

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY: COMMERCIAL DIVISION

-----X

ARIEL X. BURT, individually and derivatively
on behalf of FORSYTHE LTD.,

Plaintiff,

-against-

LLUIS TORRENT JEREZ,

Defendant.

-----X

Index No.: 910717-23
Hon. Richard M. Platkin
Motion Seq. No. 001

**AFFIRMATION OF ARIEL X.
BURT IN SUPPORT OF HER
MOTION FOR A
PRELIMINARY INJUNCTION**

I, ARIEL X. BURT, plaintiff in the above-captioned action, affirm under penalty of perjury pursuant to CPLR 2106 the truth of the following:

1. I am the Plaintiff in the above-captioned action. I submit this Affirmation in support of my motion, brought by proposed Order to Show Cause, for a preliminary injunction pursuant to CPLR § 6301.

2. I am fully familiar with the facts set forth herein based upon my personal knowledge and my review of documents and materials in my possession concerning the matters at issue in this litigation.

Lluis Torrent and I Agree to Enter into a U.S.-Based Joint Venture, and Form Forsythe as the JV's Parent Company

3. I am the owner of 50% of the shares of Forsythe Ltd., a Bermuda-based company ("Forsythe").

4. In early 2020, Defendant Lluis Torrent Jerez ("Torrent") and I agreed to enter into a joint venture to pursue U.S.-based solar power projects.

5. Torrent and I both have extensive experience developing solar power projects around the world. We had worked together on a number of such projects prior to our agreement to enter into the joint venture.

6. Prior to entering into the joint venture, I had spent ten years actively developing solar projects in the United States and had made important connections in the industry.

7. In early 2020, I identified a potentially lucrative opportunity to develop solar power projects in New York.

8. Having previously worked with Torrent, who did not personally have relevant experience developing solar power projects in the United States, I discussed with Torrent the idea of entering into a joint venture to pursue these projects.

9. Pursuant to a strategy that Torrent and I developed, Torrent and I agreed to jointly form Forsythe to serve as our jointly owned parent company, which would in turn own additional U.S.-based subsidiaries and assets related to individual solar projects we would develop in the United States.

10. In January 2020, and to further this plan, Torrent formed Atlas Renewables LLC (“Atlas”) in Delaware. Torrent and I agreed to utilize Atlas as our U.S.-based holding company for our individual solar projects and assets located in the United States.

11. Torrent and I thereafter memorialized our agreement, and our broader goals for the joint venture, in a written Cooperation Agreement. A true and correct copy of the Cooperation Agreement is annexed hereto as **Exhibit A**.

12. Under the terms of the Cooperation Agreement, Torrent and I agreed that we would each hold a 50% interest in Forsythe which, in turn, would hold a 100% interest in Atlas.

13. The Cooperation Agreement describes unambiguously the intended corporate structure of our joint venture:

A parent company in Bermuda named “Forsythe” will be held 50/50 by [Torrent] and [Burt]. In any case Forsythe will hold 100% of all of the US companies, entities and assets. So therefore, it is currently foreseen that the Bermuda company holds 100% of the Delaware company “Atlas Renewables” which holds an LLC for each 6.5MWdc solar asset.

(See Ex. A, § 6).

Torrent Transfers Ownership of Atlas to Forsythe to Serve as the Parties’ U.S.-Based Holding Company

14. To put in place the corporate structure Torrent and I had expressly agreed upon and clearly memorialized in the Cooperation Agreement, Torrent and Forsythe then entered into the Atlas Renewables LLC Membership Interest Transfer Agreement (the “MITA”), pursuant to which Torrent transferred his 100% ownership interest in Atlas to Forsythe in exchange for a nominal purchase price of \$1,000. A true and correct copy of the MITA is attached hereto as **Exhibit B**.

15. The MITA was executed on September 4, 2020. Torrent executed the MITA on behalf of himself and on behalf of Forsythe, and I executed the MITA on behalf of Forsythe.

16. The terms of the MITA are clear and unambiguous. It provides that Forsythe “shall purchase from [Torrent], and [Torrent] shall sell to [Forsythe], 100% of [Torrent’s] total Interest in [Atlas] (the ‘Transferred Membership Interest’) for the aggregate purchase price of one thousand dollars (\$1,000) (the ‘Purchase Price’).” (MITA at § 1(a).) The MITA further provides that “[t]he Purchase Price shall be payable by [Forsythe] to [Torrent], and the Transferred Membership Interest shall be transferred by [Torrent] to [Forsythe], at 10:00 a.m. EST on September 10, 2020 (the ‘Closing’).” (Id. at § 1(b).)

17. The MITA provides that no additional paperwork or filings were required to effectuate the transfer of ownership to Forsythe:

Seller [Torrent] agrees and acknowledges that no certificate or certificates are necessary to evidence the Transferred Membership Interest that is being transferred by Seller to Buyer [Forsythe] hereunder; such transfer shall be deemed effective automatically, without further notice or instruction from Seller, at Closing.
(See Ex. B, § 1(b)).

18. Pursuant to the MITA, Torrent represented that:

Seller is the sole beneficial and record holder of the Transferred Membership Interest, and upon consummation of the transactions contemplated by this Agreement, Seller shall have transferred to Buyer and Buyer shall have obtained from Seller all right, title and interest in the Transferred Membership Interest, free and clear of any and all liens, mortgages, hypothecations, collateral assignments, charges encumbrances, title defects, security interests or claims (whether recorded or unrecorded) of any kind.
(See Ex. B, § 2(c)).

19. The MITA also includes the following chart reflecting the transfer of Atlas to Forsythe, and further provides that effective immediately upon closing, Torrent would have no further rights as a direct member of Atlas:

Each Member's Interest in the Company, adjusted to reflect the transfer of the Transferred Membership Interest by Seller to Buyer hereunder, is set forth below:

Member	Percentage Interest in Company Prior Sale of Transferred Membership Interest	Percentage Interest in Company Following Sale of Transferred Membership Interest
Torrent (Seller)	100%	0%
Forsythe (Buyer)	0%	100%

(See Ex. B, §§ 4, 5).

20. Upon information and belief, following execution of the MITA Torrent caused Forsythe to transfer to Torrent the nominal \$1,000 Purchase Price.

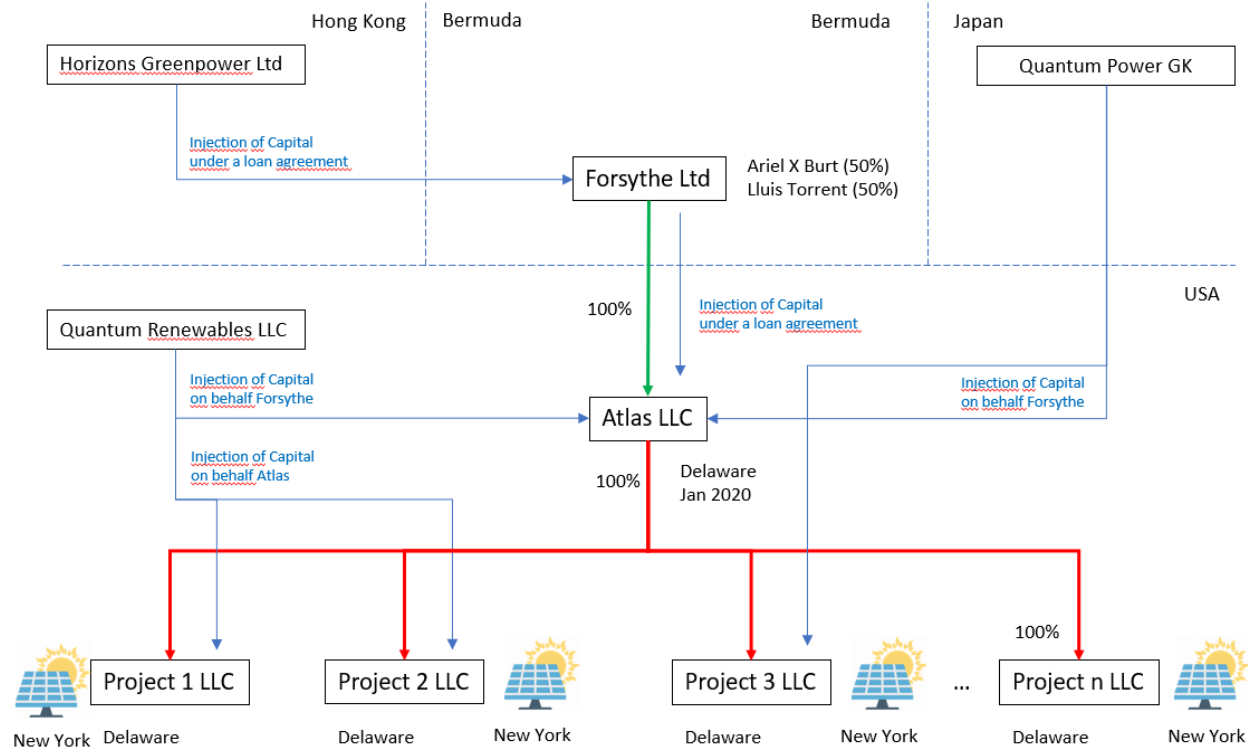
Torrent Repeatedly Affirms and Reaffirms that Forsythe is the Sole Member of Atlas

21. For the next several years, Torrent and I worked together to develop Atlas's various solar projects in New York, each of which was 100% owned, directly or indirectly, by Atlas. Torrent and I worked with other third parties to develop these projects, and Torrent consistently and repeatedly affirmed and reaffirmed, by his words and conduct, both in his dealings with me and with these third parties, that the MITA was effective and that Atlas was 100% owned by Forsythe.

22. For example, minutes of a Forsythe board meeting that Torrent and I attended on December 3, 2020 – approximately three months after execution of the MITA and the Closing date – document our discussions regarding strategy and budgeting for numerous Forsythe solar projects, all of which were owned 100% by Atlas. A true and correct copy of the minutes for this Forsythe board meeting is attached hereto as **Exhibit C**.

23. On February 9, 2021, ahead of Forsythe's March 18, 2021 board meeting and approximately five months after the MITA's Closing, Torrent emailed Forsythe's accounting firm a PowerPoint slide depicting Forsythe's 100% ownership of Atlas. True and correct copies of this email, and the PowerPoint attachment, are annexed hereto as **Exhibits D** and **E**, respectively.

24. Torrent's PowerPoint slide annexed to this email appears as follows:



25. Torrent also attached to this same email an Excel spreadsheet entitled “Forsythe_Accrued Expenses_20210209,” reflecting various accrued expenses attributed by Torrent to Forsythe and arising from Atlas’s various solar projects. A true and correct copy of this spreadsheet is annexed hereto as **Exhibit F**.

26. The minutes from Forsythe’s March 18, 2021 board meeting note, among other things, that Forsythe “had not yet produced any revenue” but that “the pipeline of projects was very promising and proceeding at pace...” A true and correct copy of the minutes from this Forsythe board meeting is annexed hereto as **Exhibit G**.

27. I attended the March 18, 2021 Forsythe board meeting with Torrent. The “pipeline of projects” described in the meeting minutes refers to Atlas’ various solar projects.

28. At no time during the March 18, 2021 Forsythe board meeting did Torrent ever express an opinion that he and not Forsythe was the owner of Atlas. At no time did he complain

that he never received the nominal \$1,000 payment from Forsythe under the Cooperation Agreement.

29. On March 15, 2021, more than six months after signing the MITA, in an email to a colleague, Benoy Thanjan, Torrent clarified the difference between Atlas and an entity called CAERO that I own 100%. A true and correct copy of this email is annexed hereto as **Exhibit H**.

30. Torrent explained in this email that he and I were utilizing my CAERO entity to pursue projects on behalf of Atlas because of CAERO's "well-known and well perceived brand in the USA." (*Id.*). As Torrent explained in this email:

Atlas Renewables is our operational company for all our developments in USA. Atlas Renewables is 100% controlled by an overseas entity which is 100% owned by Ariel and myself.

31. On March 21, 2021 – again, over six months following execution of the MITA – Torrent sent me an email in which he discussed incorporation of the various project-specific LLCs in the U.S. held or to be held by Atlas, the structure of Atlas, and a draft of Atlas' operating agreement. A true and correct copy of this email is annexed hereto as **Exhibit I**, and the Atlas Operating Agreement attached thereto is annexed as **Exhibit J**.

32. Regarding Atlas, Torrent stated to me in this email that: "Being Forsythe the entity who holds 100% membership interest, all the net losses and net profits generated by Atlas are for Forsythe." Torrent also noted in that email that Atlas's operating agreement incorporates terms of the Cooperation Agreement as well as "other critical aspects of the company." (*Id.*). Tellingly, Torrent then invited me to provide my thoughts on Atlas's operating agreement, and informed me that he was "[o]pen to include/delete/modify the necessary language" at my request. (*Id.*).

33. The Atlas Operating Agreement attached to Torrent's email gives Atlas's member, namely, Forsythe, important rights with respect to Atlas, including the right to approve certain

fundamental transactions by unanimous vote and the right to approve certain other actions, including the election and removal of managers, by majority vote. (See Ex. J, §§ 4.8(A), (B) & (C).)

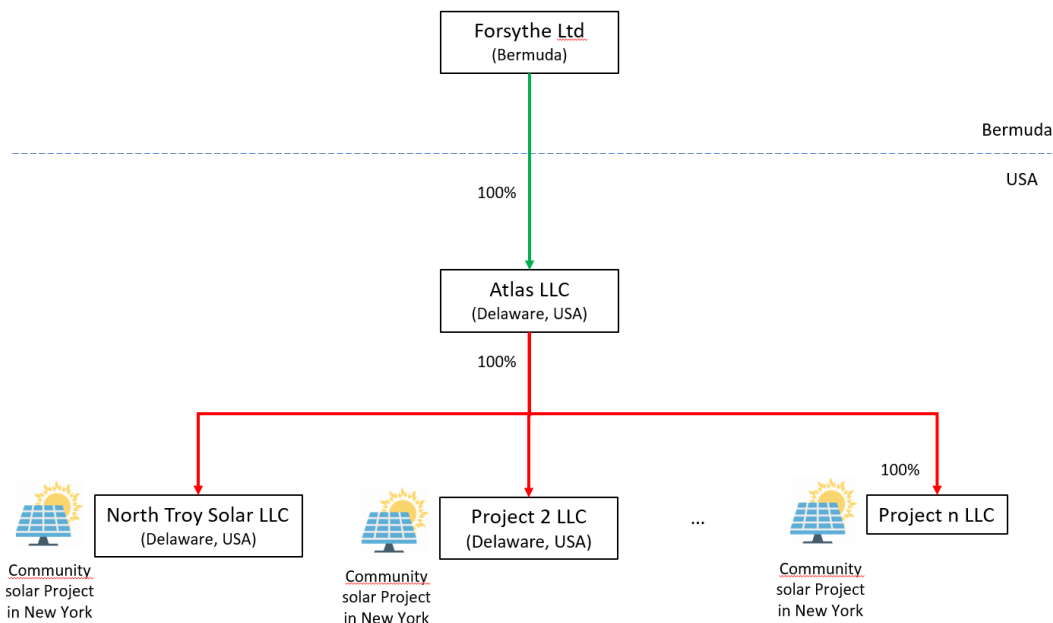
34. That same day, March 21, 2021, Torrent sent me an updated spreadsheet entitled “Forsythe_Accrued Expenses_20210319,” which again reflected various expenses attributed to Forsythe arising from Atlas’s operations, including Atlas’s rent payments. True and correct copies of Torrent’s email and the spreadsheet he attached to it are annexed hereto as **Exhibits K** and **L**, respectively.

35. A week later, on March 30, 2021, Torrent again reaffirmed Forsythe’s ownership of Atlas in an email to legal counsel, copying me. In that email, a true and correct copy of which is annexed hereto as **Exhibit M**, Torrent stated as follows:

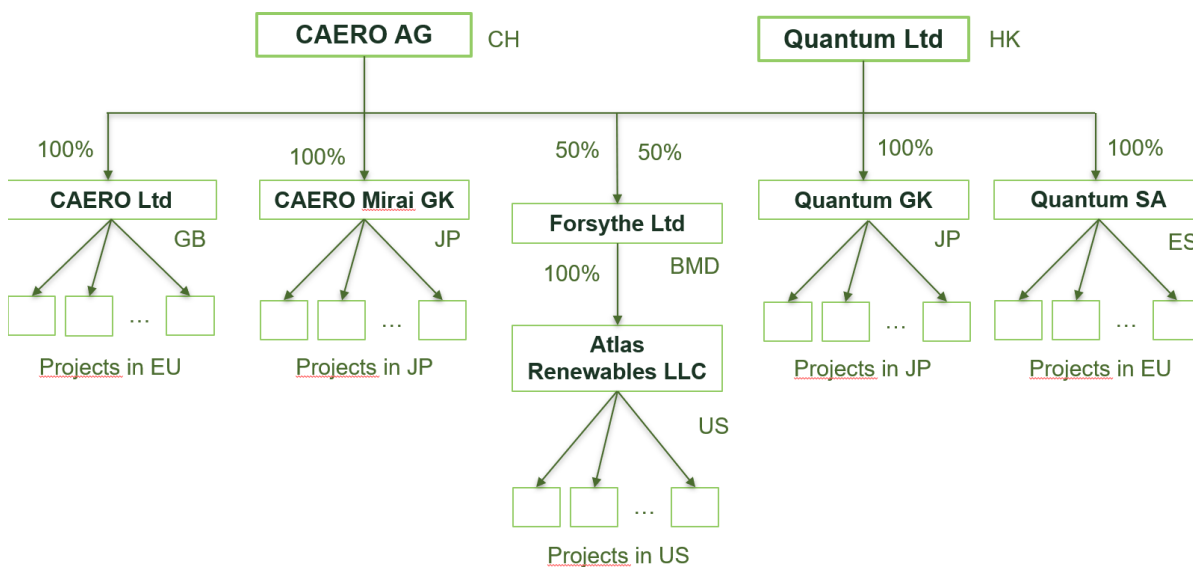
As you may remember, we are developing solar projects in the State of New York under the Atlas Renewables LLC flagship. As represented in the PPTX file, *Atlas is a 100% subsidiary of Forsythe Ltd, a Bermudian based company.* For each of the solar projects, we are incorporating a Special Purpose Vehicle (SPV), like North Troy Solar LLC, which has all the rights related to that specific project. All the incorporated SPVs are 100% subsidiaries of Atlas Renewables LLC.

(Emphasis added.)

36. Torrent attached another PowerPoint file to that email, a true and correct copy of which is annexed hereto as **Exhibit N**. Torrent’s PowerPoint file includes the following organizational chart:



37. On June 27, 2021, more than nine months after executing the MITA, Torrent sent me another email annexing another draft organizational chart he had created. True and correct copies of this email and the attached chart are annexed hereto as **Exhibits O** and **P**. Torrent’s organizational chart again clearly reflects Forsythe’s 100% ownership of Atlas:



I Pursue and Negotiate New Projects and Transactions on Behalf of Atlas

38. Throughout 2021, I was actively negotiating a deal on behalf of Atlas with a third party, Kruger Energy (USA) Inc. (“Kruger”), pursuant to which Kruger was to purchase several of Atlas’s solar projects in New York.

39. In June 2021, Kruger sent me and Torrent a letter of interest, addressed to us in our roles with the “CAERO Group,” expressing interest in acquiring certain Atlas solar projects including, among others, a project in North Troy, New York (the “North Troy Project”). A true and correct copy of Kruger’s June 2021 letter of interest is annexed hereto as **Exhibit Q**.

40. I then engaged in further negotiations with Kruger on behalf of Atlas. On November 15, 2021, Kruger sent me and Torrent an Exclusivity Extension Agreement regarding the anticipated sale of certain Atlas projects to Kruger.

41. I responded to Kruger the next day via email, attaching a copy of the Exclusivity Extension Agreement signed by me and Torrent on behalf of Forsythe and CAERO. A true and correct copy of this November 2021 email exchange is annexed hereto as **Exhibit R**. A true and correct copy of the executed Exclusivity Extension Agreement is annexed hereto as **Exhibit S**.

42. On November 23, 2021, Torrent and I attended another Forsythe board meeting during which we discussed the Kruger transaction. A true and correct copy of the minutes of this Forsythe board meeting is annexed hereto as **Exhibit T**.

43. As these minutes reflect, during this Forsythe board meeting Torrent and I discussed the terms of the Kruger transaction, its benefit to Atlas and the draft agreement that had been negotiated with Kruger. We also voted to approve the Kruger transaction and that “Atlas be given approval to proceed with the transaction and to enter into the Agreements as presented.” (See Ex. T).

44. At no time during the November 2021 Forsythe board meeting did Torrent ever assert that Atlas was not owned by Forsythe or raise any concerns regarding the effectiveness of the MITA.

45. Indeed, a vote to approve the Kruger transaction during a Forsythe board meeting would make no sense if Forsythe did not own and control Atlas.

46. At no point between September 2020 and June 2023, while I was working cooperatively with Torrent to develop Atlas's solar projects, did Torrent ever assert that the MITA was ineffective or complain that Forsythe, an entity he controlled, had failed to pay him the nominal \$1,000 payment under the MITA.

47. During this same timeframe, Forsythe loaned hundreds of thousands of dollars to Atlas at zero or very little interest, invested additional sums into Atlas without expectation of repayment, and paid certain operating costs and expenses of Atlas, all based on the understanding that Forsythe owned Atlas.

48. During this time, I also dedicated significant time, energy, money and other assets to Atlas based on my and Torrent's agreement and understanding that he and I each owned an indirect 50% interest in Atlas.

49. Among other things, I invested my own money into Atlas via loans to Forsythe, researched and identified potential projects and properties to pursue through Atlas, utilized my extensive network of contacts to connect Atlas with decisionmakers and other stakeholders in areas where projects were being pursued, actively negotiated with third parties on behalf of Atlas, hired all of Atlas's personnel, and revised and provided comments on draft agreements between Atlas and third parties.

50. I authored the underlying business model utilized by Atlas and, together with Atlas's financial team, developed the financial model that governed Atlas's various projects.

51. I also drafted the deal terms that guided Atlas's land acquisition strategy, and actively contributed to shaping that strategy. I attended site visits on behalf of Atlas, met and negotiated with landowners, and approved development and acquisition costs.

52. I met with and developed relationships with government officials regarding Atlas's projects and land use matters to facilitate a smooth regulatory process, fostered relationships with industry partners, technology partners and potential equity partners, and attended numerous meetings with third-party business prospects.

53. During that time period, together with Torrent, I made key business decisions relating to Atlas's various projects.

54. I also personally rented a property in Saratoga Springs, New York, that served as Atlas's first home office in New York.

55. Forsythe and I never would have engaged in the above efforts to develop Atlas's business, and I never would have approved Forsythe's investments in Atlas, if I and Forsythe did not have an interest in Atlas.

56. Beginning around April 2022, I became actively involved in discussions with an entity called Onyx Renewable Partners L.P. ("Onyx") regarding Onyx's potential acquisition of Atlas's North Troy Project.

57. Reflecting my material participation in negotiations with Onyx, at the outset of those discussions I suggested to Torrent and Atlas's COO, John Watson, that Atlas enter into a non-disclosure agreement with Onyx before beginning discussions. A true and correct copy of an

April 30, 2022 email from me to Torrent and Mr. Watson to this effect is annexed hereto as **Exhibit U**.

58. By email dated May 3, 2022, Torrent advised me that he was too busy that week to participate in an introductory call with Onyx. In response, on May 5, 2022 I suggested to Torrent that I and Mr. Watson handle the call without Torrent to get the ball rolling on discussions. A true and correct copy of this email exchange is annexed hereto as **Exhibit V**.

59. On June 14, 2022, Torrent requested that I review and provide comments on a draft term sheet from Atlas to Onyx, which I did, clarifying one of the provisions and approving transmittal of the term sheet to Onyx. A true and correct copy of my and Torrent's June 2022 email correspondence is annexed hereto as **Exhibit W**.

60. In the fall of 2022, Torrent and I emailed back and forth concerning the payment structure of the anticipated transaction between Onyx and Atlas. A true and correct copy of our fall 2022 email correspondence is annexed hereto as **Exhibit X**.

61. Thereafter, on November 29, 2022, Onyx sent me, Torrent and Mr. Watson a letter confirming its interest in acquiring the North Troy Project. A true and correct copy of this letter is annexed hereto as **Exhibit Y**.

62. During ongoing negotiations with Onyx, in February 2023 Torrent sent me a proposed draft email to Onyx regarding a suggested purchase price of \$2.25MM and other terms to which I responded with input. Notably, I suggested that we attempt to secure a higher purchase price between \$2.3MM and \$2.4MM. A true and correct copy of this February 2023 email exchange is annexed hereto as **Exhibit Z**.

63. On March 6, 2023, Onyx emailed me and Torrent confirming its agreement to acquire the North Troy Project for the purchase price of \$2.25 million, and attached a draft

exclusivity agreement (the “Draft Onyx Agreement”). A true and correct copy of this email is annexed hereto as **Exhibit AA**.

64. Torrent then sent me a draft response addressing certain terms of the exclusivity agreement, which I reviewed and approved. A true and correct copy of this email exchange is annexed hereto as **Exhibit BB**.

65. On March 8, 2023, Torrent then sent an email to John Watson with a redline of the Draft Onyx Agreement, copying me. A true and correct copy of this email is annexed hereto as **Exhibit CC**.

66. Throughout the Spring and Summer of 2023, I actively participated in further discussions and negotiations between Atlas and Onyx. I actively pushed for the higher purchase price of \$2.3MM-\$2.4MM during those negotiations, and was directly involved in shaping the terms and structure of the deal.

Torrent Suddenly Changes His Position and Cuts Me Out of our Joint Venture

67. After years of working cooperatively with me to develop Atlas’s projects and business strategy, in July 2023, suddenly and without warning, and just as Atlas neared consummation of its multi-million dollar deal with Onyx, Torrent launched his scheme to cut me and Forsythe out of the equation.

68. Around this time, I became aware that Torrent was not copying me on certain communications or including me in meetings involving Atlas projects.

69. I further realized that Torrent was misrepresenting to Onyx that he alone, and not Forsythe, was Atlas’s sole member.

70. By email sent on July 17, 2023, I raised my concerns with Torrent and emphasized the importance of correctly disclosing Atlas’s ownership structure to Onyx. In response, Torrent

abruptly and for the first time claimed that the MITA was never effectuated and that he remained the sole owner of Atlas, despite years of him affirming and reaffirming otherwise. A true and correct copy of the July 2023 email exchange is annexed hereto as **Exhibit DD**.

71. The only basis Torrent has asserted to justify his change in position is his claim that Forsythe, an entity he controls, never made the nominal \$1,000 payment to him under the terms of the MITA back in 2020.

72. In August 2023, I emailed Torrent and requested that I be included on all emails regarding the Atlas projects. In response, despite my having participated in Atlas's management and operations for years, Torrent advised me that I had "no right to attend any of the Atlas meetings because you have no interest, direct or indirect, in Atlas." A true and correct copy of this August/September 2023 email correspondence is annexed hereto as **Exhibit EE**.

73. Following Torrent's sudden and abrupt about-face, Torrent cut me and Forsythe off from access to information regarding Atlas's business dealings, including the status of the Onyx deal.

74. As a result, I retained counsel to pursue the instant lawsuit.

75. From the time that Torrent cut me and Forsythe off from information regarding Atlas through the minimal document production Torrent made in late April 2024, Forsythe and I had little to no insight into Torrent's management of Atlas.

Torrent Belatedly Produces Information in Discovery Revealing that He Continues to Conduct Business on Behalf of Atlas Without Forsythe's Involvement or Consent

76. Torrent made an initial, belated production of documents on April 24, 2024.

77. Upon reviewing these materials over the next several weeks, I learned that Torrent had caused Atlas to close the Onyx deal without informing me or Forsythe, and that Torrent had

diverted the sale proceeds, in a series of transfers, to himself and to separate entities he owns and controls, including an entity based in Hong Kong.

78. Attached hereto as **Exhibit FF** are true and correct copies of documents Torrent produced in discovery reflecting his unilateral closure of the Onyx deal for the total sale price of \$2,341,927.00, and his incremental transfer of the sale proceeds to himself directly and to entities he owns and controls. Those entities are Horizons Greenpower Ltd. (“Horizons”), and Quantum Renewables LLC (“Quantum”).

79. Horizons is an entity based on Hong Kong that Torrent owns and controls. (See, e.g., Exhibit E.).

80. Quantum is a company formed in Delaware that Torrent owns and controls.

81. Exhibit FF reflects that Torrent caused Atlas to transfer \$210,000.00 of the Onyx sale proceeds to Horizon on or around September 15, 2023 (DEF000227), and to then transfer another \$210,000.00 from the sale proceeds to Horizon on or around December 14, 2023. (DEF000223.)

82. Exhibit FF further reflects that Torrent caused Atlas to transfer \$1,370,000.00 of the Onyx sale proceeds to Quantum on or around September 15, 2023 (DEF000292), and to transfer another \$40,000 directly to Torrent himself on that same date. (DEF000252.)

83. Tellingly, the documents produced by Torrent reveal that the Onyx sale price ended up as the higher amount I had pushed for and negotiated with Onyx prior to Torrent cutting me and Forsythe off from Atlas’s business.

84. I also recently learned that Torrent continues to pursue additional, potentially lucrative Atlas transactions solely for his own benefit and while preventing me and Forsythe from

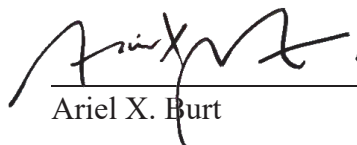
participating in Atlas's business or reaping the benefits of the Atlas projects that I spent years bringing to fruition.

85. As an example, on April 26, 2024, I received an email to Torrent regarding a transaction involving a prospective sale of an Atlas asset to Kruger. A true and correct copy of this email is annexed hereto as **Exhibit GG**.

86. Although Exhibit GG indicates that this particular transaction may not have closed, the email reveals that Torrent continues to engage in negotiations with Kruger and potentially other third parties regarding the sale of additional Atlas assets without including me or Forsythe in those negotiations or providing me or Forsythe with any information regarding those negotiations.

87. I affirm this 13 day of June, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated New York, New York
June 13, 2024



Ariel X. Burt