Aimia is continuing. On October 5, 2023, Mithaq (through its Canadian subsidiary) announced that it would be proceeding with a take-over bid of the company based on a lower share price than when it was obliged to make a mandatory take-over bid earlier in the year.

6. During this same period, Mr. Mittleman repeatedly breached his obligations to Aimia under a letter agreement dated March 29, 2022. The Joint Actors were made aware of Mr. Mittleman's obligations to Aimia and yet participated and encouraged Mr. Mittleman's breaches:

Anyway, I am besides myself with frustration. Yet, I am not supposed to be speaking out on the matter so please keep my comments between us. Seriously, Aimia would likely fire me immediately if they saw this email.

[...]

Again, please keep this email between us. I'm not supposed to be talking to shareholders about Aimia without Aimia approving in advance, but this is an urgent matter.

7. Aimia seeks the Court's assistance to protect the integrity of the market for its shares and to put an end to the Defendants' unlawful conduct and unlawful interference with its business.

## **B. THE PARTIES**

8. Aimia is a corporation formed pursuant to the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (**CBCA**) with its head office in Toronto, Ontario. Aimia's common shares are publicly traded and listed on the Toronto Stock Exchange under the symbol "AIM". Aimia is a holding company and in the business of making long-term investments in other businesses through minority or controlling stakes.

9. Aimia is the parent of its indirect, wholly-owned subsidiary Mittleman Investment Management LLC (**MIM**). MIM is an SEC-registered investment adviser that provides discretionary portfolio management services to its clients.

10. The Defendant, Christopher Mittleman, was the Chief Investment Officer (**CIO**) of Aimia until March 29, 2022, and a member of Aimia's Board of Directors (the **Aimia Board**) until May of 2022. Mr. Mittleman was also the CIO of MIM until he was terminated with cause on March 27, 2023. At all material times, Mr. Mittleman controlled the voting rights associated with

approximately 6% of Aimia's shares by virtue of his position as CIO of MIM and approximately 0.53% of Aimia's shares in his personal capacity.

11. As a director and officer of Aimia and the CIO of MIM, Mr. Mittleman was a fiduciary of Aimia and MIM and was privy to and came into possession of a range of sensitive, non-public confidential and/or privileged information including deliberations of the Aimia Board concerning potential investment targets, the non-public details of Aimia's acquisitions and sensitive internal tax assessments.

12. The Defendant, Mithaq is a company existing under the laws of the Cayman Islands and one of the investment vehicles of a family office based in Saudi Arabia. Mithaq currently holds 30.96% of Aimia's common shares.

13. The Defendant, Milkwood is an asset manager based in the United Kingdom. Milkwood holds interests in a number of other companies and owns or controls approximately 2.58% of Aimia's common shares.

### **C. BACKGROUND**

14. In January 2019, Aimia completed its sale of the Aeroplan loyalty program to Air Canada. The transaction resulted in significant cash consideration to Aimia and became part of Aimia's transition from a loyalty business to an investment business.

15. In or about June of 2020, Aimia agreed to acquire MIM. Following the acquisition, Mr. Mittleman was appointed to the Aimia Board and named CIO of Aimia.

16. Effective March 29, 2022, Mr. Mittleman transitioned out of his role as CIO of Aimia, and agreed not to seek re-election at Aimia's next annual general meeting of shareholders. Mr. Mittleman was also appointed CIO of MIM. The terms of this transition were memorialized in two agreements:

- (a) a settlement agreement between Mr. Mittleman and Aimia (a Canadian entity) dated March 29, 2022 and governed by the laws of the Province of Ontario (the **Letter Agreement**); and
- (b) an Executive Employment Agreement between Mr. Mittleman and MIM (a U.S. entity) dated March 29, 2022 and governed by the laws of the State New York (the **Employment Agreement**).

17. Mr. Mittleman entered into the Letter Agreement and Employment Agreement willingly and with full knowledge of their contents and the benefit of independent legal advice.

#### **D. THE AGREEMENTS**

18. Under the Letter Agreement, Mr. Mittleman received significant consideration including:

- (a) The immediate payment of funds on account of salary and bonus payments;
- (b) The ability to continue to benefit from Aimia's Deferred Share Unit Plan, including the retention of all vested interests under the plan;
- (c) A secured term loan on preferential terms;
- (d) The salary and benefits he would gain under the Employment Agreement; and
- (e) A full and final release from Aimia in respect of any claims that the Company had in respect of Mr. Mittleman's conduct as a director, officer or shareholder of the Company up to the date of the Letter Agreement.

19. In exchange, Mr. Mittleman agreed to a number of time-limited restrictive covenants including the following:



- (a) Section 8 – Confidentiality and Non-Disclosure: to not use or divulge any information of a confidential or proprietary nature that pertains in any way to the Company or any of its affiliates, including “research and development, corporate information, financial information...lists of any clients, account holders of the Company and its affiliates...in whatever form” (the defined term “Confidential Information” in the Letter Agreement hereinafter referred to as **Confidential Information**). By way of written correspondence, Mr. Mittleman previously acknowledged that any information about Aimia’s potential investment targets constitutes Confidential Information and that he would treat such information with the utmost precaution. Mr. Mittleman agreed to protect all Confidential Information both during his tenure with the Company and its affiliates and at any time thereafter and to return or destroy all Confidential Information following the termination of the Employment Agreement (the **Confidentiality Provision**);
- (b) Section 7 – Non-Disparagement: to not disparage the Company or its affiliates, or any of its respective officers, directors, shareholders or other equity holders, including but not limited to making any statements expressed as a fact, opinion or otherwise, that disparages, maligns, defames, libels or slanders the foregoing (the **Non-Disparagement Provision**); and
- (c) Section 4 – Standstill: to not, directly or indirectly or acting jointly in concert with others:
- (i) acquire or make any proposal to acquire or solicit offers to sell any securities, assets or liabilities of the Company or its affiliates;

- (ii) propose or offer to enter into any take-over, restructuring, recapitalization, liquidation or similar transaction involving the Company or any of its affiliates;
- (iii) solicit or participate in the solicitation of any proxies to vote any securities of the Company;
- (iv) seek to advise or influence any person with respect to the voting of any securities of the Company;
- (v) seek representation on the Aimia Board or requisition or call a meeting of the Company's shareholders or otherwise seek to control or to influence the management, board or policies of the Company or its affiliates;
- (vi) interfere with or intercept the business opportunities or any contractual relationship or other business of the Company or its affiliates; and
- (vii) engage in any discussion or negotiation, conclude any understanding, enter into any agreement or arrangement, or advise, assist or encourage any other person or otherwise evidence an intention or desire in connection with any of the foregoing (the **Standstill Provision**).

20. Mr. Mittleman confirmed that "all restrictions and other provisions in this Agreement are reasonable and valid" and waived "all defences to the strict enforcement" of the same.

21. The Letter Agreement is clear that any breach of the Letter Agreement would cause irreparable harm, and that in the event of a breach Aimia and its affiliates would be entitled to specific performance and injunctive relief without proof of actual damages.

22. In an email exchange with Aimia's then-General Counsel, Mr. Mittleman agreed and

acknowledged that information about Aimia's investment and acquisition targets constituted Confidential Information within the meaning of the Letter Agreement.

23. The Employment Agreement contains provisions similar to the Non-Disparagement and Confidentiality Provisions set out in the Letter Agreement.

#### **E. THE DEFENDANTS WERE JOINT ACTORS**

24. In November 2022, Mithaq and Milkwood discussed Mithaq's investment in Aimia. At the time, Mithaq owned approximately 12.6% of Aimia's shares and was well aware that Milkwood had a history of activist investing. By December 2022, Milkwood decided to pursue Aimia as a target.

25. In December 2022, Milkwood contacted Mithaq to co-ordinate its purchases of Aimia shares. The express purpose of this coordination was to ensure that Mithaq and Milkwood would not bid against one another for Aimia shares and thus drive up Aimia's share price. During this period, and as a result of their coordination, Mithaq was not purchasing shares at the same time as Milkwood.

26. Milkwood was acquiring shares in order to obtain a sufficiently meaningful stake to execute on its activist plan. At this time, Milkwood informed Mithaq that it intended to bring about a change to Aimia's leadership. Mithaq told Milkwood that it shared Milkwood's goals. Mithaq and Milkwood began discussing options and sharing information on how they could take control of Aimia.

27. By January 2023, Mithaq and Milkwood knew and understood that (a) Aimia was the target of their activist campaign; (b) Mithaq and Milkwood would be increasing their shareholdings in Aimia to achieve their goals; (c) by coordinating their purchases of Aimia shares, they could acquire shares more cheaply; and (d) once they had a sufficient stake, they would force management change.

28. In early February, Milkwood had acquired 1.4% of Aimia's shares and largely paused its purchases of Aimia stock so that Mithaq could increase its stake in Aimia.

29. In furtherance of their joint goal, Mithaq took advantage of its relationship with Mr. Mittleman, which it had been cultivating for many months. Mithaq and Milkwood knew Mr. Mittleman was an insider of Aimia and had access to non-public information. They were also aware of Mr. Mittleman's obligations to Aimia. And yet, Mithaq encouraged these breaches of Mr. Mittleman's fiduciary obligations and obligations under the Letter Agreement, making specific requests of Mr. Mittleman that he disclose non-public information.

30. In these discussions, Mr. Mittleman (a) disparaged Aimia and its management; (b) suggested and encouraged Mithaq and Milkwood to take control of Aimia; and (c) passed on Confidential Information to Mithaq.

31. Milkwood was well aware of Mithaq's dealings with Mr. Mittleman. Mithaq kept Milkwood apprised of its progress with Mr. Mittleman and suggested "we can talk to him to take him onboard."

32. On February 3, 2023 and following acquisition of additional Aimia shares by Mithaq, Mithaq contacted Mr. Mittleman to urgently discuss Aimia:

There are some developments on Aimia's front so I think we should talk today, if possible. I would be free anytime after 2 hours from now. Please advise.

33. On the same day, Mr. Mittleman remarked on the news of Mithaq's acquisitions of Aimia shares to other Aimia shareholders:

Methinks the Saudis are sharpening their long swords...

34. Over the following days, Mithaq would inquire with Mr. Mittleman about the process to nominate directors, tactical considerations in doing so, and plans to corral support from Aimia shareholders:

I see. So if we nominates our directors, will Aimia resend the AGM circular to shareholders adding names of our directors?

[...]

In your view, what kind of poison pills can they use to stop us?

[...]

To gain support of other fellow top shareholders [...] we might self impose a 10-20 years lock up period for a vast majority of our shares (of Aimia) if not at all. This is in addition to the capped annual comp of not more than \$100k each for Turki and I.

35. On February 10, 2023, Mithaq updated Mr. Mittleman on the “action plan”, writing “From our side our British friend [Milkwood] will take the lead”. Mithaq explained the following day: “I mentioned on the lines that he [Milkwood] would play the activist role for us and would let Mithaq manage afterwards. [...] He will have board representation. We intend to reduce the size of the board so we will see whether Rhys [Milkwood] appoints 1 or 2 directors”.

36. By the end of February 2023, Mithaq had acquired 19.9% of Aimia’s shares. Thereafter, Milkwood resumed its purchase of Aimia shares.

37. On March 1, 2023, Mr. Mittleman prepared a draft press release announcing that Milkwood and Mithaq were requisitioning a meeting of Aimia shareholders to change the Board. Also on March 1, 2023, Milkwood reached out to another significant Aimia shareholder, the University of Michigan.

38. On Friday, March 3, 2023, before Milkwood and Mithaq could organize a requisition of a special shareholders’ meeting, Aimia filed notice of its Annual General Meeting of Shareholders (the **AGM**).

39. Under the terms of Aimia's Advance Notice By-law, Milkwood and Mithaq had until March 13, 2023 to propose nominees to the Aimia Board at the AGM. Mithaq discussed the deadline for nominations with both Mr. Mittleman and Milkwood and what would need to be done to meet that deadline.

40. By Monday, March 6, 2023, Milkwood and Mithaq were actively working together to compile a slate of directors to be nominated by them. Mithaq retained a proxy advisory firm to help it elect a majority of Mithaq and Milkwood's nominees at the AGM. Mithaq and Milkwood contacted and interviewed prospective candidates for the board. They also enlisted third parties to contact possible board candidates. In the introductory emails, Milkwood and Mithaq were described as joint actors seeking to effect board change at Aimia:

Rhys runs Milkwood Capital out of the UK and is in the process of pushing for a new board at a mid-sized Canadian company in the asset management business. He is doing this with the largest shareholder of the company and I think there is a solid prospect of success. [...]

41. Beginning on March 7, 2023, Mithaq and Milkwood began to coordinate through their legal counsel and have asserted common interest privilege over these communications.

42. On March 8, 2023, Mithaq and Milkwood had prepared a formal notice to comply with Aimia's Advance Notice Bylaw that included director nominees who were representatives of both Mithaq and Milkwood.

43. At or about this time, Mithaq and Milkwood jointly prepared a draft press release announcing their "Action Plan" in respect of the Company. Among other things, the Action Plan contemplated a reduced and recomposed board of directors consistent with plans discussed in February, and included additional operational changes.

44. The Action Plan also disclosed that Mithaq had a pre-existing plan to increase its share holdings to 30% of Aimia shares. Mithaq never disclosed its intentions to increase its stake to

30% in its early warning reports even though it disclosed this material non-public information to others including its joint actor, Milkwood. According to the Action Plan:

We [Mithaq] intended to obtain up-to to 30% equity stake through purchases made in accordance with applicable securities laws, but were unable to complete such purchases before Aimia's surprise announcement of the upcoming shareholder meeting and record date.

45. As part of this effort, Mithaq and Milkwood asked the University of Michigan if it was “willing to join the ‘group’”. After numerous emails and discussions, the University of Michigan advised “we will be unable to participate as part of your group” but would support Mithaq and Milkwood’s attempts to take control of Aimia.

46. During this period, the Joint Actors breached the *Securities Act* by failing to disclose that they were acting jointly and in concert, by failing to disclose their intentions to purchase additional shares and by failing to comply with their take-over bid obligations.

47. Mr. Mittleman breached his fiduciary obligations and the Letter Agreement by disparaging Aimia, by breaching the Standstill Provision and by sharing Confidential Information. Mithaq and Milkwood knew of these breaches or were wilfully blind to them and participated and encouraged the breaches. In particular, Mithaq and Milkwood participated in a breach of the Standstill Provision.

#### **F. THE DEFENDANTS CHANGE COURSE**

48. On or about March 10, 2023, Mithaq and Milkwood realized that if they went public with their nominations, the market would discover that they had been acting jointly and in concert and had triggered the mandatory take-over bid requirement when they collectively crossed the 19.9% ownership threshold. Mithaq and Milkwood realized that their failure to update their early warning disclosures and their failure to comply with the take-over bid regime would become apparent to the market.

49. For these reasons, Mithaq and Milkwood decided not to proceed with the public nomination of directors but to instead use the provisions of the *CBCA* to remove directors by voting against them.

50. As of March 10, 2023, each of the Joint Actors worked to defeat the Aimia slate of directors but minimized their communications to hide the fact that they were acting jointly and in concert.

51. As part of this plan, Mithaq and Milkwood stopped communicating by email and instead moved to WhatsApp – an encrypted communications tool. Mithaq still shared draft documents with Milkwood for Milkwood’s comment, including press releases encouraging shareholders to vote against Aimia’s slate of directors. However, instead of sending the draft press release by email as they had in the past, Mithaq took screen shots of each page of the documents to be shared and sent those documents as pictures to Milkwood through WhatsApp for Milkwood’s comment. Mithaq and Milkwood’s steps were specifically designed to hide the fact that they were joint actors.

52. At the same time, Mithaq ceased having written communications with Mr. Mittleman and repeatedly implored Mr. Mittleman to confine their discussions to telephone calls.

53. On March 23, 2023, Aimia raised concerns about the Defendants’ potential undisclosed joint actor conduct in breach of securities legislation with the Ontario Securities Commission.

54. On March 27, 2023, MIM terminated Mr. Mittleman’s employment for cause. Given the date of Mr. Mittleman’s termination, his obligations under the Letter Agreement continue as follows:

- (a) The Confidentiality Provision under section 8 is effective “at any time”;
- (b) The Non-Disparagement Provision under section 7 is effective “at all times”; and



(c) The Standstill Provision under section 4 is effective until March 29, 2026.

55. On or about March 31, 2023, and as part of the Defendants' plan to secure votes, Mr. Mittleman used the confidential MIM client contact list to send an email to MIM clients from his personal Gmail account in which he solicited their continued business in his personal capacity, and disparaged Aimia (the **Post-Termination Letter**):

Dear Client of Mittleman Investment Management,

Just after 4:00PM today, Friday, March 31st, an email was sent from Mittleman Investment Management ("MIM") to all clients indicating a decision was made to "wind down the firm" and that I was no longer with the firm. I did not authorize that email....

Aimia took this decision against my wishes and I believe with ulterior motives, after becoming aware that I have become unsupportive of leadership at Aimia and was planning to vote against current leadership at the upcoming Annual General Meeting in Toronto on April 18th. This difference of opinion means that it is time for me to move on, and for me to provide services to my clients elsewhere.

I ask that you sit tight and await further instructions from me. They should not be able to do anything to your accounts without your authorization. In the meantime, I am working on separating MIM or its clients from Aimia, so I can continue to provide you with the advice and service that you deserve. Aimia may be abandoning you – but I am certainly not.

My former email address no longer reaches me, so please don't use [chris@mittlemanbrothers.com](mailto:chris@mittlemanbrothers.com) anymore. Please use my personal email address: [cmitt24@gmail.com](mailto:cmitt24@gmail.com) or my mobile phone # 917-951-1782.

56. Neither Aimia nor MIM consented to Mr. Mittleman's use of the confidential client contact list or the solicitation of MIM's clients.

57. Aimia has also learned that Mr. Mittleman has been communicating with numerous MIM clients and Aimia shareholders with a view to providing them with investment management services and to solicit their commitment to vote against the Aimia Board. As part of his outreach, Mr. Mittleman continues to disparage members of the Aimia Board and the Company's management team in order to further the plan of the Defendants to take over Aimia.

58. For example, on April 4, 2023, Mr. Mittleman sent a letter to members of the Aimia Board in which he demanded that he be reinstated as the CIO of MIM or that MIM be transferred to him. Mr. Mittleman also confirmed the existence of the shareholder group and the group's as-yet-unannounced intention to change the Aimia Board:

I write seeking an immediate cessation of the wind-down of Aimia's wholly-owned subsidiary, Mittleman Investment Management ("MIM"), and the rescission of my termination as its CIO, as well as all legal action in progress against me. Instead, I would offer to buy back MIM from Aimia, which would resolve our conflict in a far less damaging way for the innocent clients and employees of MIM. I would also offer my agreement to abstain from voting MIM's shares (9.7% of shares outstanding) at the upcoming AGM on April 18, 2023. Given the increasingly obvious opposition that you will face at that meeting, from Aimia's largest shareholder, Mithaq (19.99%), and many others, the abstention of MIM's shares offers you at least a chance to survive (garner the necessary 50% in favor) the vote at that AGM. Without MIM's abstention, basic math would argue that a less than 50% outcome is almost a certainty....

Lastly, no board facing a shareholder insurrection can possibly believe that it has a mandate to act against an asset (MIM) that the insurgent shareholders, with a stake of ownership between them (20%+) which in Canada is deemed "effective control," clearly want to protect and promote. So, why defy them?

59. As of the date of Mr. Mittleman's letter, and in breach of the disclosure requirements under the *Securities Act*, none of the Defendants had publicly disclosed that they had formed a group of "insurgent shareholders" or that they intended to vote their shares at the AGM so as to turnover the Aimia Board.

60. For example, Mithaq did not publicly announce its intention to vote against the re-election of the Aimia Board until two days later, on April 6, 2023 – many months after the Defendants had shared non-public and Confidential Information and breached the Standstill Provision. Days before Mithaq published this press release, it had shared a draft with Milkwood.

61. On April 17, 2023, Aimia obtained interim injunctive relief from this Court enjoining Mr. Mittleman from breaching the Letter Agreement and requiring that he disclose all Confidential Information in his possession, power or control.

62. The AGM was held on April 18, 2023. Despite the coordinated efforts of the Joint Actors, Aimia succeeded in having 7 of 8 of its director nominees elected to the Board.

63. Aimia obtained further interlocutory relief against Mr. Mittleman on April 27, 2023 requiring Mr. Mittleman to disclose records relating to breaches of the Standstill Provision in the Letter Agreement.

64. On May 1, 2023, Mr. Mittleman gave evidence by sworn affidavit that he had not had any communications with other shareholders in relation to the matters listed in the Standstill Provision:

Although I have had communications with numerous shareholders of Aimia since February 1, 2023, none of those communications were in relation to the matters listed in section 4 of the Letter Agreement [the Standstill Provision].

65. Mr. Mittleman's evidence was plainly not true. On May 11, 2023, Mr. Mittleman gave further evidence that he indeed had communications with other shareholders in breach of the Standstill Provision and turned over written communications between himself and the other Defendants. Aimia had not seen the communications until this disclosure was made.

## **G. POST-AGM CONDUCT**

66. After the AGM, Aimia commenced this action against the Defendants and brought motions for further injunctive relief. On September 20, 2023 Aimia settled its injunction motions as against the Defendants on the understanding that all of the outstanding issues would be resolved by way of an expedited trial in January of 2024.

67. On October 5, 2023, Mithaq (through its Canadian subsidiary) announced it would commence a take-over bid for Aimia. Mithaq's October 5, 2023 announcement was specifically designed to disrupt Aimia's internal corporate affairs and an attempt to take over Aimia before a decision in this litigation is rendered.

## H. SECURITIES LAW

68. At all material times and pursuant to the *Securities Act*, Mr. Mittleman was in a special relationship with Aimia and was prohibited from purchasing or selling securities of Aimia with the knowledge of a material fact or material change with respect to Aimia that has not been generally disclosed.

69. At all material times and pursuant to the *Securities Act*, Mithaq was in a special relationship with Aimia and was prohibited from purchasing or selling securities of Aimia with the knowledge of a material fact or material change with respect to Aimia that has not been generally disclosed.

70. Additionally, each of Mr. Mittleman and Mithaq are also bound by the anti-tipping prohibitions of the *Securities Act* and prohibited from informing another person of any material fact or material change that has not been generally disclosed. Indeed, Mr. Seemab of Mithaq advised Mr. Mittleman in writing that he had been counselled to stop coordinating with other shareholders in light of the “tipping” prohibitions in the *Securities Act*.

71. As a shareholder holding more than 10% of Aimia’s common shares, Mithaq is required to make public disclosure under national instruments adopted pursuant to Part XX of the *Securities Act*, including National Instruments 62-103 and 62-104, if:

- (a) Mithaq or any of its joint actors acquire ownership, control or direction of 2% or more of Aimia’s shares; or
- (b) there is any change in a material fact set out in Mithaq’s prior disclosure.

72. By law, Mithaq’s public disclosure must include:

- (a) the names of any joint actors, including any persons with whom Mithaq has any agreement, commitment or understanding with respect to the acquisition or voting of shares;
- (b) the percentage of Aimia's shares collectively owned, controlled or directed by Mithaq and its joint actors;
- (c) any exemption from securities legislation on which Mithaq is relying in making an acquisition of Aimia shares; and
- (d) Mithaq's plans or future intentions and the plans and future intentions of any of its joint actors that relate to or would result in the acquisition of additional Aimia shares, a change in the Company's Board or management, a material change in the Company's business or corporate structure, a solicitation of votes from other shareholders or any similar action.

73. These mandatory disclosure requirements are designed to ensure that the market is fully informed about the accumulation of significant blocks of shares because of the effect such consolidation may have on share price or liquidity and the influence that significant shareholders may exert over shareholder votes and the business of the company.

74. The mandatory disclosure requirements are also designed to ensure that acquisitions are made in accordance with the take-over bid rules under the *Securities Act*. Among other requirements, a shareholder that gains more than 20% ownership, control or direction of a public company's shares—whether on its own or together with joint actors—must make an offer to acquire all of the company's shares unless an exemption applies.

## **I. MISCONDUCT OF THE DEFENDANTS**

### **i. Use of Confidential and Non-Public Information**

75. Mr. Mittleman disclosed to the Defendants non-public and Confidential Information that he obtained in his capacity as a former officer of Aimia and MIM. These documents were disclosed to the Defendants as part of a joint effort to amass votes and control the outcome of the Company's AGM contrary to the Confidentiality Provision, the Non-Disparagement Provision and the Standstill Provision.

76. For example, Mr. Mittleman gave the Defendants non-public and Confidential Information such as:

- (a) Aimia's internal and sensitive tax analysis;
- (b) information on investment targets considered by the Aimia Board, including presentations containing sensitive, non-public financial information that were obtained by Aimia in the process of conducting due diligence;
- (c) information related to Board deliberations and compensation; and
- (d) files labelled "PRIVILEGED & CONFIDENTIAL".

77. At all times, the Defendants were aware that Mr. Mittleman was an insider of Aimia and aware that he was breaching his obligations to the Company and sharing non-public information.

As he wrote to the Defendants:

Yet, I am not supposed to be speaking out on the matter so please keep my comments between us. Seriously, Aimia would likely fire me immediately if they saw this email....

I trust you'll keep this in confidence. I share it with you at great risk to myself, but it's important that you know this history. No one else outside of Aimia does, except for you and Asif.

78. Mithaq and Milkwood participated in a breach of the Letter Agreement, and in particular, the Confidentiality Provision, the Non-Disparagement Provision and the Standstill Provision.

**ii. Coordinated Acquisitions**

79. At all times the Defendants sought to amass shares and votes in advance of Aimia's AGM without alerting Aimia or the market to their plan. The group secretly, and for a common purpose, coordinated its acquisitions to avoid triggering securities law requirements such as (a) the early warning disclosure requirement once a shareholder or group of shareholders control 10% or more of a public company and (b) the take-over bid requirements triggered once a shareholder or group of shareholders control 20% or more of a public company.

80. Over the course of 2023 and leading up to the "surprise announcement" of the AGM, Mithaq increased its ownership stake in Aimia from approximately 12.6% to 19.9%. Mithaq further increased its equity stake to 30.96% in May 2023, following the AGM.

81. Both Milkwood and Mr. Mittleman were aware of Mithaq's plan even though the market was not.

**iii. Joint Plan to Take Control of Aimia Board**

82. Throughout February to April 2023, the Defendants advanced their plan to reconstitute the Aimia Board. At no time did they advise the market of their plans.

**iv. Failure to comply with Take-Over Bid Regime**

83. As early as January 2023, the Defendants jointly crossed the 20% mandatory take-over bid threshold.

84. Mithaq was aware of the take-over bid regime and understood the implications of crossing the 20% threshold. On February 2, 2023, Mr. Seemab sent an email to Mr. Mittleman with the subject line "Exceeding 20%?" and asked for help understanding "the process/implications if an

investor exceeds the 20% equity threshold in the Canadian market?”

85. Mr. Mittleman advised Mr. Seemab that “if an activist’s goals can be achieved without incurring the complications of crossing the mandatory build [*sic*] threshold, that’s probably the easier / less expensive / better path. So I think 19.9% is probably sufficient”.

86. At no point have any of the Joint Actors publicly disclosed that they crossed the 20% mandatory take-over bid threshold nor have they disclosed the exemption on which they are relying to avoid having to make a mandatory bid to all of Aimia’s shareholders.

87. Had the Joint Actors disclosed their joint actorship when it first began, they would have had to make a mandatory take-over bid at a higher price than the trading price on October 2, 2023 that is the basis of Mithaq’s current take-over bid.

## **J. BREACH OF SECURITIES LAWS**

88. Mithaq breached National Instruments 62-103 and 62-104 by failing to file adequate early warning reports.

89. In particular, Mithaq’s early warning reports filed on February 3, February 9, April 6, April 19 and May 25, 2023 failed to disclose:

- (a) the identity of its joint actors, including Milkwood, Mr. Mittleman and other joint actors, the identity of whom is known to Mithaq;
- (b) the collective shareholdings of Mithaq and its joint actors;
- (c) the intentions of Mithaq and its joint actors, including the intention to acquire up to a 30% equity stake and to reconstitute the Aimia Board with a slate of directors that included representatives of Mithaq and Milkwood; and



- (d) the exemption on which Mithaq and its joint actors relied in not making a take-over bid when collectively crossing the 20% ownership threshold.

90. Mithaq continues to be in breach of the early warning regime set out in National Instruments 62-103 and 62-104.

91. The shares purchased by Mithaq and Milkwood on or after December 6, 2022 were acquired in breach of the moratorium provisions in section 5.3 of National Instrument 62-104:

### **Moratorium provisions**

**5.3 (1)** During the period beginning on the occurrence of an event in respect of which a report is required to be filed under section 5.2 and ending on the expiry of the first business day following the date that the report is filed, an acquiror, or any person acting jointly or in concert with the acquiror, must not acquire or offer to acquire beneficial ownership of, or control or direction over, any securities of the class in respect of which the report is required to be filed or any securities convertible into securities of that class.

**(2)** Subsection (1) does not apply to an acquiror that has beneficial ownership of, or control or direction over, securities that, together with the acquiror's securities of that class, constitute 20% or more of the outstanding securities of that class.

92. Together with its joint actors, Mithaq crossed the 20% ownership threshold in January 2023. Mithaq has never made a take-over bid in compliance with National Instrument 62-104, nor has it disclosed the exemption on which it relied in not making the required bid.

93. In addition, Mithaq disclosed to Milkwood and other shareholders its plans to take control of the Company, to acquire 30% of Aimia's outstanding shares and the existence of the Joint Actor group without providing this information to the market.

94. Having access to Confidential Information which is not generally disclosed, any take-over bid by Mithaq would breach the *Securities Act*.

95. Alternatively, a take-over bid by Mithaq constitutes an insider bid within the meaning of National Instrument 62-104 and Mithaq is obliged to ensure that an independent valuation is

obtained. Mithaq is not entitled to rely upon any exemptions given that it was acting jointly and in concert with Mr. Mittleman.

**K. UNLAWFUL CONSPIRACY**

96. The Defendants acted jointly and in concert for the purpose of taking over the Company.

97. To execute their plan, the Defendants engaged in multiple breaches of the *Securities Act* and participated in the inducement of several breaches of the Letter Agreement and Mr. Mittleman's fiduciary obligations. For example:

- (a) The Defendants' receipt of non-public and Confidential Information was a breach of the Confidentiality Provision in the Letter Agreement, Mr. Mittleman's fiduciary obligation to the Company and the anti-tipping rules under the *Securities Act*;
- (b) The Defendants' undisclosed coordinated acquisitions of securities, attempts to solicit proxies and votes and attempt to reconstitute Aimia's Board in order to take control of the Company's resources was a breach of the *Securities Act* and the Standstill Provision of the Letter Agreement;
- (c) The Defendants' failure to disclose that they were acting jointly and in concert, their solicitation activities, their intentions with respect to Aimia or the true purpose of their acquisitions was contrary to the mandatory disclosure rules under the *Securities Act*; and
- (d) Contrary to the rules under the *Securities Act*, the Defendants failed to make a mandatory take-over bid when they crossed the 20% threshold or otherwise failed to disclose the exemption on which they are relying despite their collective ownership, control or direction of more than 20% of Aimia's shares.

98. The Defendants' conduct was specifically directed at Aimia. At all material times, the Defendants were aware that injury to Aimia would result, and Aimia has suffered loss investigating and addressing the Defendants' misconduct as well as reputational harm.

#### **L. BREACH OF CONTRACT**

99. Mr. Mittleman breached the Letter Agreement during the course of, and following, his tenure as the CIO of MIM.

100. Mr. Mittleman committed, and the remaining Defendants participated in and induced, breaches of the following Covenants of the Letter Agreement:

- (a) The Confidentiality Provision by, among other things, divulging and receiving non-public Confidential Information;
- (b) The Non-Disparagement Provision, by, among other things, disparaging Aimia, its management and the Aimia Board; and
- (c) The Standstill Provision, by, among other things, participating in a group of undisclosed joint actors with a view to acquiring Aimia shares in order to change the Aimia Board and the Company's investment strategy.

101. The full scope of the Defendants' breaches are known only to the Defendants.

#### **M. BREACH OF FIDUCIARY DUTY**

102. As a former director and officer of the Company, Mr. Mittleman owes ongoing fiduciary duties to Aimia, including a duty of loyalty.

103. Mr. Mittleman breached, and the remaining Defendants participated in and induced, breaches of Mr. Mittleman's fiduciary duties to Aimia by, among other things:

- (a) sharing and misusing material non-public information and Confidential Information;
- (b) disparaging Aimia to shareholders, market participants, and MIM clients; and
- (c) seeking to solicit the clients of Aimia's affiliate, MIM.

104. By engaging in the conduct described herein, Mr. Mittleman failed to exercise the due care and loyalty required of a fiduciary in his position. Mr. Mittleman's breach of fiduciary duty has resulted in irreparable harm to Aimia's reputation and business, and the Defendants induced, participated in and benefitted from these breaches.

105. The full scope the Defendants' breaches are known only to the Defendants.

#### **N. BREACH OF CONFIDENCE**

106. In the course of his relationship with Aimia and MIM, Mr. Mittleman came to obtain Confidential Information including non-public Board deliberations about potential investment targets, highly confidential internal tax analysis and confidential client information.

107. Mr. Mittleman was conveyed such information in confidence as a result of his roles as a member of the Aimia Board, the CIO of Aimia and the CIO of MIM.

108. The Confidential Information was at all times and remains the exclusive property of Aimia or MIM. Mr. Mittleman had no right to disclose Confidential Information during his tenure with Aimia or MIM and has no right to possess or disclose Confidential Information following his termination on March 27, 2023.

109. Mr. Mittleman has divulged and utilized Confidential Information to Aimia's detriment. In particular, Mr. Mittleman has utilized the Confidential Information to further his breaches of his fiduciary obligation, duty of confidence and the Covenants in the Letter Agreement.

110. The Defendants induced, participated in and benefitted from these breaches.

111. The full scope the Defendants' breaches are known only to the Defendants.

**O. HARM**

112. The Defendants knowingly and maliciously used, and continue to use, unlawful means to further a conspiracy designed to cause harm to Aimia, the Aimia Board and Aimia's management team.

113. The Defendants' misconduct has caused and continues to cause irreparable harm to Aimia. Among other things, Aimia's non-public and Confidential Information is circulating among an unknown number of third parties; the conduct of Aimia's AGM has been tainted by securities law breaches; and the reputation of the Company and its officials continues to suffer as a result of the Defendants' ongoing disparagement and coordinated campaign to discredit the Company in order to solicit support for their take-over plans.

114. Separately, the Defendants' breaches have caused damages. Among other things, Aimia has incurred numerous costs responding to the baseless and untrue statements propagated by the Defendants to the market and in investigating the Defendants' conduct and engaging with regulatory authorities.

**P. LEGISLATION AND PLACE OF TRIAL**

115. Aimia pleads and relies upon the legislation referred to herein and the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 and the regulations made thereunder.

116. Aimia pleads and relies upon the *Securities Act*, including section 105.

117. Aimia is entitled to serve this Statement of Claim outside of Ontario without leave of the court pursuant to Rules 17.02(f), 17.02(g), and 17.02(i).

118. Aimia proposes that this action be tried in Toronto, Ontario.

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Court File No. CV-23-00697772-00CL

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**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

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