

At the Supreme Court of the State of New York, held in and for the County of Suffolk at the Courthouse 1 Court St., Riverhead, New York, 11901 on the ___ day of January, 2025.

PRESENT: HON: DAVID T. REILLY
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
SUFFOLK COUNTY

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MELROSE VENTURES LLC and INTELLIGENT
PAYMENT PROCESSING INC.,

Index No.: 616187/2024

Plaintiff(s),

- against-

NOTICE OF MOTION FOR
DEFAULT JUDGMENT

UPTEMPO INC., MICHAEL A. HILMER,
individually and Derivatively on behalf of
UPTEMPO INC., and JASON EWART,
individually and Derivatively on behalf of
UPTEMPO INC.,

Defendant(s),

-and-

UPTEMPO INC.,

Nominal Defendant.

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PLEASE TAKE NOTICE, that upon the annexed Affirmation of **VINCENT J. TRIMARCO, SR.**, dated the 30th day of December 2024, an attorney admitted to practice before the courts of the State of New York, the Affidavit of Plaintiff **MICHAEL TRIMARCO**, *President* of **MELROSE VENTURES LLC, and INTELLIGENT PAYMENT PROCESSING INC.**, verified on the 30th day of December 2024, the exhibits attached thereto, and all prior proceedings in this case, Plaintiffs **MELROSE VENTURES LLC, and INTELLIGENT PAYMENT PROCESSING INC.**, will move before the Supreme Court of Suffolk County, located at, 1 Court St., Riverhead, New York 11901, on ___ , January 2025 at,

9:30 o'clock in the forenoon of that day or as soon as counsel may be heard, for or an order pursuant to CPLR 3215, and for any further relief as to the court may seem just and proper, as follows:

1. Declaring that non-answering Defendants' **MICHAEL A. HILMER and JASON EWART**, are in default in the sum to be determined at an Inquest, plus pre-judgment interest and costs for failure to timely answer **MELROSE VENTURES LLC and INTELLIGENT PAYMENT PROCESSING INC.**, Summons with Notice; and
2. Declaring that the non-answering Defendants **MICHAEL A. HILMER and JASON EWART**, are in default and Tortious Interference with a Business, liable to Plaintiffs for Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages.
3. An award of \$25,000.00 in attorney's fees; and
4. For any further relief as to the court may seem just and proper

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering papers and notice of cross motion, with supporting papers, if any, if any, are to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: Smithtown, New York
December 30, 2024

VINCENT J. TRIMARCO, SR., ESQ.
Attorneys for Plaintiffs

By: *s/ Vincent J. Trimarco, Sr.*
VINCENT J. TRIMARCO, SR., ESQ.
Law Offices of Vincent J. Trimarco, Sr., P.C.
1040 W. Jericho Turnpike
Smithtown, New York 11787
(631) 543-3456/ (grace@triamrcolaw.com)

To: **MICHAEL A. HILMER**, 15 Corley Ave, Toronto, ON M4E, 1T8 Canada

JASON EWART, 310 D'arcey St., Cobourg, Ontario, K9A, 4A3 Canada
163 Ontario Street, Cobourg ON K9A 3B5 Canada

HODGSON RUSS LLP

Attorneys for Defendant UPTEMPO INC.
Attn. Carmine J. Castellano Esq.
605 Third Avenue, Suite 2300
New York, NY 10158

**SUPREME COURT OF THE STATE OF NEW YORK
SUFFOLK COUNTY**

-----X
**MELROSE VENTURES LLC and INTELLIGENT
PAYMENT PROCESSING INC.,**

Index No.: 616187/2024

Plaintiff(s),

- against-

AFFIRMATION

**UPTEMPO INC., MICHAEL A. HILMER,
individually and Derivatively on behalf of
UPTEMPO INC., and JASON EWART,
individually and Derivatively on behalf of
UPTEMPO INC.,**

Defendant(s),

-and-

UPTEMPO INC.,

Nominal Defendant.

-----X
STATE OF NEW YORK)
) S.S.:
COUNTY OF SUFFOLK)

VINCENT J. TRIAMRICO, SR., pursuant to CPLR 2106, being duly admitted to practice before the Courts of New York, under penalty of perjury hereby affirms that the statements herein are true, except as to those facts stated upon information and belief are believed true.

1. I am an attorney at law with the Law Offices of Vincent J. Trimarco, Sr., P.C. the attorneys of record for the Plaintiffs. I am fully familiar with the facts, court papers and proceedings of this action based upon a review of the file maintained by my office.
2. This Affirmation is submitted in support of the Plaintiff's motion pursuant to CPLR §3215 for the entry of a default judgment against the Defendants **MICHAEL A.**

- HILMER and JASON EWART** in an action for monetary damages as a result of Defendant's wrongful conduct and financial damages.
3. Defendants' **MICHAEL A. HILMER and JASON EWART** failed to answer, proceed and file pleadings with respect to the above captioned matter.
 4. This action is for Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages.
 5. Plaintiff commenced the action by filing a Summons with Notice on July 3, 2024. (See copy of Summons with Notice annexed hereto as Exhibit "A"). The Summons with Notice is in the form prescribed by statute and contain all the particulars required by law. The Summons contains the required notice in boldface type and is in the format required by statute.
 6. According to the affidavit of service, the Summons with Notice was served on Defendant **MICHAEL A. HILMER**, on August 4th, 2024 and August 27, 2024. (See Affidavits of Service annexed hereto as Exhibit "B").
 7. According to the affidavit of service, the Summons with Notice was served on Defendant **JASON EWART**, on August 4th, 2024 and August 11th, 2024. (See Affidavit of Service annexed hereto as Exhibit "C").
 8. The Defendants, **MICHAEL A. HILMER and JASON EWART**, have not appeared in this action within the required time period.

9. The Defendants, **MICHAEL A. HILMER and JASON EWART**, have failed to serve an answer upon Plaintiff and the requisite time period has elapsed.
10. Pursuant to CPLR §3215(a) Defendants, **MICHAEL A. HILMER and JASON EWART**, are in default for failure to answer, proceed or file pleadings in this matter.
11. Plaintiffs have attested to the circumstances of the Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages.
12. Defendants, **MICHAEL A. HILMER and JASON EWART** caused Plaintiffs substantial professional and financial damages.
13. No Defendant is an infant.
14. No Defendant is in the armed services of the United States of America.
15. Upon information and belief no Defendant is incompetent.
16. Defendant's Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages. is uncontested. No defense has been put forth.

17. As a forceable consequence of Defendant's Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages., Plaintiffs suffered damages and is entitled to recover those damages.
18. Plaintiffs are entitled to an award of legal fees in the sum of \$25,000.00 dollars as a result of Defendant's Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages and being forced to expend funds to prosecute this legal matter.
19. Therefore, the plaintiffs request that a default judgment be entered in favor of the Plaintiffs against the Defendants, **MICHAEL A. HILMER and JASON EWART** for Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York

authorities, an award of \$25,000.00 in attorney's fees and Punitive Damages and being forced to expend funds to prosecute this legal matter. in the amount to be determined at an Inquest, plus pre-judgment interest and costs; and for any further relief as to the court may seem just and proper

20. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, it is respectfully requested that this Court grant the Plaintiffs' application in its entirety and for other and further relief as this Court may deem just and proper.

Dated: Smithtown, New York
December 30, 2024

VINCENT J. TRIMARCO, SR., ESQ.
Attorneys for Plaintiffs

By: s/ Vincent J. Trimarco, Sr.
VINCENT J. TRIMARCO, SR., ESQ.
Law Offices of Vincent J. Trimarco, Sr., P.C
1040 W. Jericho Turnpike
Smithtown, New York 11787
(631) 543-3456/ (grace@triamrcolaw.com)

**SUPREME COURT OF THE STATE OF NEW YORK
SUFFOLK COUNTY**

-----X

**MELROSE VENTURES LLC and INTELLIGENT
PAYMENT PROCESSING INC.,**

Index No.: 616187/2024

Plaintiff(s),

-against-

**PART 130-1.1-a
CERTIFICATION**

**UPTEMPO INC., MICHAEL A. HILMER,
individually and Derivatively on behalf of
UPTEMPO INC., and JASON EWART,
individually and Derivatively on behalf of
UPTEMPO INC.,**

Defendant(s),

-and-

UPTEMPO INC.,

Nominal Defendant.

-----X

STATE OF NEW YORK)
) S.S.:
COUNTY OF SUFFOLK)

I, the undersigned, am an attorney admitted to practice in the Courts of the State of New York, and say that I am the attorney Vincent J. Trimarco, Sr. representing the Plaintiffs herein and I have read the annexed Affirmation and know the contents thereof and the same are true to my knowledge, except as to the matters therein which are stated to be alleged on information and belief, and as to the matters I believe them to be true, the contents contentions contained herein of this pleading are not frivolous as defined by 22 NYCRR § 130-1.1(c).

My belief, as to those matters therein not stated upon knowledge, is based upon the following: Files and records in your affirmant's possession, as well as discussions with my client.

I affirm that the foregoing statements are true under the penalties of perjury.

Dated: Smithtown, New York
December 30, 2024

s/ Vincent J. Trimarco, Sr.
VINCENT J. TRIMARCO, SR., ESQ.

**SUPREME COURT OF THE STATE OF NEW YORK
SUFFOLK COUNTY**

-----X
**MELROSE VENTURES LLC and INTELLIGENT
PAYMENT PROCESSING INC.,**

**AFFIDAVIT OF MERIT
AND AMOUNT DUE**

Plaintiff(s),

-against-

**UPTEMPO INC., MICHAEL A. HILMER,
individually and Derivatively on behalf of
UPTEMPO INC., and JASON EWART,
individually and Derivatively on behalf of
UPTEMPO INC.,**

Defendant(s),

-and-

UPTEMPO INC.,

Nominal Defendant.

-----X
STATE OF NEW YORK)
) S.S.:
COUNTY OF SUFFOLK)

MICHAEL C. TRIMARCO, being duly sworn, deposes and says:

1. I, **MICHAEL C. TRIMARCO**, the *President* of **MELROSE VENTURES, LLC and INTELLIGENT PAYMENT PROCESSING, INC.**, named Plaintiffs in this action makes this Affidavit in support of a motion for a default judgment based upon my personal knowledge the records, and all the original records of the Court.
2. A default judgment against the Defendants **MICHAEL A. HILMER and JASON EWART** is requested in this action for monetary damages as a result of Defendant's wrongful conduct.
3. This action is for Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security

interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages.

4. As a forceable consequence of Defendant's Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages., Plaintiffs suffered damages and is entitled to recover those damages. (*See copy of Verified Complaint annexed hereto as Exhibit "D"*).
5. Plaintiffs are entitled to an award of legal fees in the sum of \$25,000.00 dollars as a result of Defendant's Tortious Interference with a Business, Equitable Fraud, Fraudulent Concealment, fraud, Common Law Conspiracy, Unjust Enrichment, Deceptive Act and Practices GBL §349, Aiding and Abetting, Conversion, conversion of Plaintiff's security interests and fraudulent conveyances, fraudulent filings with filings Banks, fraudulent statements and documents submitted upon Banks, Shareholders, SBA, and New York authorities, Attorney's Fees and Punitive Damages and being forced to expend funds to prosecute this legal matter.
6. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, it is respectfully requested that this Court grant the Plaintiff's application in its entirety and for other and further relief as this Court may deem just and proper.

Dated: Smithtown, New York
December 30, 2024

MICHAEL C. TRIMARCO, *President of*
MELROSE VENTURES LLC
and INTELLIGENT PAYMENT PROCESSING
INC.,

ATTORNEY VERIFICATION

VINCENT J. TRIMARCO, SR., an attorney duly admitted to practice law in the State of New York and an attorney of the Law Offices of Vincent J. Trimarco, Sr., P.C., attorneys for the PLAINTIFFS; hereby affirms that the foregoing **AFFIDAVIT** is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true; that the grounds of his belief as to all matters not stated upon his knowledge are from conversations with the Plaintiff, **MICHAEL C. TRIMARCO**, *President of MELROSE VENTURES LLC and INTELLIGENT PAYMENT PROCESSING INC.*, and/or documents furnished to me by Plaintiff. The undersigned further states that this verification is made by the undersigned and not by the Plaintiff because Plaintiff is not presently located in the county where the attorney maintains his office.

Dated: Smithtown, New York
December 30, 2024

s/ Vincent J. Trimarco, Sr.
VINCENT J. TRIMARCO, SR., ESQ.

INDEX NO.: 616187/2024

SUPREME COURT OF THE STATE OF NEW YORK SUFFOLK COUNTY

**MELROSE VENTURES LLC and INTELLIGENT
PAYMENT PROCESSING INC.,**

Plaintiff(s),

-against-

**UPTEMPO INC., MICHAEL A. HILMER,
individually and Derivatively on behalf of
UPTEMPO INC., and JASON EWART,
individually and Derivatively on behalf of
UPTEMPO INC.,**

Defendant(s),

-and-

UPTEMPO INC.,

Nominal Defendant.

NOTICE OF MOTION FOR A DEFAULT JUDGMENT

Law Offices of Vincent J. Trimarco, Sr., P.C

Attorneys for the Plaintiffs

MELROSE VENTURES LLC and INTELLIGENT PAYMENT PROCESSING INC.,

1040 W. Jericho Turnpike

Smithtown, New York 11787

(631) 543-3456/ (grace@triamrcolaw.com)

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certified that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: December 30, 2024

Signature:

S/ Vincent J. Trimarco, Sr.

VINCENT J. TRIMARCO, SR., ESQ.

To: **MICHAEL A. HILMER**, 15 Corley Ave, Toronto, ON M4E, 1T8 Canada

JASON EWART, 310 D'arcey St., Cobourg, Ontario, K9A, 4A3 Canada

163 Ontario Street, Cobourg ON K9A 3B5 Canada

HODGSON RUSS LLP

Attorneys for Defendant UPTEMPO INC.

Attn. Carmine J. Castellano Esq.

605 Third Avenue, Suite 2300

New York, NY 10158

AFFIRMATION OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

I am not a party to this action, am over 18 years of age and reside in Suffolk County, New York. On the ___day of December, 2024 I served the within **DEFAULT JUDGMENT WITH AFFIRMATION, AFFIDAVIT OF MERIT AND EXHIBITS**, upon the undersigned at the address designated for that purpose, upon the undersigned at the address designated for that purpose, by transmitting the papers by electronic means, through the New York State Courts Electronic Filing system, to the electronic mail address or designated by the attorney for such purpose.

MICHAEL A. HILMER, 15 Corley Ave, Toronto, ON M4E, 1T8 Canada

JASON EWART, 310 D’arcey St., Cobourg, Ontario, K9A, 4A3 Canada
163 Ontario Street, Cobourg ON K9A 3B5 Canada

HODGSON RUSS LLP

Attorneys for Defendant UPTempo INC.
Attn. Carmine J. Castellano Esq.
605 Third Avenue, Suite 2300
New York, NY 10158

s/ Vincent J. Trimarco, Sr.
VINCENT J. TRIMARCO, SR., ESQ.