

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

B E T W E E N:

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF INSCAPE CORPORATION, INSCAPE INC.
AND INSCAPE (NEW YORK) INC.**

**RESPONDING MOTION RECORD
OF PREVOLV, INC
(Returnable March 23, 2023)**

March 23, 2023

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AND TO: **THE SERVICE LIST**

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC. (the "**Applicants**")

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TAB DOCUMENT

- 1. Affidavit of John Ewine sworn March 23, 2023

- A Exhibit "A" - Affidavit of John Ewine sworn March 4, 2023
 (without exhibits)

- B Exhibit "B" – Email from Jon Szczur, dated February 14, 2023

- C Exhibit "C" – Email chain beginning on March 3, 2023 between Stephen
 Moore and Philip Cho

- D Exhibit "D" – Email from Philip Cho dated March 6, 2023

Court File No. CV-23-00692784-00CL

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**AFFIDAVIT OF JOHN EWINE
(sworn March 23, 2023)**

I, JOHN EWINE, of the City of St. Paul, Minnesota, in the United States of America,
MAKE OATH AND SAY:

1. I am the President of Prevolv, Inc ("**Prevolv**"). As such, I have personal knowledge of the matters set out below, except where my knowledge is stated to be by way of information and belief, in which case I have stated the source of my information and believe that information to be true.

2. I swear this affidavit in response to the Affidavit of Eric Ehgoetz sworn March 21, 2023 (the "**Fourth Ehgoetz Affidavit**"), more generally, in response to the interim relief sought by the applicants (collectively, "**Inscape**"), namely that Prevolv:

- (a) Provide an accounting to Inscape and the Monitor of amounts received and/or expected to be received (the "**Inscape Product Collections**") from Prevolv's customers on account of the sale of certain products manufactured by Inscape (the "**Inscape Products**"); and

(b) Deposit the Inscape Product Collections with the Monitor to be held in trust pending a final determination or settlement of the issue of Prevolv's right to set-off.

3. Prevolv opposes the interim relief sought by Inscape.

4. I refer to my affidavit sworn on March 4, 2023 (the "**First Ewine Affidavit**") and filed in this proceeding, a copy of which is attached hereto and marked as **Exhibit "A"**. All capitalized terms in this Affidavit have the same meaning as set out in the First Ewine Affidavit, unless specifically defined otherwise herein.

5. The First Ewine Affidavit mistakenly defines the Affidavit of Eric Ehgoetz sworn February 28, 2023 as the "Second Ehgoetz Affidavit" when it is in fact the third affidavit sworn by Mr. Ehgoetz in this proceeding. I will refer to that affidavit as the "**Third Ehgoetz Affidavit**" herein. I otherwise adopt my evidence in the First Ewine Affidavit and expand upon some of it below.

Brief History of Dealings between Prevolv and Inscape

6. Prevolv is a commercial furniture dealer specializing in workstation design, office reconfiguration and furniture installation. The Inscape Products include certain lines of office furniture that work together as a system and are utilized by large organizations. These office furniture lines comprise a significant portion of Prevolv's offerings to its customers, with some of Prevolv's customers using Inscape Products, purchased, installed, repaired and maintained through Prevolv for nearly 25 years.

7. For Inscape's fiscal year ending April 2022, Prevolv purchased approximately USD \$4.9 million of Inscape Products. By the end of March 2023, Prevolv has purchased approximately USD \$6.1 million of Inscape Products.

8. In addition to the supplier-purchaser relationship between Inscape and Prevolv, in late 2019, Inscape approached Prevolv to work together to establish a new showroom location in Chicago (the “**Chicago Showroom**”). For the Chicago Showroom, Prevolv and Inscape entered into a commercial lease, as tenants, with Thor 816 W Fulton Owner LLC, as landlord. The agreement for the Chicago Showroom also provided that Prevolv undertake the cost of construction for the tenant improvements to the premises (the “**Buildout Costs**”). In exchange, Inscape agreed to provide rebates to Prevolv on sales of Inscape Products “to offset Prevolv’s funding the buildout,” until Prevolv had recovered the Buildout Costs, together with an agreed rate of return.

9. Construction in respect of the Chicago Showroom commenced on August 18, 2021 and was completed in March 2022. The Buildout Costs were approximately USD \$3.4 million before the landlord’s contribution of approximately USD \$1.6 million, plus the costs of financing.

10. A more fulsome description of the Buildout Costs and the agreement between the parties will be provided in a future affidavit in relation to Prevolv’s anticipated motion for leave to lift the stay of proceedings to permit the exercise of Prevolv’s set-off rights.

The Inscape Receivable

11. Inscape claims that USD \$2,147,490 is owing by Prevolv to Inscape for the purchase and sale of Inscape Products (the “**Inscape Receivable**”). However, some of the amounts are not yet due and payable in accordance with the payment terms in effect between the parties. In fact, some of the invoices are not due and payable until late April/early May.

12. Prevolv is in the process of reconciling the Inscape Receivable against its own records, inspecting and confirming the Inscape Products received, reconciling items that Inscape failed or refused to deliver, and reconciling the costs and expenses incurred, or that will be

incurred, to complete work as a result of Inscape's inability to deliver all of the Inscape Products ordered.

Inscape Continued to Complete Certain Orders

13. I learned about Inscape filing for CCAA protection on January 12, 2023 (the "**Filing Date**"). I understood that a CCAA filing in Canada was similar to a Chapter 11 filing under the US Bankruptcy Code insofar as Inscape, as the debtor company, would be able to continue operating its business with a view to restructuring its affairs.

14. This appears to have been confirmed, for example, in paragraph 1.5 of the Pre-Filing Report of the Proposed Monitor, which stated that the purpose of the filing was to "allow [Inscape] to conduct a wind-down and liquidation of their assets and business in an orderly fashion." The reference to "business" suggested that Inscape would be attempting sell its assets and business as a going concern. The same language was used in paragraph 1.5 of the First Report of the Monitor dated January 18, 2023.

15. Accordingly, I continued to engage with representatives from Inscape, including Mr. Ehgoetz, with respect to the completion and delivery of outstanding Inscape Products and the completion of "punch list" work necessary for Prevolv to meet its obligations to its end customers. "Punch list" items refer to certain standard parts necessary to install and assemble the Inscape Products. Often these punch list items arrive damaged or missing and furniture cannot be assembled or installed until these are delivered by Inscape. In turn, Prevolv cannot insist on payments from its customer until it is able to complete its work.

16. As Inscape continued to operate after the Filing Date under court protection, Prevolv acted in the ordinary course to advise Inscape of any issues with respect to deliveries and punch list items required. At no time during these discussions in respect of the completion of

outstanding orders did Inscape advise Prevolv that the manufacturing and supply of business would permanently cease. As such, Prevolv was also unaware of the basis on which Inscape decided to “maintain limited operations and complete these orders” as stated by Mr. Ehgoetz in paragraph 27 of the Fourth Ehgoetz Affidavit. From Prevolv’s perspective, Inscape was simply completing the purchase orders that it had accepted in the ordinary course of business.

No Commitment as to Payment Date or Amount

17. Shortly after the Filing Date, Inscape’s Chief Financial Officer – Jon Szczur – began to pressure me to immediately pay Inscape in advance as a condition to Inscape shipping the goods, contrary to the parties’ agreement of 60 day credit terms. Mr. Szczur indicated to me that immediate payment was something required as a result of the CCAA proceeding.

18. For Prevolv, payment in advance was not something that it was prepared to do based on its well-established business model, and more importantly, was contrary to the terms as previously agreed between the parties. I objected to this unilateral attempt to change the payment terms on phone calls with Mr. Szuzur, and ultimately informed him that Prevolv would not be paying in advance of shipment.

19. On January 23, 2023, I was notified that the product for which Mr. Szczur was requesting payment prior to shipping had shipped, and as such, it appeared to Prevolv that Inscape had decided to abide by the existing payment terms.

20. However, beginning in early February, Inscape made several requests that Prevolv commit to a payment date and confirm the amounts. As I explain in the First Ewine Affidavit, I refused to do so, and insisted that Inscape complete its work before we would discuss payment.

21. I reject the assertion at paragraph 30 of the Fourth Ehgoetz Affidavit that anything I said would have led Mr. Ehgoetz and others to believe that Prevolv would promptly pay the Inscape Receivable in full. For example:

- (a) on February 3, 2023, I attended a Teams meeting with Mr. Ehgoetz and other Inscape representatives, during which they requested that I commit to a date by which Prevolv would pay Inscape's outstanding invoices. I declined to make any commitment and suggested that it was premature to discuss payment until all of the orders were completed; and
- (b) On February 14, 2023, Inscape's Chief Financial Officer Jon Szczur emailed me and requested written confirmation that "[u]pon payment of liens and completion of punch items ...the receivables which approx. \$2MUSD will be paid by Prevolv." A copy of this e-mail is attached as **Exhibit "B"**. I did not respond to this email.

22. During this period, Inscape continued to ship Inscape Products and punch list items to complete the outstanding orders, while Prevolv continued to complete its work for its customers accordingly. Some of this work continues as of the date of this affidavit.

Prevolv Provides Notice of its Set-Off Rights

23. From the Filing Date until the end of February, Prevolv awaited information regarding Inscape's proposed marketing process to sell its assets and business, and remained hopeful that Inscape would be able to sell its business as a going concern.

24. However, I was surprised to read in the Third Ehgoetz Affidavit that Inscape had already completed a sales process and accepted two bids for substantially all of the assets – one for a single piece of equipment, and another for the remaining equipment, furniture and fixtures.

The Third Ehgoetz Affidavit stated the sales process would be set out in more detail in the Monitor's Second Report, which was served on March 2, 2023.

25. On Friday, March 3, 2023, a representative of the Monitor (Stephen Moore) wrote to Prevolv's Canadian counsel (Philip Cho of WeirFoulds LLP) advising that the Monitor's understanding was that Inscape had made "significant accommodations to [Prevolv]... all in the interests of preserving, in full, its accounts receivable," and requested Prevolv's confirmation that Inscape, the Monitor and Prevolv were "suitably aligned" prior to the pending court date (March 7, 2023). Mr. Moore specifically referenced portions of the Third Ehgoetz Affidavit and the Second Report of the Monitor that indicated Prevolv had committed to making payment in full within 60 days of shipment. That same morning, Mr. Cho responded to Mr. Moore to advise that he was still in the process of discussing the issues with Prevolv, but that his understanding was that the statements in the Third Ehgoetz Affidavit and Second Report were inaccurate. A copy of this email chain is attached as **Exhibit "C"**.

26. On March 6, 2023 (being the Monday), Mr. Cho wrote to Mr. Moore, with a copy to counsel for Inscape and counsel for the Monitor, to advise of Prevolv's position with respect to payment of the Inscape Receivable, and which attached a copy of the First Ewine Affidavit prior to its service to the Service List. A copy of this email is attached and marked as **Exhibit "D"**.

27. To be clear, Prevolv takes great exception to any implication in the Fourth Ehgoetz Affidavit that Prevolv waited to provide notice of its set-off rights and had led Inscape's representatives to believe that Prevolv would promptly pay the Inscape Receivable in full. Prevolv only insisted and expected that Inscape would perform its obligations to complete the outstanding purchase orders – nothing more, nothing less. Throughout that time, Prevolv was unaware of Inscape's intentions with respect to the ongoing manufacturing business and the Chicago Showroom. Inscape had not insisted on any commitments from Prevolv prior to completing the

outstanding orders. Inscape had not provided notice that it was disclaiming any of the agreements in relation to the Chicago Showroom. Prevolv even kept its Chicago team in place in the hopes that Inscape would continue operations or be sold as a going concern.

28. It was not until Prevolv was provided with the limited information available in the Third Ehgoetz Affidavit and the Second Report of the Monitor that it understood there was no longer any prospect for an ongoing business, whether operated by Inscape or by a new purchaser, such that it would be impossible for Prevolv to recover the Buildout Costs through rebates on future sales. Together with the Monitor's request for confirmation that Prevolv would be making payment of the Inscape Receivable in full, it was appropriate at that time for Prevolv to raise the issue of set-off rights as against the Inscape Receivable.

29. However, as Prevolv invited Inscape to begin the discussions around the various issues as between the parties, Inscape has to date, failed or refused to provide any meaningful position on the issues except to insist on full payment, denying any right to set-off. In fact, since Prevolv asserted its set-off rights, Inscape has failed or refused to sign the listing agreement for the Chicago Showroom, threatened to register mechanics' liens against properties occupied by Prevolv's customers, and made allegations of bad faith.

30. As of the date of making this affidavit, Inscape:

- (a) has not signed the listing agreement for the Chicago Showroom despite follow-up requests by the listing agent;
- (b) has not responded to Prevolv's counsel's request for the legal basis on which Inscape purports to have lien rights for the supply of office furniture;
- (c) has not registered any liens, but has not withdrawn its threat of doing so;

- (d) has not disclaimed any of the agreements in relation to the Chicago Showroom;
and,
- (e) has not indicated its intention with respect to its obligation to pay April rent for the Chicago Showroom.

Relief Sought on Inscape's Motion

31. Prevolv objects to the interim relief sought by Inscape against Prevolv.

32. With respect to the request for an accounting, Prevolv is not required – and should not be required – to account to Inscape for revenues it has received or will receive from its customers. This is confidential business information to which Inscape is not entitled under any contractual term between the parties. Further, the revenue which Prevolv realizes on the sale, installation and maintenance of Inscape products is not relevant to the amounts owing to Inscape or to Prevolv's set-off rights. These funds received by Prevolv are not received for the account of, or in trust for, Inscape.

33. Similarly, Inscape is not entitled to, nor should Prevolv be required to pay, any amount to be held in trust pending the resolution of Prevolv's set-off rights. Such a payment to the Monitor is akin to posting security for Prevolv's payment obligation to which Inscape is not entitled under any contractual term between the parties. Inscape has never requested, and has not bargained for, any security or collateral for Prevolv's payment obligation.

SWORN remotely by John EWINE stated as being located in St. Paul, Minnesota, USA, before me at the City of Toronto, in the Province of Ontario, on March 23, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



DocuSigned by:
Max Skrow
9F2CD6051682418...

Commissioner for Taking Affidavits

DocuSigned by:
John Ewine
4CCF272A8A274B5...

JOHN EWINE

This is **Exhibit "A"** to
the Affidavit of
John Ewine
sworn before me in
accordance with
O. Reg 431/20 this
23rd day of March, 2023

DocuSigned by:

Max Skrow

9F2CD6051682418...

Commissioner for Taking Affidavits

Court File No. CV-23-00692784-00CL

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

B E T W E E N:

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF INSCAPE CORPORATION, INSCAPE INC.
AND INSCAPE (NEW YORK) INC.**

**AFFIDAVIT OF JOHN EWINE
(sworn March 4, 2023)**

I, JOHN EWINE, of the City of St. Paul, Minnesota, in the United States of America,
MAKE OATH AND SAY:

1. I am the President of Prevolv, Inc ("**Prevolv**"). As such, I have personal knowledge of the matters set out below, except where my knowledge is stated to be by way of information and belief, in which case I have stated the source of my information and believe that information to be true.

2. I swear this affidavit to address a statement in the Affidavit of Eric Ehgoetz sworn February 28, 2023 (the "**Second Ehgoetz Affidavit**"), more specifically, paragraph 27 of the Second Ehgoetz Affidavit.

3. Prevolv is a commercial furniture dealer specializing in workstation design, office reconfiguration and furniture installation. Prevolv sells, installs, and services products from a number of manufacturers, including the Applicants (referred to herein as "**Inscape**").

4. Inscape's winding down of its operations pursuant to these Proceedings has resulted in Prevolv experiencing significant business interruptions and other challenges, including delays in the delivery of Inscape products and certain "punch list" items, all of which are necessary for Prevolv to complete its work, invoice, and collect payment from its customers.

5. I have engaged in discussions with representatives from Inscape, including Mr. Ehgoetz, with respect to these and other issues, and, while progress has certainly been made, one of the statements made at paragraph 27 of the Second Ehgoetz Affidavit is not accurate. Prevolv has not committed to making full payment of the Inscape receivables.

6. On January 30, 2023, I received an email from Ms. Madeleine Doherty, an Inscape collections analyst, providing me with a statement of accounts and requesting payment. I responded the next day and advised Ms. Doherty and Mr. Jon Szczur – Inscape's CFO – that due to late shipments and open punch list items, Prevolv would only be paying certain invoices, which we paid. A copy of this e-mail exchange is attached as **Exhibit "1"**.

7. Mr. Szczur then forwarded me a chart of unpaid Inscape invoices and asked to set up a call with me to discuss payment. I responded and advised Mr. Szczur that Prevolv was awaiting further shipments and the completion of punch list items, which I explained to him in this email exchange. A copy of this e-mail exchange, with attachments, is attached as **Exhibit "2"**.

8. I then attended a Teams meeting with Mr. Szczur, Mr. Ehgoetz, and other Inscape staff on February 3, 2023. The purpose of this meeting was for Inscape to provide me with an update regarding the resolution of outstanding punch list items and certain notices of intention to lien properties owned by Prevolv customers. At this meeting, Inscape requested that Prevolv commit to a date by which it would pay Inscape's outstanding invoices. I advised Inscape that it was premature to discuss payment, as these issues remained outstanding and had to be resolved

as a matter of priority. At no time during this meeting did I commit to Prevolv making full payment of the Inscape receivables.

9. On February 24, 2023, Mr. Szczur forwarded me a summary of all outstanding Inscape invoices and asked me to review and provide feedback with respect to them. According to this summary, the total amount which Inscape asserts is owed to it by Prevolv is \$2,114,345.22 USD. A copy of Mr. Szczur's email to me, together with the attached excel spreadsheets, is attached as **Exhibit "3"**. I understand the figure of \$2.8 million in the Second Ehgoetz Affidavit may be this amount converted to Canadian currency.

10. I note that Mr. Szczur's February 24, 2023 email to me is titled "Prevolv Payment Plan." At no time did Prevolv agree to enter into a payment plan with Inscape or otherwise agree to the amounts which Inscape asserts are owing and payable.

11. The \$2,114,345.22 USD which Inscape asserts is owed to it by Prevolv appears to reflect the total outstanding amounts invoiced by Inscape. It does not take into account:

- (a) rebates or credit notes to which Prevolv is entitled;
- (b) correction of incorrect amounts on invoices which Prevolv has raised with Inscape;
and,
- (c) Prevolv's rights of set-off, including in respect of chargebacks.

12. Prevolv does not dispute that there are accounts payable to Inscape. However, the quantum of the amount payable has not been settled, as it must follow a fulsome reconciliation and determination of Prevolv's set-off rights.

13. I make this affidavit only to clarify the evidentiary record before the Court on the statement made by Mr. Ehgoetz.

SWORN remotely by John EWINE stated as being located in Palm Springs, California, USA, before me at the City of Toronto, in the Province of Ontario, on March 4, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



DocuSigned by:
Max Shrow
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Commissioner for Taking Affidavits

DocuSigned by:
John Ewine
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JOHN EWINE

This is **Exhibit “B”** to
the Affidavit of
John Ewine
sworn before me in
accordance with
O. Reg 431/20 this
23rd day of March, 2023

DocuSigned by:

Max Skrow

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Commissioner for Taking Affidavits

Laurayne Bryon

From: Jon Szczur <jszczur@myinscape.com>
Sent: February 14, 2023 9:08 AM
To: John Ewine
Subject: Confirmation

Hi John,

Per my voicemail, I spoke to Christina at Old Castle yesterday. She sent over the wire instructions to deal with the two liens and confirmed the same.

We will be paying the two liens today and Christina agreed to send a confirmation that both liens have been paid and that the intention to lease has been pulled.

Per our call last week, we are pushing to complete punch items this week.

Upon payment of liens and completion of punch items we would like your confirmation that the receivables which approx. \$2MUSD will be paid by Prevolv. We can discuss the actual timing of those payments later this week.

Please respond with confirmation that the accounts receivable will be paid as indicated.

Much appreciated,

Jon Szczur, CPA, CMA
Chief Financial Officer

Inscape
T 905.952.4102 | C 416.723.9806
E jszczur@myinscape.com

myinscape.com

This is **Exhibit “C”** to
the Affidavit of
John Ewine
sworn before me in
accordance with
O. Reg 431/20 this
23rd day of March, 2023

DocuSigned by:

Max Skrow

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Commissioner for Taking Affidavits

Laurayne Bryon

From: Philip Cho
Sent: March 3, 2023 10:20 AM
To: Moore, Stephen
Cc: Nevsky, Joshua; Kyle Plunkett; Max Skrow
Subject: RE: Inscape | Prevolv AR

Stephen, good to hear from you again.

Thanks for the heads' up. I am still in the process of discussing these issues with my client, but my understanding is that the comments in the affidavit and in the report are not entirely accurate, insofar as they comment on Prevolv's position. We hope to have a more fulsome response to you (and the Company) today setting out our client's position, including some questions in relation to the sales.

Thanks for your patience.

PHILIP CHO | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

66 Wellington Street West, Suite 4100, P.O. Box 35, TD Bank Tower, Toronto, Ontario, Canada. M5K 1B7 | T. 416-365-1110 | F. 416-365-1876 | www.weirfoulds.com

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From: Moore, Stephen <smoore@alvarezandmarsal.com>
Sent: March 3, 2023 7:47 AM
To: Philip Cho <pcho@weirfoulds.com>
Cc: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>; Kyle Plunkett <kplunkett@airdberlis.com>
Subject: Inscape | Prevolv AR

[External Message]

Hi Philip, hope you're keeping well?

We wanted to provide a heads up that your client is referenced in the Applicants' and the Monitor's materials for the upcoming hearing on March 8 (excerpts below).

We understand that the Company has made significant accommodations to your client, including, among others: i) settling pending, threatened or registered liens from unpaid third-party suppliers on Inscape/Prevolv projects; ii) continuing operations to address outstanding "punch items"; and iii) negotiating the release of goods in transit withheld by freight providers – all in the interests of preserving, in full, its accounts receivable ("AR").

Given: i) the material nature of the Company's AR with Prevolv; ii) the disbursements associated with the above activities; and iii) the negative cash flow variance in AR collections in the post-filing period to date, we anticipate that Justice Conway may take an interest in the status of business discussions between the parties and ultimately the timing of collections.

We would be grateful if you would confirm your client’s position in order that the Applicants, the Monitor and Prevolv are suitably aligned prior to Court. Management has requested for the Monitor (without counsel) to attend its next meeting with Prevolv regarding commercial matters and proposed AR settlement (the Monitor has been pushing for this for some time) but this is yet to be scheduled.

Available should you wish to discuss. Thank you.

Affidavit of Eric Ehgoetz, sworn Feb 28, 2023:

27. A receivable of approximately \$2.8 million is expected to be received from Prevolv, Inc. (“**Prevolv**”) in payment for multiple orders that required completion but which are now in transit. The Applicants have discussed payment arrangements with Prevolv, and Prevolv has committed to making full payment of the receivable within 60 days of delivery of the shipment.

Second Report of the Monitor, dated March 2, 2023:

3.8 Of the remaining accounts receivable balance, approximately \$2.8 million is owing from a single customer. As described in the Third Ehgoetz Affidavit, the Applicants have discussed payment arrangements with the customer and are confident that the full balance will be collected. Further to this balance, the Applicants, with assistance from the Monitor, continue their collection efforts in respect of the remaining accounts receivable.

Stephen Moore, FCA, CPA, CA, CIRP, LIT

Senior Director
Alvarez & Marsal Canada ULC
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Toronto ON M5J 2J1
Direct: +1 416 847 5167
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This is **Exhibit “D”** to
the Affidavit of
John Ewine
sworn before me in
accordance with
O. Reg 431/20 this
23rd day of March, 2023

DocuSigned by:

Max Skrow

9E2CD6051682418

Commissioner for Taking Affidavits

Laurayne Bryon

From: Philip Cho
Sent: March 6, 2023 9:20 AM
To: Moore, Stephen
Cc: Nevsky, Joshua; Kyle Plunkett; Max Skrow; Ellis, Larry; Ward, David; Massie, Sam; McLaren, Maureen; Steve Graff; mlici@airdberlis.com
Subject: RE: Inscape | Prevolv AR
Attachments: (Prevolv) Affidavit of John Ewine Sworn March 4, 2023.pdf

Stephen, thank you for your email below. I had a chance to discuss this with my client and am able to provide you a response. I am copying Inscape's counsel as well so that the company can be made aware of Prevolv's position, which we expect will need to be further discussed with the company, perhaps with some input from the Monitor.

As you know, Prevolv has outstanding orders with Inscape that have only recently been completed, but not yet received and verified. Payments on these orders are payable in accordance with pre-existing payment terms, which we understand provides for 60-day payment terms. At the outset of the proceedings, there was an issue raised about whether Inscape could insist on COD post-filing, to which our client disagreed. The parties confirmed that the pre-existing 60-day payment terms continued to be applicable post-filing. However, our client does not agree that it had "committed to making full payment of the receivable within 60 days of delivery of the shipment" as set out in Mr. Ehgoetz's affidavit. Mr. Ewine denies that he ever made any commitment to Inscape to make "full payment of the receivable" as described. Attached is an affidavit of Mr. Ewine which we will serve to the service list so that the record can be corrected for the motion. This is not to be taken as opposition to the relief set out in the motion.

As you will see in the affidavit, the quantum of the receivable to Inscape must be reconciled against rebates or credit notes to which Prevolv is entitled, correction of certain overcharges on invoices (which we understand Inscape has notice of), and set-off rights, including in respect of chargebacks. In respect of the last category - set-off rights, we understand a significant (but not the only) issue is the impact of the Chicago Showroom lease and buildout costs. While the parties are making efforts to mitigate Inscape's inability to meet its obligations under the lease as joint tenant, any such mitigation will not address the buildout costs that were borne solely by Prevolv, in accordance with the parties' agreement that Inscape's contribution to the buildout costs would be satisfied by rebates on future orders. Given what we have seen in the Second Report, it appears that there is no prospect for the business of Inscape to continue, and manufacturing of the products will cease permanently. In our view, this will give Prevolv a basis to assert a set-off right in respect of Inscape's share of the buildout costs against the receivables owing, particularly since the parties contemplated that Inscape's form of payment would be by way of rebates to amounts payable to Inscape for product.

Until now, the main focus and efforts of the parties has been to complete the outstanding orders (which will crystallize the state of accounts between the parties), and to mitigate losses in respect of the Chicago lease (which should reduce the quantum of claims). However, it appears that the time has come now to begin reviewing the set-off issues. We do not intend, nor think it appropriate, to raise these issues on the pending motion as the parties should have an opportunity to first review and discuss. We look forward to hearing from you, or the company, on how it would like to approach this issue.

Thank you.

PHILIP CHO | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

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From: Moore, Stephen <smoore@alvarezandmarsal.com>

Sent: March 3, 2023 7:47 AM

To: Philip Cho <pcho@weirfoulds.com>

Cc: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>; Kyle Plunkett <kplunkett@airdberlis.com>

Subject: Inscape | Prevolv AR

[External Message]

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We wanted to provide a heads up that your client is referenced in the Applicants' and the Monitor's materials for the upcoming hearing on March 8 (excerpts below).

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We would be grateful if you would confirm your client's position in order that the Applicants, the Monitor and Prevolv are suitably aligned prior to Court. Management has requested for the Monitor (without counsel) to attend its next meeting with Prevolv regarding commercial matters and proposed AR settlement (the Monitor has been pushing for this for some time) but this is yet to be scheduled.

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Stephen Moore, FCA, CPA, CA, CIRP, LIT

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IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., and INSCAPE INC.

Court File No. CV-23-00692784-00CL

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

Proceeding commenced at TORONTO

AFFIDAVIT OF JOHN EWINE
(sworn March 23, 2023)

WEIRFOULDS LLP

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Lawyers for Prevolv, Inc.

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

Proceeding commenced at TORONTO

**RESPONDING MOTION RECORD
OF PREVOLV, INC.
(Returnable March 23, 2023)**

WEIRFOULDS LLP

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