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VIA EMAIL

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Attention: David Brown and Wayne Egan

Dear David and Wayne:

Re: UpTempo Inc. ("UpTempo") and related companies

We are legal counsel to Michael Trimarco and his related entities. As you are aware, Mr. Trimarco is a director and majority shareholder of UpTempo. Mr. Trimarco is also a secured debtholder of subsidiaries and related entities of UpTempo, and this debt has also been guaranteed by UpTempo.

Based on press releases dated October 8, 2020, December 21, 2020, June 16, 2021 and August 11, 2021 which have been issued by Nobelium Tech Corp. ("**Nobelium**"), a TSXV listed capital pool company, UpTempo and its subsidiaries and related entities are, or are attempting to, transfer these secured assets outside the terms of the applicable security agreement and applicable law, and are or are attempting to do so without the written consent of Mr. Trimarco.

Certain individuals purporting to act on behalf of UpTempo have been engaged in discussions with Mr. Trimarco about obtaining his consent for this transaction, but to date Mr. Trimarco has not received sufficient information to make a decision about the transaction. Based on the information received to date, we have the following serious concerns about the current state of UpTempo and any transactions which may have been purported to have been conducted without the necessary and proper approvals:

- As set out in the cap table in Exhibit E to the letter dated November 7, 2018 from David Brown to Tony Santos (which is also attached hereto), as of November 5, 2018, UpTempo had 50,353,627 common shares outstanding. According to the 45-106F1's filed under UpTempo's SEDAR profile, an aggregate of 1,819,651 common shares of UpTempo were issued at a price of \$0.47 per share on Dec. 10, 2018, Dec 17, 2018, Apr. 1, 2019, and Apr. 11, 2019 – these financings presumably fell under the board resolution attached as Exhibit D to the same letter. As a result, UpTempo has a total of **52,173,278** common shares outstanding. We are clarifying this number because in Mr. Trimarco's discussions with your clients, a MOU was presented to Mr. Trimarco which suggested that there are

89,634,273 common shares of UpTempo outstanding. **Pursuant to subsection 21(1) of the Canada Business Corporations Act (the "CBCA"), we hereby request you email to us the items listed in subsection 20(1) of the CBCA, including the share register. If notwithstanding COVID restrictions, you require us to attend to your office to make copies of these items, please let us know and we will do so. We require these items by no later than 5:00 pm on August 17, 2021.**

- It should go without saying that the records listed in the preceding bullet should be made available to Mr. Trimarco as a director of UpTempo, but for the avoidance of doubt we have also made the request under the CBCA in his status as a shareholder of UpTempo. As a director of UpTempo, Mr. Trimarco also requests certified copies of all UpTempo board minutes and resolutions since he became a director through the present. Mr. Trimarco advises that he has never signed a board resolution and was only provided notice of a couple of board meetings.
- We are advised by Mr. Trimarco that UpTempo has not held a shareholder meeting since its incorporation in violation of subsection 133(1) of the CBCA. Mr. Trimarco attempted to hold two shareholder meetings in early 2020, which attempts were resisted by your firm as counsel to UpTempo. Since a shareholder meeting has not been held as required by the CBCA, this means that the board of UpTempo has no proper authority to carry out any actions, including the purported transactions with Nobelium.
- I am also advised by Mr. Trimarco and his US counsel, who are copied here, that you are also well aware of the operative security and related transaction documents, through your role as legal counsel to Michael Hilmer and UpTempo, which were executed pursuant to the April 30, 2018 transaction pertaining to UpTempo and related companies, including the security agreement (the "**Security Agreement**") dated April 30, 2018 between Intelligent Payment Processing, Inc. ("IPPI", which is controlled by Mr. Trimarco and his holding company Melrose) and Tempo Marketing Corp. (now UpTempo Marketing Corp.). As part of that transaction, your client Michael Hilmer, on behalf of UpTempo Marketing, executed the Security Agreement (including a guarantee from UpTempo) granting IPPI a "*continuing, absolute and unconditional security interest in the Collateral to secure the payment and performance of the Obligations.*"

The "Collateral" covers every bit of UpTempo's and UpTempo Marketing's property, all its assets of whatever nature and all the products and proceeds thereof. The Security Agreement stipulated that the New York Uniform Commercial Code would apply and, further, a Uniform Commercial Code (UCC-1) statement was filed in both the states of New York and Delaware to perfect the security interest therein. You should also be aware that under New York law [Sections 9-601;9-609], Mr. Trimarco had the absolute right – without the intervention of a court -- to pursue his rights under the multiple occasions of defaults, including *ab initio* defaults and UpTempo's failure to pay its Promissory Note obligations.

Mr. Trimarco's rights included an absolute right to proceed on his own to peacefully foreclose on the property, all of which he did do. These steps were outlined and admitted by Mr. Hilmer himself in the ongoing Delaware litigation (See, Ciccolini et al. v. Trimarco

et al., Delaware Chancery Court, C.A. No. 2020-0493-JTL) - so there should be no question about these judicially confirmed actions, and Mr. Trimarco's legal rights, even though he does not presently have absolute possession of all the collateral. Of particular concern to you should be that Mr. Trimarco therefore owns the very assets which are involved in the Nobelium transaction – please also confirm that these details have been provided to the TSX Venture Exchange, Cantor Fitzgerald and Gravitas Securities.

We are further concerned that any continued attempt at this time to place those assets *outside* the reach of the Security Agreement, the non-judicial foreclosure and Mr. Trimarco's rights to possession raises issues under New York law of fraudulent transfer, tortious interference with property, tortious interference with business relations, wire fraud and Racketeering and Influenced Corrupt Organizations violations.

To be clear, Mr. Trimarco is not necessarily opposed to the Nobelium transaction. In particular, Mr. Trimarco believes that the involvement of Cantor Fitzgerald in the concurrent financing is positive because he understands this will ultimately lead to a subsequent listing in the US and Cantor US leading a US raise as the listed issuer pursues accretive acquisitions in the US. But Mr. Trimarco can only be supportive of the transaction if he understands what his interest will be in the resulting entity. Unfortunately, to date, Mr. Trimarco has only received partial answers, confusing MOUs and on/off communication.

Mr. Trimarco has engaged our firm to communicate with you, as counsel to UpTempo, to receive correct information and work on a proper settlement agreement to resolve all matters. If we are not able to achieve this result in short order, Mr. Trimarco will proceed to take rightful possession of his assets pursuant to the Security Agreement.

I am available to discuss at your convenience at 416-845-7580.

Yours very truly,

FOGLER, RUBINOFF LLP



Rick Moscone
RM/rm

cc: Robert V. Beltrani, Esq.
Michael L. Zuppone, Esq., Paul Hastings LLP
Christopher A. Byrne, Esq.
Client
Joseph S. Naylor, Swartz Campbell, LLC