AMENDED THIS May 5 2010 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02 ( )
☑ THE ORDER OF THE Hon. Justice G. Strathy
L'ORDONNANCE DU
DATED / FAIT LE April 30 2010
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No.: CV-08-362807-00 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL CANNON

PLAINTIFFS

and

(Court seal)

FUNDS FOR CANADA FOUNDATION, DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, BERMUDA LONG TAIL TRUST, EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as PATTERSON PALMER LAW, PATTERSON KITZ (Halifax), PATTERSON KITZ (Truro), McINNES COOPER, SAM ALBANESE, KEN FORD, RIYAD MOHAMMED, DAVID RABY and GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

DEFENDANTS

PROCEEDINGS COMMENCED UNDER THE *CLASS PROCEEDINGS ACT*

FURTHER FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). 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(s) do(es) not have a lawyer, serve it on the plaintiff(s), 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.

Date: September 18, 2008

Issued by "M. SaGaria"
Local registrar

Address of court office:
393 University Avenue
10th Floor
Toronto, Ontario M5G 1E8

TO:
FUNDS FOR CANADA FOUNDATION
3003 Danforth Avenue, P.O. Box 93587
Toronto, Ontario, M4C 5R4

TO:
DONATIONS CANADA FINANCIAL TRUST
1455 Lakeshore Road South, Suite 205
Burlington, Ontario L7S 2J1

or 390 Brant Street, Suite 400
Burlington, Ontario, L7R 4J4

TO:
PARKLANE FINANCIAL GROUP LIMITED
1455 Lakeshore Road South, Suite 205
Burlington, Ontario L7S 2J1

or 390 Brant Street, Suite 400
Burlington, Ontario, L7R 4J4

TO:
TRAFALGAR ASSOCIATES LIMITED
1455 Lakeshore Road South, Suite 205
Burlington, Ontario L7S 2J1

or 390 Brant Street, Suite 400
Burlington, Ontario, L7R 4J4

TO:
TRAFALGAR TRADING LIMITED
48 Par-La-Ville Road, Suite 567
Hamilton HM11, Bermuda

TO:
BERMUDA LONG TAIL TRUST
c/o Rory Gorman – Managing Director
Appleby Services (Bermuda) Ltd.
Cannon's Court
22 Victoria Street
PO Box HM 1179
Hamilton HM EX, Bermuda

TO:
EDWIN C. HARRIS, Q.C.
10 Church Street
Truro, Nova Scotia B2N 5B9

or 5151 George Street, Suite 1600
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Halifax, Nova Scotia B3J 2N9

TO:
PATTERSON PALMER (aka Patterson Palmer Law)
10 Church Street
Truro, Nova Scotia B2N 5B9

or 5151 George Street, Suite 1600
P.O. Box 247
Halifax, Nova Scotia B3J 2N9

TO:**PATTERSON KITZ (Halifax)**

To: **PATTERSON KITZ (Truro)**

TO:
McINNES COOPER
Purdy's Wharf Tower II
1300-1969 Upper Water Street
P.O. Box 730
Halifax, NS
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TO:
SAM ALBANESE
Markham, Ontario

TO:
KEN FORD
Pickering, Ontario

TO:
RIYAD MOHAMMED
Oshawa, Ontario

TO:
DAVID RABY
3003 Danforth Avenue, P.O. Box 93587
Toronto, Ontario, M4C 5R4

TO:
GLEESON MANAGEMENT ASSOCIATES INC.
300 Beach Avenue,
Toronto, Ontario
M4E 3J2

TO:
MARY-LOU GLEESON
107 Airdrie Road
Toronto, Ontario
M4G 1M4

TO:
MATT GLEESON
1234 Kingston Road, Suite #107
Toronto, Ontario
M1N 1P3

TO:
MARTIN P. GLEESON
107 Airdrie Road
Toronto, Ontario
M4G 1M4

CLAIM

1. The Plaintiff claims on behalf of himself and on behalf of each of the Class Members:

(i) $500,000,000.00 for general and special damages;

a. against all Defendants for negligence, restitution, *quantum meruit*, waiver of tort, unjust enrichment, and constructive trust;

b. as against all Defendants other than the lawyers (Edwin C. Harris, Patterson Palmer also know as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro) McInnes Cooper) the Plaintiff claims damages based upon conspiracy, fraud, fraudulent misrepresentation, and for breach of the provisions of the Ontario *Consumer Protection Act*, S.O. 2002, C.30, Schedule A , ("the Ontario "*CPA*") and breach of similar legislation in other provinces and territories;

c. as only against the Defendants Funds for Canada Foundation, Donations Canada Financial Trust, and Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, and the Bermuda Long Tail Trust, the Plaintiff claims damages for breach of contract. Against these Defendants the Plaintiff also seeks rescission and the return of all monies paid under the Gift Program described in paragraph 2 below, and the remedy of rescission of the contract;

(ii) an interim Order or injunction, until trial or other final disposition of these proceedings restraining any of the Defendants (and their servants and agents) from dissipating any monies, wherever situated in the world, in their possession which directly or indirectly came from the Class Members described herein, and an interim Order or injunction freezing any bank accounts wherever situate in the world where such Class Members monies are held, including payment into Court of a $500,000.00 or other amount for a legal challenge and against CRA rulings relating to the Gift Program described herein;

(iii) punitive and exemplary damages in the sum of $50,000,000.00;

(iv) a tracing Order for all monies paid by the Class to the Gift Program described in paragraph 2 below, and Judgment against the Defendants or any other persons who have received directly or indirectly the monies paid by the Class members;

(v) compounded prejudgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act, R.S.O. 1990, and c.C.43*, or alternatively, prejudgment and post-judgment interest calculated on a simple interest basis;

(vi) any goods and services tax which may be payable on any amounts pursuant to Bill C-62, *The Excise Tax Act, R.S.C. 1985*, as amended or any other legislation enacted by the Government of Canada;

(vii) an Order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(viii) the costs of this action on a full indemnity basis, as well as the costs of notice and administering the plan of distribution of recovery in this action, plus disbursements and applicable taxes;

(ix) such further and other relief as counsel may advise and this Honourable Court may permit and deem just and appropriate in the circumstances.

A/ THE PARTIES

2. The Plaintiff ("the Representative Plaintiff") resides in the Province of Ontario. The Representative Plaintiff is a representative of a class of persons ("the Class") all of whom invested in the Donations Canada Charitable Donation program ("the Gift Program"). The Representative Plaintiff invested in the Gift Program in 2005 and 2006. The proposed Class Members include any persons who at any time, while a Canadian resident, invested in the Gift Program including the years both before 2005 and after 2006.

3. The Defendant Funds for Canada Foundation ("FFCF Charity") was a registered Canadian charity with Registration No: 82160-0475-RR0001. The FFCF Charity created,

promoted, marketed, administered, operated, participated, and sold to the public the Gift Program more particularly described below.

4. The Defendant Donations Canada Financial Trust is a private charitable trust. Donations Canada Financial Trust created, promoted, marketed, administered, operated, participated, and sold to the public the Gift Program described below.

5. The Defendant Parklane Financial Group Limited ("Parklane") is an Ontario corporation which created, promoted, marketed, administered, operated, participated, and sold to the public the Gift Program more particularly described below.

6. The Defendant Trafalgar Associates Limited ("Trafalgar Associates") is an Ontario corporation which created, promoted, marketed, administered, operated, participated, and sold to the public the Gift Program more particularly described below.

7. The Defendant Trafalgar Trading Limited ("TTL") is a Bermudan corporation which created, promoted, marketed, administered, operated, participated and sold to the public the Gift Program more particularly described below.

8. The Defendant Bermuda Long Tail Trust is a Bermudan trust. TTL, Parklane, Trafalgar Associates, and the Bermuda Long Tail Trust are affiliated with each other, sharing common offices, employees, officers, directors, shareholders, owners, and professional advisers. Together, these corporations and trusts, acted in concert effectively acting as one entity which created, controlled, promoted, marketed, administered,

operated, participated, and sold to the public and the Class the Gift Program more particularly described below.

9. The Defendant Edwin C. Harris, Q.C. ("Harris") was at all material times a lawyer and partner at the law partnerships or entities or affiliations of Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax) and McInnis Cooper. Harris is a lawyer licensed to practice law in the Province of Nova Scotia. Harris is currently a member of McInnes Cooper.

10. Patterson Palmer (also known as Patterson Palmer Law) and Patterson Kitz (Halifax), Patterson Kitz (Truro), and other unknown firms carrying on business as Patterson Palmer, as well as McInnes Cooper are hereafter described as the "Law Firms". The Law Firms were, or are, partnerships carrying on the business of the practice of law in the Provinces of Nova Scotia, New Brunswick, Newfoundland & Labrador, and Prince Edward Island. Patterson Palmer Law, is an affiliation or partnership comprised of several groups or law firms including but not limited to Patterson Kitz (Halifax) and Patterson Kitz (Truro). The Law Firms received large amounts of money for legal fees for work relating to the Gift Program described below.

11. The Law Firms are vicariously liable for the damages resulting from the acts, omissions and negligence of Harris as set out below for the periods in which Harris was a lawyer and partner at each of the Law Firms. To the extent any Defendant law firm is a successor of any previous law partnerships or entities no longer carrying on business, the

Defendant law firm is vicariously and legally liable for damages suffered by the Class for the period when Harris was a member of a law firm or entity no longer carrying on business. To the extent that the Class suffered damages for the period when Harris was a member of Patterson Palmer Law, the partners or entitles affiliated with Patterson Palmer Law, including but not limited to Patterson Kitz (Halifax), Patterson Kitz (Truro) are vicariously liable for damages caused by Harris when he was a member of Patterson Palmer Law. Those persons, who were at the material times, or who are now partners of the Law Firms, are personally liable for any claims of the Class against the Law Firms.

12. The Defendant Gleeson Management Association Inc. ("GMA") is a corporation duly incorporated pursuant to the Laws of Ontario. GMA created, promoted, marketed, administered, operated, participated, and sold to the public the Gift Program more particularly described below.

13. The Defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, Greg Wade, Matt Gleeson, Mary-Lou Gleeson, and Martin P. Gleeson are Ontario residents and the persons who control, manage, and direct the FFCF Charity and Donations Canada Financial Trust. These Defendants are the persons who *inter alia* created, controlled, promoted, marketed, administered, operated, participated, and sold to the public and the Class the Gift Program. The Defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, Greg Wade, Matt Gleeson, Mary-Lou Gleeson, and Martin P. Gleeson control, manage, and direct the FFCF Charity, Donations Canada Financial Trust, and GMA and treat these entities as their *alter-ego*.

14. The Defendants Matt Gleeson and Mary-Lou Gleeson are a married couple. The Defendants Martin P. Gleeson, Matt Gleeson, and Mary-Lou Gleeson ("the Gleesons") control, manage and direct GMA and treat GMA as their *alter-ego*.

15. The Defendants Sam Albanese ("Albanese"), Ken Ford ("Ford"), Riyad Mohammed ("Mohammed"), David Raby ("Raby"), Greg Wade ("Wade"), Matt Gleeson, Mary-Lou Gleeson, and Martin D. Gleeson personally financially benefitted from the Gift Program. As part of the conspiracy and fraud described in paragraphs 64 – 91 below, the Gleesons, Albanese, Ford, Mohammed, Raby and Wade, assisted in the creation of the FFCF Charity, Donations Canada Financial Trust, and its sub-trust and/or designed and directed the Trusts and FFCF Charity with respect to their role in the Gift Program. For example, the Gleesons, Albanaese, Ford, Mohammed, Raby, Wade or some of them, executed documents purporting to accept the Representative Plaintiff and Class Members as "beneficiaries of the sub-trusts", as part of the fraudulent scheme designed to create the illusion of charitable donations which were much larger than the amounts actually recovered by the charities.

16. In the alternative, even if any of the Defendants in paragraph 13 did not personally financially benefit from the Gift Program, he or she knew or ought to have known that some of the Defendants would financially benefit from the Gift Program as a result of the fraud perpetrated on the Class by the Gift Program and those who controlled it.

17. The Gift Program is a consumer transaction, governed and regulated by the provisions of the Ontario *CPA* (for Ontario residents) and by similar legislation in the provinces and territories for Class Members who at the time of the advance of money to the Gift Program resided in other provinces and territories of Canada.

B/ SEPARATE TORTIOUS CONDUCT

18. With respect to the acts and omissions of the Defendants listed in paragraph13, the Representative Plaintiff states the following:

(i) these Defendants owed a duty of care to the Class;

(ii) the acts and omissions of these Defendants constitute separate tortious conduct which conduct caused or contributed to the losses of the Class;

(iii) the tortious conduct of these Defendants exhibited a separate identity or interest from the corporations or trusts or entities with which these Defendants were employed, affiliated, or associated, or for whom they were employees, trustees, officers, directors or with shareholders; and

(iv) the tortious conduct of these Defendants was not in the best interests of the corporations, trusts, or entities with which these Defendants were employed, affiliated or associated.

The particulars of the tortious conduct is found in the allegations of fraud, conspiracy, and negligence as against these Defendants in paragraphs 64 – 105 below. The corporate veil should be pierced to expose the Defendants listed in paragraph 13 to personal liability because of their grievous, negligent, fraudulent, and tortious misconduct.

C/ THE GIFT PROGRAM

19. Members of the Class were each provided with written promotion materials ("the promotional materials") that were identical or substantially similar, in which they were advised, in writing, that for each $250.00 invested they would receive a tax credit in the amount of $1,000.00. For example, for an Ontario resident, the promotional materials stated that for $250.00 invested by an individual in any given year in the Gift Program prior to September 30th, the individual would receive a tax credit of $464.00, resulting in a net cash return of $214.00 ($464.00 tax credit less the $250.00 actually invested). The promotional materials stated that this was an 86% return on investment.

20. The minimum donation to the Gift Program was $10,000.00 CDN, increasing in increments of $5,000.00 CDN.

21. For every $250.00 CDN of cash invested, the Gift Program purported to assign $750.00 CDN of a beneficial interest in a trust to a charity.

22. The Gift Program was registered as a Canadian tax shelter, as No. TS-070623 and as QAF-05-01097 in the Province of Quebec. The Gift Program was sold to Canadians between 2005 and 2009. Between those years, Class Members invested approximately **$100 million dollars** in the Gift Program. Much of the $100 million dollars has been directed offshore to Bermuda or other unknown locations. The Canada Revenue Agency ("CRA") has disallowed all of the tax credits promised to the Class for participating in the Gift Program. While the exact amounts are unknown, the Plaintiff estimates that the $100 million dollars invested by Class Members was distributed amongst the Defendants as follows:

a. The Bermuda Long Tail Trust	$20 million as profit for their role in the Gift Program;
b. Parklane	$32 million Parklane's profit is estimated at $12 million after paying its sales force an estimated $20 million);
c. Trafalgar Trading Limited	$44 million dollars, which Trafalgar Trading Limited claims to invest to profit the charities, with unknown amounts benefiting this Defendant from fees for investing and securities trading;
d. Funds for Canada Foundation	$4 million dollars remains from the original $300 million received by this charity and other charities. From these monies, unknown amounts were paid for the personal gain of the Defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, Greg Wade, Matt Gleeson, Mary-Lou Gleeson, Martin P. Gleeson, and GMA.

23. The sum of $500,000.00 of the Class Members monies has been purportedly set aside to retain counsel for Class Members who wish to litigate with CRA over the Gift Program tax credit reassessments described herein. The Plaintiff and Class Members seek an Order releasing this money to the Class.

24. The Defendants acted in concert in all dealings in relation to the Gift Program. The Defendants knew that the promotional materials and the Opinion and Comfort Letters described below, would lead the Class Members to believe that there was a charitable purpose or intent for the Gift Program.

25. The transactions related to the Gift Program were tax-avoidance transactions without legitimate purpose, a fact that was not disclosed to the Class. The primary purpose of the Gift Program was to financially benefit the Defendants. Most of the money paid by the Class Members was received by the Defendants and not by the charities. The facts set forth in this paragraph were not disclosed to the Class prior to the Class advancing money to the Gift Program.

26. In the alternative, if one or more of the Defendants did not financially benefit from the Gift Program, then those Defendants nevertheless knew or ought to have known that some of the Defendants would improperly financially benefit from the Gift Program.

D/ CREATING THE FUNDS FOR CANADA FOUNDATION

27. Parklane retained GMA to establish the Funds for Canada Foundation ("FFCF Charity") in 2005, for the purpose of promoting and expanding the Gift Program. GMA and its operators and directors, (Mary-Lou Gleeson, Matt Gleason, and Martin P. Gleeson) assisted in creating, promoting, marketing, administering and operating the FFCF Charity and the Gift Program.

28. At the time FFCF Charity applied for Charity registration, Matt Gleeson was listed as a director. Once the FFCF Charity was established, Matt Gleason held the title 'Director of Development', through which he participated in seminars and presentations promoting Parklane, the FFCF Charity, and the Gift Program. Matt Gleason concurrently was a shareholder, officer, and director of GMA.

29. Mary-Lou Gleeson was a director of the FFCF Charity, holding the title of Executive Director of the Charity. Mary-Lou Gleeson also had full signing authority for the FFCF Charity and was compensated by the FFCF Charity for her role in the Gift Program. Mary-Lou Gleeson concurrently was a shareholder, officer and director of GMA.

30. GMA was hired for profit by the FFCF Charity to fundraise and act as their agent reviewing requests for grants and approving the requests. At the same time, GMA approached charities and entered into agreements with them to solicit grant funding from the FFCF Charity in return for a percentage of the grant funding allocated to the charity.

31. Mary-Lou and Matt Gleason were financial beneficiaries of perpetrators in the tax scheme; on the one hand, they acted as directors for the FFCF Charity who granted money to donees and, on the other hand, acting as directors for GMA receiving from the donees a percentage of the grant money the donees received in exchange for soliciting grant money from the FFCF Charity. Particulars of GMA's and the Gleeson's roles, duties, and involvement are particularized below. GMA, Matt Gleeson, Martin P. Gleeson, and Matt Gleeson directed monies and fees, salary and remuneration to the Defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, and Greg Wade.

E/ THE OPINION LETTERS AND COMFORT LETTERS

32. On May 18, 2005, Harris issued an opinion letter as to the income tax consequences for an individual participating in the Gift Program ("the May 18th opinion letter"). Previously on February 23rd, 2004 Harris issued a similar opinion letter ("the February 23, 2004 letter"). Harris also issued a similar opinion letter on March 14, 2006

("the March 14, 2006 Opinion letter"). Other opinion letters with respect to the Gift Program were also issued by Harris ("the opinion letters"). The opinion letters and the comfort letters were issued to Parklane at the request of some or all of the following Defendants, Parklane, Trafalgar Associates, Trafalgar Trading Limited, Bermuda Long Tail Trust, Donations Canada Financial Trust and Funds for Canada Foundation.

33. On June 15th, 2005, Harris issued a letter ("the June 15th comfort letter") stating that "we reviewed the [Gift] Program and its compliance with the Income Tax Act and Regulations and ...issued our opinion to you dated May 18th, 2005". On March 20th, 2006 Harris issued a similar comfort letter ("the March 20th comfort letter"). Harris also issued other comfort letters with respect to the Gift Program ("the comfort letters".)

34. Class Members, including the Representative Plaintiff, received the comfort letters. The Defendants knew that the Class Members were to receive the opinion and comfort letters.

35. Some of the Class Members, but not including the Representative Plaintiff, received the opinion letters. The Representative Plaintiff was one of the Class Members who did not receive an opinion letter, but did receive a comfort letter.

36. The opinion letters and comfort letters were necessary inducements and a necessary pre-requisition to the promotion and sale of the Gift Program. But for these letters, the Gift Program would not have been launched and the Class would not have invested in the Gift Program. These letters were designed to induce the Class Members to

invest in the Gift Program without disclosing to the Class all of the material risks of investing in the Gift Program. All Class Members were told of the opinion letters in the promotional materials and the existence of the opinion letters, the existence of which was an express term of the contract with respect to the Gift Program.

37. To maintain the confidence of the Class members in the Gift Program, Harris wrote an opinion letter on December 6, 2007 with respect to potential penalties for the Class members under the provisions of the *Income Tax Act*.

F/ WHAT HAPPENED TO THE MONIES IN THE GIFT PROGRAM

38. The Representative Plaintiff participated in the Gift Program for the 2005 and 2006 tax years. The Gift Program was sold to Canadians between 2005 and 2009. The Plaintiff is the representative of Canadians who participated in the Gift Program between 2005 and 2009.

39. The Representative Plaintiff paid to Parklane, in trust, the sum of $10,600.00 in 2005 and the sum of $12,500.00 in 2006, for a total advance of $23,100.00. For the purposes of the Gift Program, the Defendant FFCF and the Defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, Greg Wade, Matt Gleeson, Mary-Lou Gleeson, and Martin P. Gleeson created a trust, namely, Donations Canada Financial Trust (a Defendant herein). The Defendants FFCF and the Defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, Greg Wade, Matt Gleeson, Mary-Lou Gleeson, and Martin P. Gleeson then created a sub-trust of Donations Canada Financial Trust. The sub-trust

received the monies from Parklane, representing the monies paid by the Representative Plaintiff and Class Members.

40. The Representative Plaintiff and the Class members were issued sub-trust units, which were held in escrow for the Class Members. The sub-trust units purported to entitle the holder to receive monies from the sub-trust of the Donations Canada Financial Trust.

41. The monies paid by the Representative Plaintiff and the Class members were given to the Defendant FFCF Charity. The sub-trust units were then transferred to the Donations Canada Financial Trust.

42. At or about the same time, in furtherance of the Gift Program, the Defendant Bermuda Long Tail Trust gave monies (described by the Bermuda Long Tail Trust as a "gift") to the Defendant Donations Canada Financial Trust and its sub-trust. For every $2,500.00 given by a Class Member, $7,500.00 was paid ("gifted") by the Defendant Bermuda Long Tail Trust to the Defendant Donations Canada Financial Trust and its sub-trust. Therefore, for the $23,100.00 the Representative Plaintiff paid, the sum of $69,300.00 was paid by the Defendant Bermuda Long Tail Trust to the Defendant Donations Canada Financial Trust and its sub-trust.

43. The FFCF Charity first received cash donations of the Representative Plaintiff and the Class Members and then subsequently received sub-trust units. The FFCF Charity (and other charities) purportedly redeemed those sub-trust units for an equivalent amount of cash. Donations Canada Financial Trust and its sub-trust were paid $7,500.00 for every

$2,500.00 donated by the Class Members. In the specific case of the Representative Plaintiff, $69,300.00 (from the Bermuda Long Tail Trust) and $23,100.00 (from Michael Cannon) was paid to the FFCF charity, for a total of $92,400.00.

44. For every $2,500.00 a Class Member donated, the FFCF charity received $7500 from the Defendant Donations Canada Financial Trust and its sub-trust, for what the Gift Program described as a $10,000.00 Aggregate Donation. Of the $10,000.00 Aggregate Donation, the FFCF Charity kept approximately $100.00 (or 1 per cent of the purported $10,000.00 aggregate donation). Approximately $800.00 of the purported $10,000.00 Aggregate Donation) was paid to Parklane for its "fees". In the specific case of the Representative Plaintiff, the FFCF Charity kept approximately $924.00 and paid Parklane approximately $7,392.00. Parklane then paid various amounts in commission to its sales force (the sales people received approximately 18-30 percent of the cash it obtained from Class Members). For every $2,500.00 paid by the Class Members, Parklane received approximately $800.00, paid about $500.00 to the sales force, and kept $300.00 for its own use and profit. For the $23,100.00 paid by the Representative Plaintiff, Parklane received approximately $7,392.00, paid its sales force, and then kept as its own profit approximately $2,772.00.

45. The FFCF Charity then paid monies to TTL to invest for the Charity. For every $10,000.00 received, $9,100.00 was then paid by the FFCF Charity to TTL. TTL kept $1,100.00 to trade on stocks using margin accounts. TTL paid $8,000.00 of every $9,100.00 it received from the FFCF Charity (or other charities) to the Bermuda Long Tail

Trust for the purported use of a licensed stock trading software program, owned by the Bermuda Long Tail Trust. The software program is called the Trafalgar Global Index Futures Program. The money travelled in a giant circle. In the example of a "$10,000.00 Aggregate Donation", Bermuda Long Tail Trust gifted $7,500.00 to the Donations Canada Financial Trust, so the end result was that on the $10,000.00 Aggregate Donation, Bermuda Long Tail Trust made a $500.00 profit from the Gift Program. (It paid a $7,500.00 "gift" and received back $8,000.00 in software license fees or royalties, for a $500.00 profit on a $10,000.00 Aggregate Donation). In the case of the Representative Plaintiff's payments of $23,100.00, the Bermuda Long Tail Trust made a profit of $4,620.00.

46. TTL has approximately $44 million in its possession. Some monies are paid on trading profits to FFCF Charity and other charities, pursuant to Royalty Agreements between TTL and the Charities, TTL keeps 20 percent of all trading profits. TTL has converted the sum of approximately $44 million to its own accounts and the charities have no registered ownership of these accounts. Further, if trading losses exceed a certain amount, the charities lose all rights to future profits. In any event, TTL asserts its rights to keep the $44 million or whatever value remains of approximately $44 million for its own benefit.

Summary of where the money went

47. The total Aggregate Donations between 2004 and 2009 were approximately $400 million, including $100 million paid by the Representative Plaintiff and other Class

Members. The following summarizes how this amount was disbursed amongst the Defendants:

a. of the $400 million, only $4 million was received by the FFCF Charity and other charities. From this $4 million, certain unknown amounts were paid for personal gain to the defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, Greg Wade, Matt Gleeson, Mary-Lou Gleeson, Martin P. Gleeson, and GMA;

b. $20 million was made as profit by Bermuda Long Tail Trust (the profit is calculated by subtracting the difference between "gift" and its software licence royalties). Bermuda Long Tail Trust advanced approximately $300 million as a "gift" and received back approximately $320 million as royalty fees or software license payments;

c. Parklane made a profit estimated at $12 million (the amount left after paying the sales force approximately $20 million); and

d. TTL has approximately $44 million dollars in funds which it trades in margin stock accounts, keeping trading profits and distributing some portion of the profits to charities. TTL has converted approximately $44 million to its own accounts.

G/ CRA REASSESSMENT

48. As a result of the transactions mandated by the Gift Program, CRA has concluded that Class Members received consideration and a benefit from the Gift Program. Therefore, CRA has concluded that donations of the Class Members under the Gift Program are **not** gifts as defined in the *Income Tax Act*. CRA has re-assessed the Representative Plaintiff's income tax returns and has or will reassess all or most tax returns of the Class Members. As a result, the Representative Plaintiff has lost $23,100.00 that he advanced to the Gift Program. Other Class Members have also lost the money they invested in the Gift Program.

49. On May 7, 2008 CRA advised the representative Plaintiff that they completed the audit of his charitable gifts relating to the 2005 Gift Program. In the same letter CRA advised the Representative Plaintiff that CRA "had completed our audit of your charitable gifts related to the [2005 Gift Program] ... and has determined that no amount is allowable as a charitable gift..." On June 19th, 2008 CRA sent the Representative Plaintiff a Notice of Reassessment for 2005, in which the Representative Plaintiff was advised that he owed CRA the sum of $19,754.73 (which included $3,229.98 in interest charges). As a consequence of this communication by CRA, the Representative Plaintiff realized his investment in the 2005 Gift Program was lost. Other Class Members received similar CRA letters and Notices of Reassessment.

50. On July 8th, 2008, the Representative Plaintiff paid $19,754.73 to CRA.

51. CRA has sent the Representative Plaintiff a Notice of Re-Assessment for 2006, in which the Representative Plaintiff was advised that he owed CRA the sum of $25,100.91 (which included $3,473.78 in interest charges). On May 11, 2009 the Representative Plaintiff paid the outstanding balance, including interest, to CRA.

H/ BREACH OF CONTRACT

52. CRA has indicated its intention to audit all claimed tax credits with respect to participation in the Gift Program. CRA's position is that 100% of the tax credits claimed by Class Members will be disallowed.

53. CRA has determined that the Gift Program was not a *bona fide* charitable gift.

54. CRA has determined that all transactions related to the Gift Program involved a circular flow of funds giving the appearance of a legitimate charitable donation, when in fact this was not a legitimate charitable program.

55. CRA has determined that even the cash portion of the donation amount actually paid by participants does not qualify as a gift under the *Income Tax Act*.

56. CRA has stated that the Gift Program was designed to give the appearance that there was a legitimate charitable donation and charitable use of the funds, when in fact, none existed.

57. CRA has stated that the series of transactions involved in the Gift Program were all tax-avoidance transactions without any *bona fide* purpose. CRA has concluded that the only purpose of the Gift Program was to obtain an improper tax credit.

58. On June 29, 2009, the Government of Canada issued a notice of intention to revoke the charitable registration of Funds for Canada Foundation. This decision was a result of the CRA's findings that Funds for Canada Foundation was operating for the primary or collateral purpose of furthering the Donations for Canada tax shelter by agreeing, for a fee, to participate in the tax shelter arrangement.

59. On or about August 8, 2009 the CRA revoked the charitable registration of FFCF Charity.

The CRA audit of the FFCF Charity

60. CRA's audit of the FFCF Charity revealed that for a one year period (December 2005 to December 2006) the Funds for Canada Foundation issued nearly $176.5 million in receipts for cash received through the Gift Program; paid over $14.2 million to the tax shelter promoters; and directed an additional amount of $160.8 million to an off-shore investment vehicle.

61. CRA's audit revealed that for the same one year period, 79.05% of the funds that were directed to the off-shore investments were eventually redirected to the original lender. The audit also revealed that less than 1% of the total amounts received by the FFCF Charity were actually used by the charity for its own programs.

The Contract

62. The promotional materials set out the terms of contract entered into by the Class. The Class Members as participants in the Gift Program had a direct and specific understanding that they would receive a charitable donation receipt that would be recognized by CRA for tax credit purposes. It was an express, or in the alternative, an implied, term of the contract that all participants would receive a charitable donation receipt, and would receive the tax savings as stated in the promotional materials.

63. The Class Members entered into contracts with all or some of the following Defendants: Funds for Canada Foundation, Donations Canada Financial Trust, Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited and

Bermuda Long Tail Trust. The Class Members claim from these Defendants damages for breach of contract, and the remedy of rescission.

I/ CONSPIRACY

64. The Representative Plaintiff and proposed Class Members plead that all the Defendants, except Harris and the Law Firms (the "Lawyers"), engaged in a conspiracy for the financial benefit of the Defendants.

65. There was an agreement between these Defendants (other than the Lawyers), the predominant purpose of which was to cause injury to the Representative Plaintiff and the Class and which ultimately did cause injury to the Representative Plaintiff and the Class. The Defendants (other than the Lawyers) together agreed to make the fraudulent misrepresentations and participated in the fraud set forth in paragraphs 75 to 91 below.

66. Further, the agreement between these Defendants (other than the Lawyers) was an agreement to engage in unlawful conduct aimed at the public, the Class, and the Representative Plaintiff, which caused injury to the public, the Class, and the Representative Plaintiff.

67. These Defendants (other than the Lawyers) agreed to create a scheme which deceived the Class Members into believing they would receive tax savings for participating in the Gift Program described in paragraph 19 above. As a consequence, the Class suffered injury through financial loss. The purpose of the agreement between these Defendants (other than the Lawyers) was to cause the Class Members to suffer economic

loss and injury while some or all of these Defendants (other than the Lawyers) received a corresponding financial gain. The creation of the scheme was fraudulent and therefore unlawful.

68. These Defendants (except the Lawyers) in creating, controlling, promoting, marketing, administering, operating, participating, and selling to the public and the Class the Gift Program, by agreement, participated in a scheme designed to create the illusion of property being donated and issued charitable receipts for property, which was not beneficially transferred.

69. These Defendants (except the Lawyers) in creating the FFCF Charity, knew or ought to have known that the role of the FFCF Charity was to issue charitable receipts for property which flowed through its accounts but to which it had no ownership.

70. The Representative Plaintiff and proposed Class Members plead that the object of the conspiracy was the financial benefit of these Defendants (excluding the Lawyers) who participated in the conspiracy. The Representative Plaintiff and the proposed Class Members rely on the following facts:

(i) The facts set forth in paragraphs 15, and 19 to 47 above;

(ii) The allegations of fraud set forth in paragraphs 75 to 91 below;

(iii) Parklane was instructed to establish the FFCF Charity and the Donations for Canada Financial Trust. The establishment of the Gift Program, the FFCF Charity, and Donations for Canada Financial Trust was designed to deceive the Class Members and CRA into believing that there was a charitable purpose or intent for the Gift Program where in fact no such purpose or intent existed. These Defendants (excluding the Lawyers) knew or ought to have

known that CRA would conclude that the donations of the Class Members were not gifts (as defined in the *Income Tax Act*);

(iv) The Class paid Parklane who controlled the Donations Canada Trust ("the Master Trust"). At the same time, the Master Trust issued sub-trust units. The sub-trust units and the donated money was held in escrow by Parklane and was transferred to the FFCF Charity or other Charities;

(v) The FFCF Charity or other charities received the donated money and the trust units, which they exchanged with the Master Trust for their equivalent cash value. The FFCF Charity or other charities redeemed the trust units from monies received from the Bermuda Long Tail Trust;

(vi) The FFCF Charity then transferred a portion of the money to Trafalgar Trading Limited ("TTL"), who invested the money. A portion of this investment money was transferred by TTL back to Parklane;

(vii) A Royalty Agreement existed between TTL and FFCF Charity whereby FFCF Charity would receive a percentage of the investment gains;

(viii) TTL paid more to Bermuda Long Tail Trust then it originally advanced, allowing this trust to obtain a large multi-million dollar profit which it received along with its original advance. These funds travelled to Canada and back to Bermuda in a large circular path without benefiting the charities;

(ix) The FFCF Charity also transferred a portion of the money to Parklane for fundraising;

(x) FFCF Charity retained a small portion of the original donation to be used for the grants. The remainder was paid to Mary-Lou Gleeson as executor director of the FFCF Charity, GMA for rent and utilities, GMA for administrative duties, and to the Defendants Matt Gleeson, Martin P. Gleeson, Mary-Lou Gleeson, Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, and Greg Wade;

(xi) Despite receiving funds from the FFCF Charity for rent and utilities, GMA did not have a permanent residence and was provided office space rent free at the Scarborough Foreign Mission;

(xii) GMA's administrative duties included reviewing applications for grants submitted by charities and donees and approving said grants;

(xiii) GMA approached charities and potential donees to solicit grant funding for them from the FFCF Charity. In turn, the donee would pay to GMA a percentage of the grant money they received and which GMA approved; and

(xiv) The transfer of funds, property, and other assets was the result of an agreement between these Defendants (other than the Lawyers).

71. The funds that were represented as donated, owned, and invested by the FFCF Charity (or other charities) were returned to Bermuda Long Tail Trust under the guise of software fees or royalties. As a result, the Bermuda Long Tail Trust never in essence relinquished any funds for the sub-trust units. These Defendants (other than the Lawyers) were fully aware, or were wilfully blind, to the fact that, the funds would flow in a circular fashion back into their original account.

72. These Defendants (other than the Lawyers) knew or were wilfully blind to the fact that CRA would never allow the tax benefits of the Gift Program to be realized by the Representative Plaintiff and the Class members.

73. These Defendants (other than the Lawyers) conspired to commit a fraud. These Defendants (other than the Lawyers) knew or were wilfully blind to the fact that the Class would lose their entire investment in a scheme that they knew or ought to have known would not deliver the promised tax savings, while allowing these Defendants (other than the Lawyers) to receive millions of dollars from the fraudulent scheme.

74. As a result of the conspiracy to perpetuate the Gift Program, and promote, market, administer, operate, and participate in the FFCF Charity, the Representative Plaintiff and proposed Class Members have suffered damages for which they seek compensation.

J/ FRAUD AND FRAUDULENT MISREPRESENTATIONS

75. The Representative Plaintiff states that all of the Defendants (other than the Lawyers) fraudulently planned and created the Gift Program, for the purpose of profiting themselves and defrauding the Class. The facts setting forth how the Class was defrauded of approximately $100 million dollars are set forth in paragraphs 15, and 19 – 47 and paragraph 70 above.

76. The Representative Plaintiff pleads that these Defendants (other than the Lawyers) promoted, perpetuated, participated, marketed, administered, created, controlled, and operated the FFCF Charity and the Gift Program which they knew or ought to have know was fraudulent. These Defendants fraudulently misrepresented to the Class that they would receive from the Gift Program the tax benefits, including the specific tax benefits set forth in paragraph 19 above, when they knew or ought to have known that the Class Members would not receive the tax benefits and savings.

77. The Representative Plaintiff pleads that the Gift Program, which these Defendants (other than the Lawyers) helped to create, was a fraud and these Defendants knew or ought to have known that they were assisting with the fraud.

78. These Defendants (other than the Lawyers) ought to have ensured that the Gift Program did not violate the *Income Tax Act* or other statutes.

79. GMA and the Gleesons, as consultants to Parklane and directors of the FFCF Charity, ought to have ensured that the Gift Program did not violate the *Income Tax Act* or

other statutes. GMA, Matt Gleeson, Mary-Lou Gleeson, Martin P. Gleeson, Sam Albanese, Ken Ford, Riyad Mohammed, David Raby, and Greg Wade, were all parties to this fraudulent scheme and all of them received monies which were given by the Class members to Parklane. These Defendants GMA, Matt Gleeson, Mary-Lou Gleeson, Martin P. Gleeson, Sam Albanese, Ken Ford, Riyad Mohammed, David Raby and Greg Wade received monies while they provided no valuable services, and received directly or indirectly the monies of the Class Members by way of commissions from the individual charities who received grants from FFCF Charity.

80. The Representative Plaintiff and the Class Members donated money to the FFCF Charity and/or the Gift Program, and received a charitable receipt four times larger than their donation. The Defendants (other than the Lawyers) knew or ought to have known, or were wilfully blind to the fact that the charitable donation receipt would not be or was not recognized by the CRA and that the Representative Plaintiff and the Class would be disentitled to the tax donation credit. These Defendants (other than the Lawyers) knew or ought to have known that CRA would conclude that the donations made by Class Members were not gifts, as defined in the *Income Tax Act*.

81. It was an express or an implied term of the contract that the donated money would be going to charity, and Class Members were fraudulently and intentionally not told that this contractual term would be breached and was incapable of being honoured.

82. The Representative Plaintiff states that the Class Members were never told by the Defendants (other than the Lawyers) that the primary purpose of the scheme was for the benefit of the Defendants such that *inter alia* these Defendants would receive the vast majority of the donated property.

83. These Defendants (other than the Lawyers), are sales persons, marketers, and promoters, of the Gift Program, or had the authority and responsibility to supervise such persons, and had an obligation to ensure that the information provided to the Representative Plaintiff and the Class Members was accurate. Further, these Defendants (other than the Lawyers) had an obligation to ensure that they explained the risks of investing in the program to the Representative Plaintiff and the proposed Class Members and explained that the primary purpose of the Gift Program was the financial benefit of these Defendants.

84. Further and in the alternative, these Defendants (other than the Lawyers) created, reviewed, drafted, supervised, approved, and authorized or had the opportunity and authority to authorize the preparation and distribution of the promotional materials, the opinion letters, and the comfort letters. These Defendants knew, or ought to have known, or were wilfully blind to the fact that the Class Members would be receiving promotional materials, the opinion letters, and the comfort letters, and relying upon the accuracy and completeness of the information in making the decision to invest in the Gift Program.

85. These Defendants (other than the Lawyers) knew, or ought to have known, or were wilfully blind to the fact that the information contained in the promotional materials, opinion

letters, and the comfort letters was inaccurate, false, deceptive, misleading, and failed to contain material information, and yet these Defendants allowed those documents to be distributed to the Class, thus committing the tort of fraudulent misrepresentation either by way of express fraudulent representation or omission of material which ought to have been disclosed to the Representative Plaintiff or the Class member.

86. Further, once these Defendants (other than the Lawyers) became aware of CRA's position, and became aware that the information in the promotional materials, opinion letters, and the comfort letters was inaccurate, false, deceptive, or misleading they failed to take any steps to contact the Class Members to advise them that these documents were inaccurate, false, deceptive, and misleading. Further, these Defendants (other than the Lawyers) failed to deliver revised promotional materials or letters, and continued to fraudulently sell the Gift Program to Canadians and to Class Members even after becoming aware of CRA's position.

87. As part of the fraud these Defendants (other than the Lawyers) refused to allow the Class to review any of the opinion letters relating to Gift Program prepared by the Lawyers. These Defendants (except the Lawyers) created a complicated system designed to discourage the viewing of the opinion letters. The opinion letters were only available over the internet. Only some of the sales force could read it. Before viewing the opinion letters, the sales persons had to sign an agreement to keep the opinion confidential and promising not to share its contents with anyone including the Class Members. The computer technology was password protected, which passwords expired quickly allowing the sales

force only a very limited amount of time to see the very lengthy opinion letters. The technology prevented the sales force from downloading or copying or printing the opinion letters.

88. As part of the fraud, these Defendants (other than the Lawyers) asked the Lawyers to prepare the comfort letters. But for these letters, the Gift Program would not have been launched and the Class would not have invested in the Gift Program. The comfort letters were designed to induce the Class to invest in the Gift Program without disclosing to the Class all of the material risks of investing in the Gift Program. These Defendants (other than the Lawyers) knew, or ought to have known, or were wilfully blind to the fact that the Class Members receiving the comfort letters (but not the opinion letters), would assume that the opinion letters created by the Lawyers would opine that the income tax savings represented in the promotional materials for the Gift Program would be permitted without objection from the CRA.

89. Solicitors who are not parties to this action expressed doubt that participants in the Gift Program would receive the promised tax credits. These Defendants (other than Lawyers) did not advise the Class, or let the Class learn about or read any opinions from other solicitors doubting participants in the Gift Program would receive the promised tax credits.

90. The fraud and fraudulent misrepresentations of these Defendants (other than the Lawyers) were the proximate cause of the losses of the Class Members; but for the fraud

and fraudulent misrepresentations of these Defendants, the Class Members and the Representative Plaintiff would not have suffered any losses.

91. The Representative Plaintiff and proposed Class Members claim from these Defendants (other than the Lawyers) damages for the fraud, as set out in paragraphs 75 to 89 above. But for these Defendants' fraud, the Representative Plaintiff and the Class members would not have donated money to this scheme, had their taxes re-assessed, and suffered damages.

K/ NEGLIGENCE

92. All of the Defendants, including the Lawyers, negligently planned and created the Gift Program.

93. All of the Defendants negligently created, reviewed, drafted, supervised, approved, and authorized the preparation and distribution of the promotional materials, the opinion letters, and the comfort letters, even though they knew, or ought to have known, that the Class Members would be receiving these documents, and relying upon the accuracy and completeness of the information in the documents in making the decision to invest in the Gift Program.

94. The Defendants knew or ought to have known that the information contained in the promotional materials, opinion letters, and the comfort letters ("Gift documents") was inaccurate, false, deceptive, misleading, and failed to contain material information, and yet the Defendants negligently distributed the Gift documents to the Class, or negligently

authorized the distribution of the Gift documents, and did not take steps to halt the distribution of the Gift documents when they had the authority, capacity and means to stop the distribution of the Gift documents.

95. Further, once the Defendants became aware of CRA's position, and became aware that the information in the Gift documents, was inaccurate, false, deceptive, or misleading, they negligently failed to take any steps to contact the Class Members to advise them that these documents were inaccurate, false, deceptive, and misleading. Further, the Defendants negligently failed to deliver revised Gift documents, and negligently continued to allow the Gift Program to be sold to Canadians and Class Members even after becoming aware of CRA's position.

96. As part of their negligence, the Defendants refused to allow the Class to review any of the opinion letters relating to the Gift Program as prepared by the Lawyers. The Defendants created a complicated system designed to discourage the viewing of the opinion letters. The opinion letters were only available over the internet and only to some members of the sales force. The computer technology prevented the sales force from downloading or copying or printing the opinion letters. The Defendants owed the Class a duty of care which required them to make any opinions available to the Class for review.

97. As part of the negligence of the Defendants, the Lawyers prepared the comfort letters. But for these letters, the Gift Program would not have been launched and the Class would not have invested in the Gift Program. The comfort letters were designed to induce

the Class to invest in the Gift Program without disclosing to the Class all of the material risks of investing in the Gift Program. The Defendants knew, or ought to have known, that the Class Members receiving the comfort letters (but not the opinion letters), would assume the opinion letters created by the Lawyers would opine that the income tax savings represented in the promotional materials for the Gift Program would be permitted without objection from the CRA.

98. The Defendants owed the Class a duty, which they breached. The particulars of the breach of duty are described in paragraphs 92 to 97 above and 100 to 105 below. The Defendants owed the Class Members a duty of care based, *inter alia*, on the special relationship between them and the members of the Class. The special relationship between the Defendants and the Class Members arose from the Defendants' knowledge of the reliance which the Class Members would place on the information provided to them in the promotional materials, the opinion letters, and the comfort letters, and arose from the facts set forth in paragraphs 19 – 21, 24, and paragraphs 32 - 37 above. The Defendants had a duty to ensure that these letters and the promotional materials, were accurate, and were neither deceptive nor misleading, and to ensure that these documents contained all material facts relating to the decision to invest in the Gift Program.

99. The Defendants had an obligation to ensure that the sales persons selling the Gift Program to the Class Members understood the risk to the Class participating in the Gift Program and had a duty to ensure that the sales persons were properly trained, and a duty to take steps to ensure the sales force explained the risks of investing in the program to the

Class, and explained to the Class that the primary purpose of the Gift Program was the financial benefit of the Defendants.

100. The Representative Plaintiff and Class Members state that the Defendants were negligent, the particulars of which are as follows:

(A) as against all Defendants:

(i) they failed to ensure that CRA would in fact recognize the charitable donation receipts issued and tax credits claimed by the Class Members;

(ii) they provided to the Class the promotional materials, and the opinion and comfort letters which were inaccurate, false, deceptive, misleading, and failed to contain material information, and which were designed to convince the Class Members of tax benefits which the Defendants knew or ought to have known would not be ultimately realized;

(iii) they breached their duty by not providing to the Class Members amended and accurate documents. The Defendants were aware or ought to have been aware that the documentation (the promotional materials and the opinion and comfort letters) provided to the Class Members was inaccurate, false, deceptive, misleading, and failed to contain material statements or information. The Defendants were aware of the necessity of the delivery of revised or amended documents but failed to provide these amended documents to the Class Members;

(iv) they separately, and in concert, created, authorized, approved, promoted, marketed, administered, operated, participated and sold to the public and the Class the Gift Program when they knew or ought to have known that the investment in the Gift Program would likely result in Class Members not receiving the tax savings promised in the promotional materials, the comfort letters, and the opinion letters;

(v) they knew, or ought to have known, that the Gift Program would not qualify as a charitable gift under the *Income Tax Act*, and that the Class would be negligently misled into believing that the Gift Program had a charitable purpose or intent where no such intent or purpose

existed. The Defendants knew or ought to have known that CRA would conclude that the donations of the Class Members were not gifts as defined in the *Income Tax Act*;

(vi) they knew or ought to have known from CRA publications and press releases that the tax benefits of the Gift Program would ultimately not be received by Class Members;

(vii) they knew, or ought to have known, that CRA would reassess the tax returns of the Class Members, rendering the Class Members liable to repay tax and interest and penalties to CRA;

(viii) they failed to tell the Class Members about the facts as set forth in paragraphs (v), (vi) and (vii) above;

(ix) they failed to tell the Class Members that the transactions related to the Gift Program were tax avoidance transactions without legitimate purpose;

(x) they participated in a scheme which they knew would deceive the Class Members into believing that the tax benefits of the Gift Program would ultimately be received by Class Members, when they knew or ought to have known it was unlikely such benefits would ultimately be received;

(xi) they preferred their own interests and those of the co-Defendants to those of the Class Members and failed to advise the Class that they were making this preference;

(xii) they failed to disclose to the Class that the primary purpose of the Gift Program was the financial benefit of the Defendants, and that most of the money paid by Class Members under the Gift Program was to be received by these Defendants and not the charities;

(xiii) they negligently failed to ensure the fulfilment of duties owed to the Class Members pursuant to the provisions of the Ontario *CPA* (for Ontario residents) and other similar legislation in the provinces and territories for the Class members who at the time of the investment resided in other provinces and territories of Canada;

(xiv) they breached the duties set forth in paragraphs 92 to 97 and 104 - 105 below;

(xv) the Defendants (other than the Lawyers) provided to the lawyers factual information and assumptions about the Gift Program which they knew or ought to have known were untrue;

(xvi) they had an obligation to ensure that the sales persons selling the Gift Program to the Class members understood the risk to the Class of participating in the Gift Program, and had a duty to ensure that the sales persons were properly trained, and had an obligation to take steps to ensure the sales force explained the risks of investing in the Gift Program to the Class. The Defendants knew that the tax benefits promised to the Class were unlikely to ultimately be received by the Class, and these Defendants had a duty to explain to the Class that the primary purpose of the Gift Program was the financial benefit of these Defendants;

(xvii) they had an obligation to ensure that the sales persons selling the Gift Program to the Representative Plaintiff and the Class Members were educated on the risks faced by the Class Members in participating in the Gift Program. They had a duty to take steps to ensure the sales force explained the risk of investing in the program to the Representative Plaintiff and the Class, and to explain to them that the primary purpose of the Gift Program was the financial benefit of the Defendants; and

(xviii) they refused to allow the Class Members to view the opinion letters prepared by the Lawyers. They permitted the creation of a complicated system designed to discourage the viewing of the opinion letters. The opinion letters were only available over the internet. Only some of the sales force could read it. Before viewing the opinion letters, the sales persons had to sign an agreement to keep the opinion confidential and promising not to share its contents with anyone including the Class members. The computer technology was password protected, which passwords expired quickly allowing the sales force only a very limited amount of time to see the very lengthy opinion letters. The technology prevented the sales force from downloading or coping or printing the opinion letters;

(xix) Until 2009, even after members of the Class had their tax reassessed and their Gift Program tax credits disallowed by CRA, these Defendants continued to sell and permit the Gift Program to be sold to Class Members, and took no steps to amend the promotion materials or advise new potential customers of the CRA reassessments;

(B) as against Harris, the Law Firm, and the partners of the Law Firm only:

(xx) they issued the opinion and comfort letters without due care and consideration, with the expressed intention that the letters be relied upon by the Class Members, when they knew or ought to have known that the content of these letters was inaccurate, incomplete, untrue, and deceptive;

(xxi) they failed to properly investigate and consider the income tax consequences of participation in the Gift Program;

(xxii) they were negligent in the preparation of the opinion letters and the comfort letters;

(xxiii) they knew, or ought to have known, that the aforesaid opinion and comfort letters were an inducement for the promotion and sale of the Gift Program, and that but for these letters, the Gift Program could not be undertaken, and yet they still failed to fully and properly investigate and accurately opine about the likely tax consequences of the Gift Program;

(xxiv) they knew, or ought to have known, that the opinion and comfort letters were no longer accurate or reliable following:

(a) the issuance by CRA of its Fact Sheets in November and December 2003;

(b) the legislative changes announced on December 5, 2003; and

(c) the CRA issuance of Taxpayer Alerts in November 2005 and October 2006 and other CRA alerts and press releases between 2003 and 2009 and other CRA press releases;

(xxv) they knew, or ought to have known, that the Class Members receiving the comfort letters (but not the opinion letters), would assume the opinion letters would opine that the income tax savings represented in the promotional materials for the Gift Program would be permitted without objection from the CRA;

(xxvi) they failed to disclose in the opinion letters and the comfort letters all the material risks associated with the Gift Program;

(xxvii) they failed to ensure that the Class Members were told of all the material risks associated with the Gift Program;

(xxviii) they prepared the comfort and opinion letters based upon assumptions and factual information about the Gift Program provided by the co-Defendants, or by some of the co-Defendants, which factual information and assumptions Harris and the Law Firm knew or ought to have known were untrue;

(xxix) they negligently prepared the December 6, 2007 opinion letter when they knew or ought to have known the contents of the said letter was inaccurate, incomplete, untrue and deceptive;

(xxx) they ignored contrary legal opinions from other lawyers about the tax consequences of the Gift Program; and

(xxxi) they took no steps to prevent or advise against the selling and marketing of the Gift Program even when they knew that the program was being assessed by the CRA;

(xxxii) they negligently preferred to collect legal fees rather than objectively evaluate the tax consequences of the Gift Program;

(xxxiii) they issued the opinion letters and comfort letters with the express intention that these letters would be relied upon by all or some of the Defendants, Parklane, Trafalgar Associates, TTL, Bermuda Long Tail Trust, Donations Canada Financial Trust and Funds for Canada Foundation ("the Gift Program Defendants"), when it knew or ought to have known that these Defendants would rely upon and publish the existence of the opinion and comfort letters in promoting the Gift Program;

(xxxiv) they issued opinion letters and comfort letters with the expressed intention that these letters be relied upon by the Gift Program Defendants, without due care and consideration, when they knew or ought to have known that the Gift Program Defendants would rely upon the accuracy and reliability of these letters in promoting the Gift Program;

(xxxv) they issued the opinion letters and comfort letters with the expressed intention that the opinion letters and comfort letters be relied upon by the Class Members as well as their authorized representatives, without due care and consideration, when it knew or ought to have

known that the Class Members would rely upon the existence of these letters in deciding whether to participate in the Gift Program;

(xxxvi) they issued the opinion Letters and comfort letters with the expressed intention that these letters be relied upon by the Class Members as well as their authorized representatives, without due care and consideration, when it knew or ought to have known that the Class Members would rely upon the accuracy and reliability of these letters in deciding whether to participate in the Gift Program;

(xxxvii) they failed to notify the Gift Program Defendants, prospective donors to the Gift Program and Class members that their opinion and comfort letters were no longer accurate or reliable; and

(xxxviii) they knew or ought to have known that the Gift Program Defendants continued to rely upon and publish the existence and content of the opinion letters and comfort letters for the promotion and sale of the Gift Program to prospective donors and despite their knowledge that these letters were no longer accurate or reliable.

101. Harris and the Law Firms were negligent in the issuance of the opinion and comfort letters, the issuance of which was a necessary prerequisite for the promotion of the Gift Program by the Gift Program Defendants. Accordingly, Harris and the Law Firms' issuance of the opinion letters and comfort letters was the proximate cause of damages to all Class Members.

102. Harris and the Law Firms owed a duty of care to those whom it intended to, or knew or ought to have known would, rely upon the existence and/or the accuracy and reliability of the content of the opinion letters it issued.

103. Harris and the Law Firms had a duty to warn the Gift Program Defendants and the Class Members, and to make full disclosure to them as to the facts and circumstances set out above and failed to do so. Particularly, the law firms and Harris failed to notify the Gift

Program Defendants and the Class Members that these opinion letters and comfort letters were no longer accurate or reliable.

104. All the Defendants negligently failed to take proper steps to fully investigate the Gift Program to ensure that the CRA would in fact recognize the charitable donation receipts that were issued and the tax credits as claimed by the Class Members.

105. The negligence of all the Defendants was the proximate cause of the losses of the Class Members; but for the acts and omissions of these Defendants, the Class Members and the Representative Plaintiff would not have suffered any losses.

L/ DAMAGES

106. As a result of the conspiracy, breach of contract, negligence, fraud, fraudulent misrepresentations, and breaches of the Ontario *CPA* and other similar provincial legislation, the Representative Plaintiff and the Class Members have suffered the following damages and losses:

(i) charitable donation tax credits have been or will be disallowed by CRA resulting in reassessments as well as liability to CRA for payment of interest and penalties;

(ii) loss of monies paid for the Gift Program;

(iii) any interest or penalties owed by the Class Members to CRA;

(iv) loss of opportunity of return on investment of the monies paid; and

(v) special damages, being out-of-pocket expenses, including professional accounting and legal fees and consulting fees, incurred due to CRA's reassessments.

M/ RETURN OF THE MONIES OF THE CLASS AND RESCISSION

107. The Class seeks rescission and the return of the monies paid under the Gift Program on the basis that there has been a mistake, or an unconscionable transaction, or that there were material misrepresentations by the other party (or parties) to the contracts with the Class. Further, the Class seeks rescission on the basis of a breach of the provisions of the *Ontario Consumer Protection Act* (for Ontario residents) and breaches of similar legislation in the provinces and territories for Class members who at the time of the advance of monies resided in other provinces and territories of Canada.

N/ RESTITUTION, UNJUST ENRICHMENT, WAIVER OF TORT, CONSTRUCTIVE TRUST, and *QUANTUM MERUIT*

Unjust Enrichment and *Quantum Meruit*

108. The Defendants' acts, omissions, and misconduct were designed to lure the Representative Plaintiff and the Class Members to invest in the Gift Program. Directly or indirectly, these Defendants, or some of them, have received some or all of the monies paid by the Class Members for the Gift Program.

109. The Representative Plaintiff and Class Members will not receive the tax benefits promised. Consequently, the following has occurred:

(i) the Defendants, or some of them, have been unjustly enriched;

(ii) the Representative Plaintiff and Class Members have suffered a corresponding deprivation; and

(iii) there is no juristic reason for this enrichment.

110. The Class relied, to their detriment, upon the inaccurate, false, deceptive, and misleading opinion letters, comfort letters, and promotional materials, and the Class believed that they would receive the tax benefits promised. The Class' reliance on the Defendants' was to the Defendants' benefit, and to the Class' detriment.

111. Even if the Class did not rely upon the promotional materials, opinion letters, and the comfort letters, the Defendants have unjustly benefited from the monies directly or indirectly received by them from the Class. The Class received no benefit from the Gift Program. There is no juristic reason for the Defendants' betterment.

112. Accordingly, the Class claims monies and damages on the basis of unjust enrichment and *quantum meriut.*

Waiver of Tort (Constructive Trust and Restitution)

113. The Representative Plaintiff pleads and relies upon the legal doctrines of waiver of tort, restitution, and constructive trust. The Defendants created, reviewed, drafted, supervised, approved the Gift Program, and authorized the preparation and distribution of promotional materials, the comfort letters, and the opinions letters which they knew, or ought to have known, were inaccurate, false, and misleading. The Defendants failed to confirm all material facts relating to the Gift Program. Not only did the Class not realize a financial benefit from the Gift Program, the Class has or will lose money in interest payments and penalties imposed by CRA and other damages as particularized in paragraph 103 above. In these circumstances, the Defendants should be compelled to disgorge any funds which the Defendants received, directly or indirectly, from the Gift

Program and to repay to the Representative Plaintiff and the Class Members all benefits, monies, and profits unjustly obtained by the Defendants' tortious, unlawful, and improper conduct as described herein.

O/ ONTARIO *CPA* (FOR ONTARIO RESIDENTS) AND SIMILAR LEGISLATION FOR CLASS MEMBERS in OTHER PROVINCES AND TERRITORIES OF CANADA.

114. The Defendants (other than the Lawyers) owed duties to the Class to comply with the Ontario CPA and other similar legislation in other provinces and territories of Canada and are liable to the Class for false, misleading, deceptive representations, and unfair practices, and their unconscionable conduct. The Class claims damages and rescission for the breach of these Defendants' statutory duties.

P/ PUNITIVE AND EXEMPLARY DAMAGES

115. The conduct of all of the Defendants is such as to justify an award of punitive and exemplary damages. The Representative Plaintiff pleads that the Defendants' conduct has been a breach of the duty of good faith and separate actionable wrongs, including separate breaches of the provisions of the *CPA* (for Ontario residents) and other similar legislation in the provinces and territories for Class members who at the time of the investment resided in other provinces and territories of Canada. The Defendants breached their obligations to the Representative Plaintiff and Class Members because of their desire to maximize profits and financial gain, causing them to suppress the conveying of accurate information to the Representative Plaintiff and Class Members, which the Defendants feared would hurt sales. The Defendants have behaved with arrogance and high-handedness, have shown a callous disregard and complete lack of care for the Representative Plaintiff and Class

Members and the rights of the Representative Plaintiff and Class Members, and ought to be punished and deterred from future misconduct. The Defendants conduct was sufficiently harsh, vindictive, reprehensible, and malicious, so as to justify an award of punitive, exemplary, and aggravated damages from these Defendants. The Defendants were, or ought to have been, aware of the probable consequences of their conduct and the damage such conduct would cause to the Representative Plaintiff and Class Members.

116. The Defendants continue to be major participants in Canadian businesses. These Defendants have considerable assets. An award of $50 million for punitive and exemplary damages is justified and required to punish the Defendants and deter their inappropriate conduct in the future.

Q/ ONTARIO IS THE PROPER FORUM

117. The Representative Plaintiff and Class members are all residents of Canada, or were residents of Canada when investing in the Gift Program, and many of the Class members, including the Representative Plaintiff, are residents of Ontario.

118. The Representative Plaintiff and Class Members were provided with the promotional materials, opinion letters, and comfort letters in Canada, and many in Ontario, including the Representative Plaintiff. The transactions were negotiated and documents were signed in Canada.

119. The Representative Plaintiff and Class Members invested in Canadian currency in the Gift Program, which was promoted as a tax shelter duly registered under Canadian law.

120. The Defendants promoted the Gift Program throughout Canada, including Ontario, and accepted funds that, although directed to off-shore companies, was initially collected in Canada by Canadian entities which held themselves out as offering a tax shelter program that was in compliance with the Canadian tax regime. All of the Defendants carried on business in Ontario.

121. In these circumstances, there is a real and substantial connection between this claim and the Province of Ontario, entitling the Representative Plaintiff and Class Members to bring this action in Ontario. Ontario is the most convenient forum for the trial of the action and the foreign defendants are necessary and proper parties to this action.

R/ SERVICE OUTSIDE ONTARIO

122. With respect to service of this claim outside of Ontario, the Representative Plaintiff pleads and relies upon the following Rules:

(a)	17.02(f)(i)(iv)	- the contract was made and breached, in part in Ontario;
(b)	17.02 (g)	- the tort was committed in Ontario;
(c)	17.02 (h)	- the damages of many members of the proposed class were sustained in Ontario;
(d)	17.02 (o)	- the Defendants are necessary and proper parties to this action which is properly served;
(e)	17.02 (p)	- the Defendants carry on business in Ontario;
(f)	17.05 (3)	- where service is to be made in a contracting state pursuant to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, the document is to be served

either (a) through the central authority in the contracting state, or (b) in a manner that would be permitted by the Convention and that would be permitted by the Rules if the document was being served in Ontario.

The Representative Plaintiff proposes that this action be tried at Toronto.

September 18, 2008

Date of issue: ~~February~~ ~~2010~~

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Court File No. CV-08-362807-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

FURTHER FRESH AS AMENDED STATEMENT OF CLAIM

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