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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL CANNON

Plaintiff

and

FUNDS FOR CANADA FOUNDATION, MATT GLEESON AND SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES (BERMUDA) LTD. as trustee for the BERMUDA LONGTAIL 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, GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

MOTION RECORD

(Motion for Settlement Approval, returnable October 17, 2013)

Date: September 17, 2013

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TAB 1

(1)

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL CANNON

Plaintiff

and

FUNDS FOR CANADA FOUNDATION, MATT GLEESON AND SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES (BERMUDA) LTD. as trustee for the BERMUDA LONGTAIL 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, GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

NOTICE OF MOTION

The Plaintiff will make a motion to Justice Belobaba on Thursday, October 17, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard at Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

(2)

1. an order:

a) declaring that the Settlement Agreement dated June 4, 2013 (the "FFCF/Gleeson Agreement") between the Plaintiff and the Defendants Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc. (the "FFCF/Gleeson Defendants"), is a fair, reasonable and adequate settlement of this action as against the FFCF/Gleeson Defendants, and is in the best interests of the Class, approving same pursuant to s. 29(3) of the *Class Proceedings Act, 1992* ("CPA"), and directing that the FFCF/Gleeson Agreement be implemented in accordance with its terms, including the bar order set out therein;

b) declaring that the Settlement Agreement dated July 9, 2013 (the "Law Firm Agreement") between the Plaintiff and the Defendants Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro) and McInnes Cooper (the "Law Firm Defendants") is a fair, reasonable and adequate settlement of the action as against the Law Firm Defendants, is in the best interests of the Class, and approving same pursuant to s. 29(3) of the CPA, and directing that the Law Firm Agreement be implemented in accordance with its terms, including the bar orders set out therein;

c) declaring that the FFCF/Gleeson Agreement and the Law Firm Agreement form part of the court's approval order, and are binding on the Class and all parties hereto, including persons who are minors or mentally incapable,

and that the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure shall be disposed with;

d) directing that notice of the court's approval of the Law Firm Agreement and the FFCF/Gleeson Agreement shall be disseminated to the Class in accordance with the notice protocol appearing as Exhibit O to the affidavit of Keith M. Landy sworn September 13, 2013;

e) approving the form of notice to the Class of this court's approval of the Law Firm Agreement and the FFCF/Gleeson Agreement appearing as Exhibit N to the affidavit of Keith M. Landy sworn September 13,;

f) approving the distribution protocol for distribution of the net settlement funds to the Class appearing as Exhibit P to the affidavit of Keith M. Landy sworn September 13, 2013;

g) permitting the Plaintiff and the Settling Defendants to agree to reasonable extensions of time to carry out any provisions of the Law Firm Agreement and the FFCF/Gleeson Agreement without further order from the court;

h) appointing NPT RicePoint Class Action Services Inc. ("RicePoint") as Claims Administrator, directing that the claims administration fees shall be paid from the settlement funds, and declaring that the FFCF/Gleeson Defendants and the Law Firm Defendants shall have no responsibility for and no liability with respect to the administration of their respective Agreements;

(4)

i) declaring that upon the Effective Dates set out in the Law Firm Agreement and the FFCF/Gleeson Agreement, the Releasors (as defined in those Agreements) shall release and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees (as defined in those Agreements) from the Released Claims (as defined in those Agreements);

j) declaring that, should it be necessary, this court has full authority to determine the proportionate liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees appear at the trial or other disposition of the action, and that the proportionate liability of the Releasees shall be determined as if the Releasees are parties to the action and any determination by the court in respect of the proportionate liability shall only apply in the action and shall not be binding on the Releasees in any other proceedings;

k) dismissing the action as against the FFCF/Gleeson Defendants and the Law Firm Defendants effective as of the Effective Date, with prejudice and without costs;

l) approving the contingency fee agreement respecting fees and disbursements made between the Plaintiff and Class Counsel and approving Class Counsel's fees in the amount of $9,303,638 plus applicable taxes to be paid from the settlement funds in accordance with the the Law Firm Agreement and the FFCF/Gleeson Agreement; and,

(5)

m) such further and other relief as to this Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

a) Sections 12, 19, 29, 32 and 33, *Class Proceedings Act, 1992*, S.O. 1992, c.6;

b) Rules 12 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 190, as amended;

c) This action was certified as a class proceeding by order of this court dated January 18, 2012;

d) The Class is defined as:

> Any person who participated in the ParkLane Donations for Canada Charitable Gift Program while resident in Canada during the period between January 1, 2005 and December 31, 2009, excluding Edward Furtak, Wayne Robertson, the Defendants, their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the families of the Individual Defendants, Wayne Robertson and Edward Furtak, and any entity in which any of the foregoing persons or entities has a legal or *de facto* controlling interest.

e) The action seeks recovery of losses sustained by the Plaintiff and Class Members arising from their participation in a leveraged charitable giving program called the ParkLane Donations for Canada Gift Program (the "Gift Program") which operated from 2005 to 2009;

f) The Law Firm Defendants gave opinions about the Gift Program, and Edwin C. Harris permitted his profile and a "comfort letter" directed to the participants in the Gift Program to be included in the promotional brochure for the Gift Program;

(6)

g) The FFCF/Gleeson Defendants were involved in accepting the donations from the class members and delivering charitable tax receipts, and recruiting charities to participate in the Gift Program, and were involved in preparing the promotional brochure for the Gift Program from 2006 – 2009;

h) The Plaintiff has entered into settlements with the Law Firm Defendants and the FFCF/Gleeson Defendants, subject to this court's approval;

i) The settlement agreements require these Defendants to pay most of their available insurance to the Class, and to provide ongoing co-operation to the Plaintiff in the prosecution of the action against the remaining Defendants;

j) The remaining Defendants are the entities that received virtually all of the money paid into the Gift Program by the Class;

k) The Plaintiff, the Law Firm Defendants and the FFCF/Gleeson Defendants have negotiated settlements and entered into settlement agreements that are fair, adequate and reasonable, and are in the best interests of the Class;

l) The Plaintiff wishes to provide notice to the Class of the settlements' approval in accordance with sections 19 and 29 of the *Class Proceedings Act, 1992*;

m) The opt-out period for the Distributor Class Members was extended by order of this court dated February 20, 2013 until 60 days after the final disposition of any motions brought to deal with the status or stay of the

(7)

Third Party Claims or other relief relating thereto, but subject to any further order of the court;

n) The opt-out period for the Distributor Class Members has not yet expired;

o) The contingency fee agreement and the fees and disbursements sought by Class Counsel are fair and reasonable, and are proportionate for the time expended, the risks assumed and the results achieved to date in this proceeding;

p) RicePoint are qualified and experienced class action administrators who have agreed to act as the Notice Administrator for the purpose of delivering the Notice of Hearing for Settlement Approval; and,

q) Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion

a) The affidavit of Keith M. Landy sworn September 13, 2013;

b) The affidavit of Michael Cannon sworn September 13, 2013;

c) Such further and other evidence as this Court may permit.

Date: September 16, 2013

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

MICHAEL CANNON
Plaintiff

-and-

FUNDS FOR CANADA FOUNDATION et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding under the Class Proceedings Act, 1992

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

(Motion for Settlement Approval, returnable October 17, 2013

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Class Counsel

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TAB 2

(17)

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, MATT GLEESON AND SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES (BERMUDA) LTD. as trustee for the BERMUDA LONGTAIL 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, GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

AFFIDAVIT OF KEITH M. LANDY
(Sworn September 13, 2013)

I, Keith M. Landy, Barrister and Solicitor, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner of the law firm Landy Marr Kats LLP ("LMK") and a member of the Class Counsel team involved in the prosecution of this certified class action. As such, I have personal knowledge of the matters set out below, except where I have been

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advised of such information, in which case I have stated the source of my information, and I do believe it to be true.

2. Class Counsel are, jointly, the law firms of LMK and Paliare Roland LLP ("Paliare Roland"). Both firms are experienced class action lawyers. LMK has been prosecuting this action since 2008. Paliare Roland began their involvement in the proceeding in July 2010, and came on the record in October 2010. Class Counsel have been actively prosecuting the action from the outset of the LMK retainer.

The Parties to this Proceeding

3. Michael Cannon ("Cannon") is the representative plaintiff. The certified class is defined as:

> Any person who participated in the ParkLane Donations for Canada Charitable Gift Program while resident in Canada during the period between January 1, 2005 and December 31, 2009, excluding Edward Furtak, Wayne Robertson, the Defendants, their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the families of the Individual Defendants, Wayne Robertson and Edward Furtak, and any entity in which any of the foregoing persons or entities has a legal or *de facto* controlling interest.

4. The ParkLane Defendants (defined below) provided Class Counsel with a "Master Donor List" that includes the names and last known contact information for all of the individuals who participated in the ParkLane Donations for Canada Charitable Gift Program (the "Gift Program"), and sets out the amounts that the each contributed to the Gift Program by year. The list contains 10,336 individual names.

5. The opt out period expired on February 22, 2013 for all Class Members, except for those Class Members who are also defendants to the Third Party Claims ("the

Distributor Class Members"). The termination of the opt out period for the Distributor Class Members is to be addressed by the court on September 18, 2013.

6. To date, only 129 individuals have opted out of the class action. Based upon the information in the Master Donor List, the total of cash contributions to the Gift Program made by the Class is $138,508,200.50. The Distributor Class Members (who had not opted out of the class action as of June 7, 2013) made total cash donations of $4,112,054 to the Gift Program.

7. For ease of reference, in this affidavit, I refer to the Defendants in this action as falling into four groups and two categories:

(a) the "ParkLane Defendants" include ParkLane Financial Group Limited ("Parklane"), Trafalgar Associates Limited and Trafalgar Trading Limited ("TTL");

(b) the "FFCF/Gleeson Defendants" include Funds for Canada Foundation ("FFCF"), Mary-Lou Gleeson ("Mary-Lou"), Matt Gleeson ("Matt") and Gleeson Management Associates Inc. ("GMA");

(c) the "Law Firm Defendants" include Edwin C. Harris, Q.C. ("Harris"), Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro) and McInnes Cooper;

(d) Appleby Services (Bermuda) Ltd. as trustee for the Bermuda Longtail Trust (the "BLT") ("ASBL");

(e) The "Settling Defendants" are the FFCF/Gleeson Defendants and the Law Firm Defendants; and,

(f) The "Non-settling Defendants" are the ParkLane Defendants and ASBL.

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8. Prior to the motion for certification, the Plaintiff entered into settlements with some individuals who had been named as defendants in this proceeding. Under these settlements, the former individual defendants provided evidence on cross-examination, produced some relevant documents in their personal possession, and provided a statutory declaration confirming that they had assets of less than $500,000 in the jurisdiction. Among the individual defendants who settled on this basis was Edward Furtak ("Furtak"), who resides in Bermuda, and is the CEO and Chairman of the Trafalgar Group of Companies, including the ParkLane Defendants. Furtak is the settlor of and one of the beneficiaries of the BLT, as well as being the CEO and Chair of the ParkLane Defendants.

Nature of this Motion

9. This affidavit is sworn in support of the Plaintiff's motion for court approval of:

(a) the settlement reached between Cannon and the FFCF/Gleeson Defendants on the terms set out in the settlement agreement dated June 4, 2013 (the "FFCF/Gleeson Settlement"); and

(b) the settlement reached between Cannon and the Law Firm Defendants on the terms set out in the settlement agreement dated July 9, 2013 (the "Law Firm Settlement").

Attached hereto and marked as **Exhibit A** is a true copy of the FFCF/Gleeson Settlement Agreement dated June 4, 2013

Attached hereto and marked as **Exhibit B** is a true copy of the Law Firm Settlement Agreement dated July 9, 2013

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10. It is the opinion of Class Counsel that both the FFCF/Gleeson Settlement and the Law Firm Settlement are reasonable and fair and in the best interests of the Class. The bases for this conclusion are set out below.

11. If the settlements are approved, Class Counsel also seek an order from the court:

(a) appointing NTP RicePoint Class Action Services Inc. ("RicePoint") to act as claims administrator for the purpose of distributing the settlement funds under both the FFCF/Gleeson Settlement and the Law Firm Settlement to qualifying Class Members; and

(b) approving the contingency fee agreement between Class Counsel and the Plaintiff and authorizing payment to Class Counsel of the fees described below from the combined settlement fund.

Attached hereto and marked as **Exhibit C** is a true copy of the Contingency Agreement dated November 4, 2010

Nature of the Action

12. This action was certified as a class proceeding on January 18, 2012.

13. The action seeks recovery of losses sustained by the Plaintiff and Class Members arising from their participation in a leveraged charitable giving program called the ParkLane Donations for Canada Gift Program (the "Gift Program") which operated from 2005 to 2009. CRA has reassessed the Class Members' tax returns and disallowed the charitable deductions that the Class claimed based upon the charitable receipts they obtained for their participation in the Gift Program.

14. The Gift Program was marketed as "an innovative tax-assisted product designed" so that participants would receive a tax credit equal to $10,000 for every $2,500 of cash donated by the participant. The Gift Program promotional brochure represented that for each $2500 donation the participating charities would receive a total of $10,000 which would "be used to fund [their] current and long term charitable objectives." The $7,500 difference was to be contributed by a benevolent Canadian resident trust "with a mandate and commitment to fund Canadian charities."

> Attached hereto and marked as **Exhibit D** is a true copy of the 2006 ParkLane Donations for Canada promotional brochure

15. The Class' tax returns have been reassessed by Canada Revenue Agency (CRA), and the charitable tax deductions the Class Members claimed based upon the receipts they received through the Gift Program have been disallowed. In addition to the loss of their out of pocket contributions to the Gift Program, the Class have also been assessed interest by CRA based upon the overdue taxes arising from the reassessments. The class action seeks damages for both the total contributions to the Gift Program made by the Class, and the CRA interest charged on the reassessment to thereby put the Class back into the position that they would have been in if they had not participated in the Gift Program. Calculation of the CRA interest component of damages was not certified as a common issue.

16. For example, Cannon participated in the Gift Program by contributing a cash donation of $10,600 in 2005 and $12,500 in 2006. In 2008 and 2009 CRA reassessed Cannon's tax returns for 2005 and 2006, respectively, and disallowed the charitable tax credits he claimed in respect of the Gift Program, and in addition, he was charged

arrears interest totalling $6,703.76 in respect of these two reassessments, i.e. approximately 30% of his cash donations.

17. While the Gift Program promotional brochure showed that Canadian charities would receive both the participant's cash donation and the leveraged amount from the benevolent trust, that is not how the Gift Program worked in its entirety.

18. In reality, the Gift Program was a complex scheme of inter-connected agreements and transactions, all of which were effected more or less contemporaneously at the time of each "closing", i.e. at the time when the Class Members donations to designated charities were aggregated and the money flowed through to the various participants in the scheme.

19. Using an example of a cash donation of $2,500, this is what happened:

(a) Individuals would sign all the requisite documentation required to participate in the Gift Program and pay their "donation" of $2,500 to ParkLane as escrow agent. The individual would sign all documentation required to direct his or her donation to a designated charity, including both the cash donation and the donation of sub-trust units of the Donations Canada Financial Trust, which would be issued in the name of the participant, on the closing, and held by ParkLane as escrow agent;

(b) Once a sufficient number of people had designated a particular charity, or at the end of the calendar year, a separate "closing" would occur for that participating charity, at which time all the funds would flow in accordance with the preauthorized directions executed by all the participants;

(c) First, the $7,500 leveraged amount of the aggregate donation was funded by ASBL which it paid to the Donations Canada Financial Trust, i.e. the benevolent Canadian resident trust to give ostensible value in the subtrust units issued to the participant which he or she was "donating" to the charity;[1]

(d) the $7,500 leveraged payment and the participant's $2,500 payment were aggregated by ParkLane acting as escrow agent and paid into a bank account in the name of the participating charity after the charity sent a notice to redeem all the subtrust units that had been transferred to it by ParkLane. The participating charity had no direct control over this bank account, which was operated by a third party escrow agent;

(e) 1% of the total donated amount, i.e. $100 of every $10,000 aggregate donation ($100 out of the $2,500 of cash donation) was transferred to the participating charity;

(f) to participate in the Gift Program, the charities had to enter into a Royalty Agreement with TTL in which they agreed to send the remaining 99% of the aggregate donations to TTL – this 99% was also paid out of the escrow bank account to TTL;

(g) TTL would then pay, on behalf of the charity, 6% or 8% of the aggregate donations to ParkLane as a sales commission ($600 or $800 of the $2,500 cash donation), part of which it passed on to its distributors. For the whole of the Gift Program the total amount of commission paid to ParkLane totaled $41,650,024;

[1] ASBL refers to this payment as an "investment."

(25)

(h) the remaining balance was the "purchase price" paid by the charity for the Royalty Agreement. The charity had no right to return of the purchase price. It only was entitled to receive a contingent revenue stream payable under the terms of the Royalty Agreement;

(i) under the terms of the Royalty Agreements, TTL was to establish a trading facility equivalent to the total amount of the purchase price paid by each charity, to be comprised of cash and "trading leverage";

(j) TTL was supposed to trade futures contracts for a 20 year period using a specialized software trading program it licensed from ASBL. 60% of any monthly trading profits were to be paid to the charity, and 20% of the trading profits were to be added to the trading facility. TTL was entitled to keep for itself the remaining 20% of any trading profits;

(k) TTL paid 85% of the purchase price to ASBL pursuant to the terms of a Master License Agreement in respect of the trading program. The result was that ASBL received back the $7,500 it had "invested" and earned a guaranteed profit of either $405 or $235 for each $7,500 it had advanced to the Donations Canada Financial Trust, depending on whether ParkLane was paid a commission of 6% or 8%, respectively. For the whole of the Gift Program the total profit achieved by ASBL was $16,028,400;

(l) the balance of the purchase price - $1,395 or $1,365 of each $10,000 aggregate donation - was retained by TTL. For the whole of the Gift Program the total amount paid to and retained by TTL was $77,222,349.

20. At the time that the Plaintiff negotiated the Settlement Agreements with the Settling Defendants, Class Counsel believed that TTL had kept the balance of the purchase prices paid for the Royalty Agreements (which totaled over $77 million) and was using that money as the cash capital portion of the leveraged trading TTL was to be performing under the Royalty Agreements.

21. As the Settlement Agreement with the Law Firm Defendants was being finalized, Furtak deposed that is not what happened, and that TTL has spent all of the $77 million. He says that until 2009, TTL borrowed money from ASBL for the cash component of the leveraged trading – TTL did not use any of the $77 million for the futures trading. According to Furtak, the quantum of each trade conducted by TTL was based on its own discretion, and what trading was done, was all on a super leveraged basis (i.e. up to 40 times the amount of the cash on deposit).

> Attached hereto and marked as **Exhibit E** are true copies of the relevant excerpts from the cross-examination of Furtak on June 21, 2013

22. TTL has produced statements of payments it has made to the charities to date. It appears that from 2006 to the present, TTL has paid a mere $5,867,040.37 to the charities, i.e. approximately 1% of the original trading facility/purchase price of $562,086,550 paid by the charities to TTL under the Royalty Agreements.

Status of the Class Proceeding

23. This action was commenced by Cannon on September 18, 2008, on behalf of all the participants in the Gift Program. The Gift Program operated from 2005 to 2009. By

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2009, CRA was reassessing the participants in the Gift Program, and this class action had been launched.

24. Prior to the certification motion, the ParkLane Defendants, the FFCF/Gleeson Defendants (except Gleeson Management Inc. which defended after its motion for leave to appeal from the certification order was dismissed) and the Law Firm Defendants delivered their Statements of Defence. These pleadings were amended one or more times, and the Plaintiff has delivered Replies as well as Defences to Counterclaims where warranted. A separate volume containing all the current versions of the pleadings in the main action will be filed with the court for reference on this motion.

25. ParkLane and the Law Firm Defendants delivered their Statements of Defence prior to certification because they intended to, and did bring motions for summary judgment which were heard (and decided against them) at the same time as the motion for certification. These summary judgment motions are discussed in more detail, below.

26. The FFCF/Gleeson Defendants also brought a motion for summary judgment, but it was withdrawn.

27. The Plaintiff brought a motion to add ASBL as a defendant on February 9, 2010 based upon information Class Counsel had obtained in its investigations.

28. ASBL did not defend the action initially. Instead, it brought a motion to stay or dismiss the action against it for lack of jurisdiction. ASBL delivered a motion record including the affidavit of its Managing Director, Rory Gorman, who was cross-examined.

> Attached hereto and marked as **Exhibit F** is true copy of the affidavit of Rory Gorman sworn June 3, 2010, and only Exhibits H, I, S – V thereto ;

Attached hereto and marked as **Exhibit G** is a true copy of the transcript of the cross-examination of Rory Gorman taken on July 7, 2010

29. On August 18, 2010, Justice Strathy dismissed the jurisdiction motion, except in respect of the Plaintiff's claims for breach of contract, negligent misrepresentation and breach of the Consumer Protection legislation. ASBL appealed Justice Strathy's decision. The Court of Appeal dismissed ASBL's appeal on March 9, 2011.

30. Thereafter, ASBL attorned to this court's jurisdiction, and participated in the motion for certification. ASBL delivered its defence after its motion for leave to appeal from the certification order was dismissed.

31. The certification and summary judgment motions were argued during the week of August 22, 2011, and Justice Strathy granted certification and dismissed the summary judgment motions by order dated January 18, 2012.

32. The Defendants all sought leave to appeal the certification decision. ParkLane and the Law Firm Defendants also sought leave to appeal the dismissal of their summary judgment motions. On October 29, 2012, the Divisional Court dismissed all of the motions for leave to appeal.

33. On or about November 28, 2012, notice of certification was delivered to the class. The opt out period expired on February 22, 2013 for all class members, except the Distributor Class Members. The opt out period for the Distributor Class Members was extended by order of the court granted on February 20, 2013. The motion to end that opt out period is to be heard by the court on September 18, 2013.

(29)

34. Prior to the certification motion, the ParkLane Defendants advised that they intended to assert third party claims. On July 16, 2010, Justice Strathy made an order granting leave to any Defendant who filed a statement of defence to issue a third party claim up to thirty days following the court's decision on the summary judgment and certification motions or any appeals therefrom, whichever is later.

> Attached hereto and marked as **Exhibit H** is a true copy of the order of Justice Strathy dated July 16, 2010

35. On September 16, 2010, the Law Firm Defendants issued but did not serve Third Party Claims against ParkLane's Distributors and against BDO Dunwoody LLP and Ralph Neville. These Third Party Claims were not served until after the Law Firm Defendants' motion for leave to appeal from the certification and summary judgment motions was dismissed.

36. On September 17, 2010, the ParkLane Defendants issued but did not serve Third Party Claims against their Distributors, and against BDO Dunwoody LLP and Ralph Neville. These Third Party Claims were not served until after the ParkLane Defendants' motion for leave to appeal from the certification and summary judgment motions was dismissed.

37. The Distributors are the individuals and companies that signed Class Members up to participate in the Gift Program. Most entered into a written agreement with ParkLane. The Distributors were paid commissions by ParkLane for each Class Member whom they signed.

38. After the motions for leave to appeal the certification order were dismissed, the time for service of the Third Party Claims was extended several times, with the last extension expiring on June 30, 2013.

Attached hereto and marked as **Exhibit I** is a true copy of the order of Justice Perell dated April 29, 2013

39. Many of the Third Parties, but not all, have either defended one or both of the Third Party Claims, or have delivered Notices of Intent to Defend those proceedings. A few Third Parties have also served a Notice of Intent to Defend the main action; but none have defended the main action, yet. The time has expired for any other Third Parties to defend the main action.

40. Of the over 400 Distributors listed in the Third Party Claims, 182 are also Class Members, who have not opted out as of this date. They are the Distributor Class Members.

41. Immediately following the motion for approval of the settlements, the Plaintiff is moving for an order:

(a) To amend the certified common issues to clarify that the claim in negligent misrepresentation asserted against the ParkLane Defendants is limited to the Gift Program Materials; and

(b) To stay ParkLane's Third Party Claims against the Distributors.

Information about the Case Available to Class Counsel

42. As referenced above, ParkLane and the Law Firm Defendants brought motions for summary judgment seeking to have Cannon's action against them dismissed. The motions were heard at the same time as the certification motion. The Law Firm Defendants delivered a separate motion record for each motion.

43. Prior to the hearing of the summary judgment motions, the Plaintiff brought and settled a motion for production of documents relevant to those motions from both ParkLane and the Law Firm Defendants. There were 518 documents produced by the Lawyers, and 270 by ParkLane. Many of those productions became key exhibits on the motions.

44. Also prior to the certification and summary judgment motions being heard, the Plaintiff settled his claim against Sarah Stanbridge as Trustee of the Donations Canada Financial Trust. As part of the settlement, Ms. Stanbridge was examined under oath, and she produced to the Plaintiff all the relevant documents in her possession or control, of which there were several thousand. Key among these documents were the closing agendas, which provided a clearer picture of how the "back half" of the Gift Program actually worked, including the flow of money to Canada from ASBL, and back down to TTL and ASBL in Bermuda.

45. The record on the certification and summary judgment motions was voluminous, it included:

(a) 38 volumes of evidence;

(b) 18 affiants swore affidavits, on which they were all cross-examined, over the course of 16 days;

(c) 13 facta, totaling 795 pages, and further written submissions on summary judgment were filed; and,

(d) 12 volumes of authorities were filed, comprising 275 authorities, and additional authorities were filed in respect of the further submissions on summary judgment.

46. Among the parties cross-examined on the certification and summary judgment motions were Mr. Harris and a representative of Patterson Palmer Law, Mr. James, who were examined on March 28 and March 30, 2011 (which was after ASBL had lost its appeal on the jurisdiction motion). The transcript of Mr. Harris' examination is 167 pages, and the examination lasted from 10 am to after 4 pm. Undertakings were answered following his examination. Mr. James also provided answers to undertakings following his cross-examination.

47. The documents produced on the motions for certification and summary judgment, the documents produced by Ms. Stanbridge and the other defendants who settled early on, along with the cross-examinations and answers to undertakings and refusals, all assisted Class Counsel in understanding the merits of the case, and the relative strengths and weaknesses of the parties' positions by the time we commenced negotiating the settlements with the Settling Defendants.

48. While discoveries have not yet commenced, due to the nature and scope of the summary judgment motions brought by ParkLane and the Law Firm Defendants, and

the information obtained from ASBL on the jurisdiction motion, as well as the production of documents and cross-examinations of the settled defendants, Class Counsel have obtained reasonably extensive document production and evidence respecting the claims asserted in this proceeding, particularly with respect to the claims asserted against the Law Firm Defendants and the FFCF/Gleeson Defendants.

49. Before entering into the settlement negotiations with the FFCF/Gleeson Defendants and the Law Firm Defendants, Class Counsel were satisfied that they had sufficient information from the Settling Defendants, the certification and summary judgment motions, and our own investigations to reasonably evaluate the case and to negotiate these settlements.

The Claims against the Defendants

50. The Plaintiff will be continuing the class proceeding against the ParkLane Defendants and ASBL. In reaching the settlements with the Settling Defendants, Class Counsel were of the view that it is likely that the common issues trial judge will conclude that the greatest proportion of liability to the Class should be allocated to the Non-settling Defendants jointly with respect to the claims in negligence. There is, in our view, also a strong case for findings of conspiracy, fraud and/or fraudulent misrepresentation, based on the facts summarized above, and from our independent investigations.

51. The certified common issues include a claim for breach of contract against ParkLane. If this claim is successful, ParkLane cannot make a claim for contribution and indemnity against any other Defendant. The Class' total damages will be, of

course, reduced by the amount of the net settlement fund received by the Class from these settlements.

52. The certified common issues include a claim in conspiracy against the Non-settling Defendants. No such claim was asserted against the Law Firm Defendants. If this claim is successful, there would be no claims over for contribution and indemnity against the Law Firm Defendants. It remains an open legal question whether co-conspirators can claim contribution and indemnity from each other, but the Non-settling Defendants have not brought crossclaims against each other.

53. The certified common issues include claims in fraud and fraudulent misrepresentation against the Non-settling Defendants. No such claims were asserted against the Law Firm Defendants. If these claims are successful, there would be no claims over for contribution and indemnity against the Law Firm Defendants.

54. The certified common issues include a claim against the ParkLane Defendants for negligent misrepresentation. The same claim was originally pleaded against ASBL, but was disallowed on the jurisdiction motion. If this claim is successful, there would be no claim over by the ParkLane Defendants against ASBL. If the claim succeeds, the proportionate liability as between the ParkLane Defendants and the Law Firm Defendants will be fixed by the common issues trial judge.

55. The certified common issues include claims against the ParkLane Defendants under the various provinces' *Consumer Protection Acts* for rescission of the Gift Program contracts or damages in lieu for their engaging in unfair and unconscionable practices in respect of the marketing and sale of the Gift Program. Again, if this claim is

successful, it is not subject to a claim for contribution and indemnity against the Law Firm Defendants.

56. Based upon the information that is available to Class Counsel at this stage in the proceeding, we are of the view that the likelihood of success against the Non-settling Defendants under each of the above-referenced causes of action is very good. This has also been borne out by the preliminary conclusions of the court on the both the jurisdiction motion brought by ASBL, and the summary judgment motion brought by ParkLane.

57. An important factor in considering the fairness of the settlements reached with the Settling Defendants is that the Non-settling Defendants are the parties that received virtually all of the Class' money. Furtak is the principal of the ParkLane Defendants and a beneficiary of the BLT. Class counsel anticipate that at the common issues trial, the court will conclude that the Gift Program's primary objective was to enrich Furtak at the expense of the Class and the Federal Treasury.

The FFCF/Gleeson Role in the Gift Program and Inability to Satisfy a Judgment

58. The FFCF/Gleeson Defendants were involved in the recruitment of charities to participate in the Gift Program. From 2006 to July 2009, FFCF was a registered charity, and the primary charity promoted in the Gift Program. It received donations from and provided charitable receipts to the Class.

59. FFCF received 1% of the total aggregate donations paid to it, but passed on 75% of that 1% to real charities who participated in the Gift Program through FFCF. It

similarly passed through to the charities all but a small fraction (59%) of the profit distributions that it received from TTL under the Royalty Agreements. The balance of the money FFCF received was used for its operating expenses including a modest salary for Mrs. Gleeson, and consulting fees paid to Mr. Gleeson.

60. FFCF was reassessed by CRA after losing its charitable status. As a result of its tax debt, it is insolvent. Accordingly, other than the personal assets of Mr. and Mrs. Gleeson, the only asset available to respond to the Class' claim was an eroding director and officer's liability policy in the face amount of $2 million.

The Law Firm's Role in the Gift Program and Relative Liability

61. The Law Firm Defendants are Harris and the firms at which he worked.

62. The Law Firm Defendants did not participate in sharing the proceeds from the Gift Program. Mr. Harris has advised through his counsel that he was paid by the ParkLane Defendants for the services rendered by him, and did not receive any other remuneration for his involvement in the Gift Program.

63. In their draft crossclaim against the Law Firm Defendants, the ParkLane Defendants allege that Harris "played an integral role in creating the design, structure and contents of the Gift Program and the Gift Program Materials." They also assert that if the Class relied to their detriment upon misrepresentations in the Harris "comfort letter" that was included in the Gift Program promotional brochure, then the ParkLane Defendants are entitled to contribution and indemnity from the Law Firm Defendants.

(37)

Attached hereto and marked as **Exhibit J** is a true copy of the ParkLane Defendants' draft Further Fresh Further Amended Statement of Defence, Counterclaim and Crossclaim

64. The protective terms of Articles 7.1(c) and 7.2 of the Bar Order (discussed below) should be, in Class Counsel's view, sufficient protection for the ParkLane Defendants to ensure that they are not held liable to the Class for any part of the Class' claim for which the ParkLane Defendants could otherwise claim contribution and indemnity from the Law Firm Defendants.

65. In their draft crossclaim against the Law Firm Defendants, ASBL claims contribution and indemnity, but also alleges that the Law Firm Defendants owed ASBL a duty of care to ensure that Harris' legal opinions were accurate and not misleading, and ASBL alleges that it relied upon the opinions to its detriment.

Attached hereto and marked as **Exhibit K** is a true copy of ASBL's draft Amended Statement of Defence and Crossclaim

66. It appears unlikely to Class Counsel that ASBL relied upon the opinions *to its detriment*, as it profited from its participation in the Gift Program; as ASBL admits in its statement of defence. The only potential detriment it will suffer will be based upon its liability to the Class, if any, as determined at the common issues trial.

67. The claim against the Law Firm Defendants was based in negligence and negligent misrepresentation, primarily with respect to the faulty design of the Gift Program, and Harris' misrepresentations arising from the comfort letter included as part of the promotional brochure. The Statement of Claim alleges that Harris put himself in a

position of direct proximity with the Class such that he owed them a duty of care, and that he breached that duty to the detriment of the Class.

68. The negligence-based claims asserted against the Settling Defendants and the Non-settling Defendants are asserted against them jointly, as joint tortfeasors who were all involved in the Gift Program.

69. The apportionment of liability with respect to the negligence-based claims is an issue to be determined by the common issues trial judge. The settlement reached with the Law Firm Defendants took into consideration Class Counsel's view of the likely allocation to the Law Firm Defendants of liability in negligence and negligent misrepresentation. It also took into consideration the important intangibles of litigation risks, and the advantage to the Class of having a sum certain paid to them now, without the delay of waiting for the uncertain outcome of a trial and the inevitable appeal(s) therefrom.

70. In considering the allocation of potential liability, Class Counsel concluded that much will depend upon whether the Plaintiff successfully proves the claims in fraud, fraudulent misrepresentation, breach of contract and breach of the *Consumer Protection* legislation. Particularly, we considered that if the common issues trial judge finds that the Non-settling Defendants were involved in a fraud on the Class, that ParkLane was in breach of its contracts with the Class, or that the ParkLane Defendants breached consumer protection legislation, these are not areas for which the Law Firm Defendants could likely be found liable.

71. In negotiating the settlement with the Law Firm Defendants, Class Counsel took into consideration ASBL's evidence on the jurisdiction motion, in which Mr. Gorman attested that it had "conducted a review of its files pertaining to the Trust to identify documents that might be related to the "Donations Canada Charitable Gift Program" as alleged in the Amended Claim." ASBL identified a number of documents that might be relevant, but then swore "ASBL does not have detailed knowledge of them [i.e. the documents] or any particular explanation for them or why they were provided to ASBL, and when".

72. Among the documents ASBL produced, and about which Mr. Gorman swore, ASBL had no detailed knowledge or explanation for, was one tax opinion by Harris, dated March 14, 2006, in respect of which Gorman attested "ASBL cannot speak to the details of the relationship, if any, between the 2006 Tax Opinion and the Gift Program as pleaded by the Plaintiff. ... to the best of my knowledge ASBL had no role in requesting this 2006 Tax Opinion or any other legal opinion relating to the Gift Program as pleaded." Gorman distanced himself from the Tax Opinion; he did not assert reliance on it.

73. The Master License Agreement that ASBL produced and which Furtak asserts is the only license agreement relevant to this Gift Program was dated as of September 1, 2005, a date which substantially pre-dates the Tax Opinion in ASBL's files.

74. Furthermore, the letter from Mr. Robertson to ASBL which is produced at Ex. W to the Gorman affidavit confirms that ASBL had been granting software licenses to TTL

in respect of TTL's business dealings in Canada since 1998, and particularly with respect to the charitable giving programs in which TTL was involved since 2003.

75. Based on this evidence, Class Counsel concluded that ASBL should not have any basis for a claim for contribution and indemnity from the Law Firm Defendants in respect of the negligence claim asserted against ASBL by the Class, nor any other tenable claim based upon the Law Firm owing ASBL a duty of care in respect of ASBL's participation in this Gift Program. Hence, in our view the terms of the Bar Order (discussed below) would not be prejudicial to ASBL.

76. In reaching the settlement with the Law Firm Defendants, Class Counsel assumed that there would be a reasonable chance of success in establishing the negligence and negligent misrepresentations claims asserted against the Law Firm Defendants. However we also weighed in the balance the warning language included in both the opinion letters and in the Gift Program contract documents upon which the Law Firm Defendants had relied for the purposes of their summary judgment motion.

77. We also took into consideration the fact that the assertion of an independent duty of care owed by the Law Firm Defendants to the Class when there was no solicitor-client relationship was bound to be an area of legal controversy that would likely lead to appeals, potentially all the way to the Supreme Court of Canada.

Next Steps in the Proceeding

78. On October 17 and 18, 2013, after the hearing of the settlement approval motion, the Plaintiff will be seeking a court order to stay the ParkLane Defendants' Third Party

Claim against the Distributors and/or to sever that claim from the main action. In addition, the Plaintiff is seeking an order to amend the certified common issues to clarify that the claim in negligent misrepresentation is focussed on the Gift Program documentation.

79. A separate motion record has been filed in respect of that motion.

80. The Plaintiff has also brought a motion against TTL for an order under Rule 45.02 for payment into court of a specific fund, i.e. whatever remains in TTL's possession of the $77 million that it received over the course of the Gift Program. That motion has been adjourned to be heard by Master Dash in January 2014.

81. A similar motion was brought and settled against ASBL with respect to the remainder of the $16 million that it received from its participation in the Gift Program.

82. The parties have yet to proceed to discoveries. Although substantial documents and information were produced as part of the certification and summary judgment motions, and from the settled defendants, there undoubtedly remains extensive documentation that has yet to be produced by the Non-settling Defendants.

83. The Settling Defendants also have continuing production and oral discovery obligations under the terms of the Settlement Agreements (as discussed below).

84. While it is very difficult to estimate how much longer this case will take to get to the common issues trial, Class Counsel estimate that it will likely take a further 2 years to be ready for the common issues trial. Given the complexity of the case, the amount

of money at stake and the nature of the allegations in the claim, we anticipate that there are likely to be appeals from the common issues trial.

85. In addition, it may be necessary to establish part of the class members' losses on an individual basis – particularly the total interest or penalties assessed by CRA when their tax returns were reassessed. While we do not foresee this part of the case taking much time, and we anticipate that it will be likely that it can be completed using an expedited and simplified procedure, this stage may have to await the outcome of any appeals from the common issues trial, which will mean a further delay before the Class will be compensated for the balance of their losses.

86. For these reasons, and as elaborated below, Class Counsel are of the view that an early settlement that will see the Class receiving partial compensation now is in the best interests of the Class.

Communications with the Class

87. Throughout the action, Class Counsel have consulted with and taken instructions from Cannon. Cannon has attended many of the hearing dates, and he has been actively involved with Class Counsel in the negotiation of the settlements.

88. Class Counsel have been proactive to ensure that Class Members are kept apprised of the status of the litigation:

(a) From time to time newsletters regarding the progress of the litigation were sent to Class Members who contacted Class Counsel prior to certification;

(b) Class Counsel have maintained dedicated webpages which are updated regarding the status of the proceeding, including posting key documents;

(c) Class Counsel have maintained toll-free numbers which Class Members utilize to contact us, and we return calls promptly after messages are left;

(d) Class Counsel communicate directly with any Class Members who contact them by email or telephone;

(e) Notice of Certification was delivered in accordance with the court's order; and

(f) Notice of the Hearing for approval of these settlements was delivered in accordance with the court's order.

89. Class counsel have had direct communications with about 1,600 class members to date. There has been a flurry of new emails and telephone calls after the notice of hearing for settlement approval was delivered by RicePoint, as of September 12, 2013 there had been over a 100 new email communications and over 50 telephone calls, with more arriving daily.

90. To date, Class Counsel have received no objections to these proposed settlements (discussed below), or to the amount of fees we are seeking under the terms of the contingency agreement. To the contrary, most are very pleased with the settlement and I am advised by Margaret Waddell that several have expressly told her that they thought the fees are fair.

The FFCF/Gleeson Settlement

91. On June 4, 2013, Cannon, on behalf of himself and the Class, executed the Settlement Agreement with the FFCF/Gleeson Defendants that appears at **Exhibit A** hereto. The Settlement Agreement reflects the product of extensive arm's length negotiations between Class Counsel and the lawyers for the FFCF/Gleeson Defendants that had started in or about October 2010.

92. Throughout the process of the negotiations, Mr. Cannon was informed of the legal positions asserted by the FFCF/Gleeson Defendants. He was advised of the relative strengths and weaknesses of each side's case in the opinion of Class Counsel, and he knew the limitations on the ability to recover any substantial judgment against the Gleesons personally and that the FFCF D & O insurance was eroding. Mr. Cannon agreed that the settlement with the FFCF/Gleeson Defendants is fair and reasonable and in the best interests of the Class in all the circumstances of this case.

Details of the FFCF/Gleeson Settlement

93. The key terms of the FFCF/Gleeson Settlement are as follows:

(a) the FFCF/Gleeson Defendants will pay $950,000;

(b) the FFCF/Gleeson Defendants will provide co-operation to Class Counsel in the prosecution of the action, including:

a) providing documentary production of all non-privileged and relevant documents in their power, possession, or control and that are reasonably accessible;

b) making reasonable inquiries and providing answers to written questions of Class Counsel in respect of the documentary production; and

c) to meet with Class Counsel on two occasions to answer questions about their information regarding the Gift Program and the issues in the litigation, and again to prepare their trial evidence;

(c) FFCF will advise Class Counsel if it receives any royalty payments from TTL, and FFCF agrees to be bound by a court order to be sought by the Plaintiff, on notice to CRA, to have any such royalty payments paid into court pending the outcome of this proceeding;

(d) Class Counsel's fees and disbursements, as approved by the court, will be paid out of the settlement fund;

(e) the fees and expenses of the claims administrator will be paid out of the settlement;

(f) the Class Proceedings Fund will be paid its levy from the settlement fund;

(g) the balance of the settlement fund will be distributed to the Class by the claims administrator in accordance the distribution protocol as approved by the court;

(h) the Plaintiff will seek a bar order from the court, barring any claims for contribution, indemnity or other claims over against the FFCF/Gleeson Defendants relating to the Gift Program (no such claims had been asserted at the time that the settlement agreement was executed); and

(i) the action will be dismissed as against the FFCF/Gleeson Defendants with prejudice and without costs.

94. After this Settlement Agreement was executed, the Settlement Agreement with the Law Firm Defendants was completed. As a result, the FFCF/Gleeson Defendants agreed to the modification of some of the schedules to their Settlement Agreement to reflect the fact that Class Counsel would be seeking the court's approval of the two settlements at the same time. Hence, they agreed to the form of notices appended to the Law Firm Defendants' Settlement Agreement.

95. FFCF had a directors and officers' liability policy of insurance in the face amount of $2 million, but it was an eroding policy. Hence, as the litigation proceeded, and FFCF and Mary-Lou Gleeson incurred legal expenses and paid court costs, the value of this policy was rapidly declining. Matt Gleeson was covered under the policy only for the time he was a director of FFCF, which ended some time in early 2006. It was likely that the whole amount of the policy would have been extinguished by the time the action reached the common issues trial.

96. As at the time the settlement was completed, the policy limit had eroded to approximately $1.2 million. Under the terms of the settlement, the FFCF/Gleeson Defendants have continuing co-operation obligations including the obligation to make documentary discovery as though they remained parties to the proceeding, and the obligation of Matt and Mary-Lou Gleeson to both make themselves available to Class Counsel for interviews both in lieu of discovery and to prepare for trial. They must also attend, if required, to give evidence at trial.

(47)

97. To the extent that part of the insurance policy is not paid directly to the Class, they will receive the benefit of the insurance through the legal services provided to Matt and Mary-Lou Gleeson as they fulfil their continuing co-operation obligations under the terms of the settlement in making documentary production, answering written questions about the productions, attending for interviews and attending at trial.

98. As referenced above, FFCF is insolvent. It is, in the opinion of Class Counsel, unlikely that it will receive any future payments under the Royalty Agreements it entered into with TTL. The evidence of Furtak in response to the Plaintiff's motion for payment into court of a specific fund is that TTL has "spent" all the money it received from the Gift Program, and that the trading it conducted for the Royalty Agreements was with funds lent to it from the BLT by ASBL. ASBL stopped granting those loans in early 2009.

99. Furtak also deposed that in 2012 TTL started trading again on a "test" basis using $100,000 of capital. He deposed that some small amounts were paid to charities under the Royalty Agreements (and other agreements), including a total of $1,189.72 paid to FFCF. Class Counsel have been advised by the lawyers for the FFCF/Gleeson Defendants that the FFCF/Gleeson Defendants have no record of receiving those payments. The amounts, in any event are minute.

100. Nonetheless, as referenced above, the settlement with the FFCF/Gleeson Defendants allows for the Plaintiff to seek an order – on notice to CRA – for an order that any royalty payments received by FFCF be paid into court pending the outcome of the common issues trial.

101. The FFCF/Gleeson Defendants were involved on the charities' side of the Gift Program. From 2006 until July 2009 (when its status as a registered charity was revoked by the CRA), FFCF was the primary charity for the Gift Program. It entered into Royalty Agreements with TTL and it issued charitable tax receipts to the Gift Program participants.

102. Matt Gleeson was the founding director of FFCF, and Mary-Lou was and continues to be its executive director. Together, Mary-Lou and Matt owned and ran GMA. Through GMA, Matt recruited other charities to participate in the Gift Program under the umbrella of FFCF.

103. As set out above, as part of the scheme, FFCF actually received only 1% of the total cash donations that were made to it. It then paid 75% of the 1% to the charities participating through it, keeping 25% of 1% for its operating costs. Similarly, FFCF paid 95% the funds that it received under the Royalty Agreements to the charities, keeping only 5% for its operating costs.

104. Mary-Lou and Matt are individuals and, to the best of the knowledge of Class Counsel, do not have significant personal wealth. They did not receive substantial incomes in their capacities as directors of FFCF:

(a) Mary-Lou received an annual salary of approximately $50,000; and

(b) Matt received consulting fees from the recruitment of other charities to the Gift Program.

105. Class Counsel are of the view that the FFCF/Gleeson Settlement is fair and reasonable and in the best interests of the class. Among other things:

(a) Class Counsel have concluded that the payment of $950,000 is proportionate to the likely allocation of liability at the common issues trial to the FFCF/Gleeson Defendants, i.e. they played a very peripheral role in the whole of the Gift Program, and much like the Class, they were relying upon information that they received from the ParkLane Defendants about how the Gift Program worked, including representations that TTL would be actually applying the funds it received from the Royalty Agreements for the purposes of the futures trading;

(b) Class Counsel considered and weighed the risks associated with continuing the litigation against these Defendants, including the defences raised by the FFCF/Gleeson Defendants, and the complications, additional expense and delay arising from two additional sets of defence counsel participating in the discovery and common issues trial versus the benefit of receiving most of the amount remaining of the one major asset – the insurance policy - before it was all used up in defence costs;

(c) The total funds received by the FFCF/Gleeson Defendants was not substantial, and it was spent in operating the Foundation, the quantum of any claim for unjust enrichment would be *de minimus* versus the costs of prosecuting the claim, and the likelihood of enforcing a substantial judgment was low;

(d) There is an intangible, but substantial, benefit to the Class to have the cooperation of the FFCF/Gleeson Defendants in the ongoing prosecution of the action; and,

(e) The inclusion of a term that requires FFCF to advise Class Counsel if it receives any royalty payments from TTL, together with FFCF's agreement to be bound by an order to have any such amounts paid into court, ensures that the FFCF/Gleeson Settlement will not foreclose a potential source of recovery to the Class in the unlikely event that FFCF receives any future payments from TTL.

106. In summary, Class Counsel have concluded that it is in the best interests of the class to settle with the FFCF/Gleeson Defendant on the terms set out in the Settlement Agreement at **Exhibit A** hereto.

The Law Firm Settlement

107. On July 9, 2013, Cannon, on behalf of himself and the Class, through counsel, executed a settlement agreement with the Law Firm Defendants that appears at **Exhibit B** hereto. The settlement agreement reflects the product of very hard fought, arm's length negotiations between Class Counsel and the lawyers for the Law Firm Defendants that had started in June 2012, but began in earnest in December 2012, after the motions for leave to appeal had been dismissed by the Divisional Court. Many in-person meetings, telephone discussions, written communications and offers were exchanged before the parties reached terms that Class Counsel considered acceptable.

108. Throughout the process of the negotiations, Mr. Cannon was informed of the positions asserted by the Law Firm Defendants in this proceeding. He was advised of the relative strengths and weaknesses of each side's case in the opinion of Class Counsel. Mr. Cannon knew the professional liability insurance covering the claim

against the Law Firm Defendants was eroding at a fast pace, which would accelerate as the action progressed into the discovery phase, and if the Third Party Claims brought by the Law Firm Defendants were actively pursued. Mr. Cannon agreed that the settlement with the Law Firm Defendants is fair and reasonable and in the best interests of the Class in all the circumstances of this case.

109. In negotiating the settlement, Class Counsel took into consideration the facts and evaluations of the case referenced above and below.

Details of the Law Firm Defendants Settlement

110. The key terms of the Law Firm Defendants Settlement are as follows:

(a) the Law Firm Defendants have paid to Class Counsel in trust a "base settlement amount" of $23,130,789, which is being held in an interest bearing account pending settlement approval and distribution;

(b) upon the termination of the opt out period for the Distributor Class Members, the Law Firm Defendants will pay an additional "Net Bonus Payment" of up to $4,112,054;[2]

(c) the Law Firm Defendants will comply with any unfulfilled obligations to the Plaintiff under the *Rules of Civil Procedure* as though they remained a party to the class action, including to:

[2] The Net Bonus Payment is calculated as follows: $4,112,054 (representing the aggregate amount of cash donations to the Gift Program made by the Distributor Class Members who have not opted out as of June 7, 2013) minus the aggregate amount of cash donations made by Distributor Class Members who opt out of the class action after June 7, 2013.

a) produce any non-privileged relevant documents in their possession that have not yet been disclosed (documents from 2005 and 2006 had been disclosed already for the summary judgment motion);

b) produce a list of all documents in their possession, power or control over which privilege is claimed (i.e., akin to a Schedule "B" to an affidavit of documents); and

c) facilitate the attendance by Harris at an examination for discovery and at trial;

(d) Class Counsel may seek the court's approval to have their fees and the settlement administration expenses paid from the settlement amount;

(e) the mechanics of the implementation and administration of the settlement and distribution protocol will be determined by the court; and

(f) the action against the Law Firm Defendants and the Third Party Claim by the Law Firm Defendants against the Distributor Class Members who have not opted out of the action will be dismissed with prejudice and without costs.

The Bar Order

111. The Law Firm Defendants Settlement also includes comprehensive bar order terms at Article 7, which are reproduced in full here for ease of reference:

7.1 Bar Order

The Plaintiff and the Settling Defendants agree that the Second Order shall contain a bar order which shall include the following provisions:

a) all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Gift Program which were or could have been brought in the Class Action or in a separate proceeding by any Non-Settling Defendant or any other person or party against any of the Releasees, or by the Releasees against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Article (unless such a claim is made in respect of a claim by a person who has validly opted out);

b) all claims of any person of any nature whatsoever arising out of or relating in any way to the professional services provided by the Settling Defendants to the defendants ParkLane Financial Services Limited, Trafalgar Associates Limited or Trafalgar Trading Limited relating to or arising from the Gift Program which could have been brought in the Class Action or in a separate proceeding are barred, prohibited and enjoined;

c) if, in the absence of Articles 111.a) and 111.b), a Non-Settling Defendant or any other person or party would have the right to make a claim of any kind against any of the Settling Defendants:

i. the Plaintiff and/or the Settlement Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Settling Defendants proven at trial or otherwise;

ii. the court shall have full authority to determine the proportionate liability at the trial or other disposition of the Class Action as if the Settling Defendants were parties to the

action and any such finding by the court in respect of the proportionate liability shall only apply in the Class Action and shall not be binding upon the Settling Defendants in any other proceedings; and

d) after the Effective Date, a Non-Settling Defendant may, on motion to the court determined as if the Settling Defendants still remained parties to the Class Action, and on at least ten days notice to Defence Counsel and the Plaintiff, seek orders to conduct discovery of the Settling Defendants according to the Ontario *Rules of Civil Procedure*. The Settling Defendants retain all rights to oppose such motions or seek the costs of compliance, including any such motion brought at trial seeking an order requiring any of the Settling Defendants to produce a representative to testify at trial. On any motion brought pursuant to this paragraph, the court may make such orders as to costs and other terms that it considers appropriate;

e) on any motion brought pursuant to Article 111.d), the Court may make such orders as to costs and other terms as it considers appropriate;

f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided in a timely manner by the Settling Defendants to Class Counsel;

g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for these purposes only; and

h) a Non-Settling Defendant may effect service of the motion(s) referred to in Article 111.d) on the Settling Defendants by service on Defence Counsel.

7.2 Reduction on Recovery

For greater certainty, to the extent that the Settling Defendants are found in any proceeding to have any liability to any of the Non-Settling Defendants for damages or losses arising from or related to amounts for which the Non-Settling Defendants are found liable to the Settlement Class Members, the Settlement Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants.

112. At the time the Law Firm Defendants Settlement Agreement was executed no claims for contribution or indemnity or other claims had been asserted against the Law Firm Defendants by any Non-settling Defendant. Class counsel was not privy to the tolling agreement that was in place among the Defendants with respect to claims for contribution and indemnity.

113. The bar order terms in Article 7.1(a) of the Law Firm Defendants Settlement Agreement are substantially the same as the terms of the bar order in Article 8.1(a) of the FFCF/Gleeson Defendants Settlement Agreement, and the language of both is comparable to bar orders that have been granted by the court in other partial settlements of class actions.

114. The protection granted to the Non-settling Defendants to address the fact that their claims for contribution and indemnity against the Law Firm Defendants are to be barred is found in Article 7.1(c) and Article 7.2 of the Law Firm Defendants Settlement

Agreement, by which terms the Class agrees to limit its recovery against the Non-settling Defendants to their proportionate liability as proven at trial, and the Non-settling Defendants' liability to the Class is to be reduced by any amounts for which the Law Firm Defendants are found to be liable to the Non-settling Defendants in respect of the Non-settling Defendants' liability to the Class in any proceeding.

115. The intent of these clauses is to ensure that, if the action is successful at trial, the Non-settling Defendants will not be at risk of paying to the Class any amount of money for which they would otherwise have been able to obtain contribution and indemnity from the Law Firm Defendants.

116. In addition to the Bar Order terms set out in Article 7.1(a), the Bar Order includes at 7.2(b) a more comprehensive bar which is intended to preclude any further claims being asserted against the Law Firm Defendants in respect of the professional services they rendered to the ParkLane Defendants in respect of the Gift Program. No such claims have been asserted against the Law Firm Defendants, except those claims asserted by ASBL and the ParkLane Defendants in their draft crossclaims, which are discussed above and in a separate Notice of Action now issued by ParkLane against the Law Firm Defendants in Nova Scotia.

> Attached hereto and marked as **Exhibit L** is a true copy of ParkLane's Notice of Action in the Nova Scotia courts.

117. Based upon the facts set out above and particularly the sworn evidence of ASBL's representative, Class Counsel is not aware of any factual basis upon which

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ASBL could tenably assert an independent cause of action against the Law Firm Defendants.

118. The Law Firm Defendants have professional liability insurance that provided coverage of $40,000,000 (the "Law Firm policies"). Like the FFCF D&O policy, the Law Firm policies are eroding as defence costs are expended.

119. As of December 31, 2012 the Law Firm Defendants advised that the Law Firm policies had eroded to approximately $37,350,000, but they still had outstanding defence costs to be paid, as well as an outstanding $28,000 costs order from the leave to appeal motions. Additional costs would be incurred by the Law Firm Defendants with respect to the Third Party Claims it was serving at that time, and thereafter in dealing with issues arising from those proceedings.

120. Under the terms of the settlement, the Law Firm Defendants continue to have substantial obligations to the Plaintiff including making full production of all relevant documents, producing a list of documents over which privilege is claimed by the ParkLane Defendants, producing Harris for examination both for discovery and at trial, and remaining at risk to respond should the Non-Settling Defendants bring a motion for any additional discovery as contemplated by Article 7.1(d) of the Settlement Agreement.

121. Based upon all of the factors and facts set out above, Class Counsel are of the view that the Law Firm Settlement is fair and reasonable and in the best interests of the Class. Among other things:

(a) The payment of a "Net Bonus Payment" is fair in view of the fact that the opt out period for the Distributor Class Members has not yet expired. The "Net Bonus Payment" is calculated by taking the total cash donations of Distributor Class Members who had not opted out as of June 7, 2013, and subtracting those amounts attributable to Distributor Class Members that do opt out after June 7, 2013. In this way, the Law Firm Settlement contains a built-in mechanism to ensure that the settlement amount will not include amounts attributable to Class Members who ultimately opt out of the Class action, and could potentially assert claims against the Law Firm Defendants. To date, there have been no additional opt-outs.

(b) Class Counsel have concluded that the payments of $23,130,789 plus the "Net Bonus Payment" of up to $4,112,054 are a fair representation of the Law Firm Defendants' proportionate liability in respect of the negligence and negligent misrepresentation claims, moderately discounted for the many risks inherent in the litigation and considering the defences raised by the Law Firm Defendants.

(c) The Law Firm Defendants continue to have discovery and trial attendance obligations to the Class under the settlement. Given Harris' involvement in the creation and structuring of the Gift Program, and his work with the ParkLane Defendants Class Counsel anticipate that having the Law Firm Defendants' evidence and cooperation will be of great assistance in the prosecution of the action against the Non-settling Defendants. Hence,

(59)

there is a substantial intangible value to the Class arising from the settlement.

(d) The dismissal of the Law Firm Defendants' Third Party Claim against the Distributor Class Members is also of strategic value to the Class and a real benefit to the Distributor Class Members. While the ParkLane Defendants still have a Third Party Claim against the Distributor Class Members, the Plaintiff intends to focus the common issues on those issues so they are clearly directed against the ParkLane Defendants, which should reduce the complications that arise from the additional pleadings, legal arguments and general confusion and scheduling mayhem that would otherwise arise in the prosecution of the class action.

(e) Finally, the Class Members were reassessed by the CRA and have incurred tax liabilities as a result of those reassessments. If the settlement is approved, it will result in the Class Members receiving a preliminary yet meaningful payment towards their losses now, rather than having to wait until the conclusion of the action - which will likely be at least 3 - 4 years away by the time the common issues are resolved, appeals are completed and any residual individual damages claims are adjudicated. A sum certain payment now is of real value to the Class.

Settlement Approval Hearing Notice

122. On August 22, 2013, the court approved the settlement approval hearing notice, and appointed RicePoint as the notice administrator. RicePoint sent the notice to the class by email and by mail in accordance with the court's order.

123. Since the notice was delivered, as mentioned above, there has been a deluge of communications from the Class. Not one person has objected to the settlements or the fees proposed so far.

Appointment of NTP RicePoint Class Action Services Inc. as Claims Administrator

124. Class counsel seek the court's approval to appoint RicePoint to act as claims administrator with respect to the distribution of the settlement funds under both the FFCF/Gleeson Settlement and the Law Firm Settlement. RicePoint already have good familiarity with this matter have the updated list of Class Members, and they are very experienced claims administrators.

> An outline of RicePoint's class action administration experience is attached to my affidavit as **Exhibit M**.

125. The anticipated cost of the administration of the settlement by RicePoint is $248,000 plus taxes and disbursements which Class Counsel considers reasonable, given the nature of this case and large number of interested Class Members. This will include:

(a) setting up the case including case website and toll-free number;

(b) drafting the claim form, cover letter and FAOs with Class Counsel;

(c) communications with Class;

(d) claims processing and distributions to Class;

(e) preparing status reports and final reporting;

(f) preparing all relevant tax filings.

Settlement Approval Notice

126. If the FFCF/Gleeson Settlement and the Law Firm Settlement are approved, Class Counsel seeks court approval of the proposed settlement approval notice, substantially in the form attached to this affidavit as **Exhibit N**, and approval of the notice protocol attached as **Exhibit O**.

127. The notice protocol is basically the same as that for the notice of settlement hearing, with additional newspaper publications. Class counsel believe that the reach to the Class will be well in excess of 95%, which is excellent.

Distribution Protocol

128. Class Counsel recommend that the court approve the distribution protocol attached hereto as **Exhibit P**.

129. This protocol will achieve a fair result for the class, since it will divide the net settlement found among all Class Members who seek a payment on a pro rata basis based on the amount of their total cash contribution to the Gift Program.

130. In discussions with the Class who have asked about this issue, no Class Member has suggested that this method of distribution is unfair.

Approval of Class Counsel Fees

131. LMK has been involved in the prosecution of this action since its inception in 2008. The LMK team consists primarily of Samuel Marr, myself and David Fogel with assistance from other lawyers, including a contract research lawyer, and students, as required. My partner, Samuel S. Marr ("Marr"), has had primary carriage of the file at LMK, although my involvement increased while he took a medical leave from the practice from November 2012 to March 2013.

Risks Assumed by LMK

132. LMK is a 7 lawyer firm with 3 partners. The opposing lawyers in the case are senior counsel from some of Canada's largest firms, including Bennett Jones LLP, McCarthy Tétrault LLP and Blake Cassells & Graydon LLP, as well as eminent defence counsel at Steiber Berlach LLP and Ricketts Harris LLP and also included counsel from other firms such as Gowlings LLP for the settled defendants.

133. The financial risk to LMK in agreeing to take this case was enormous. While our firm has prosecuted several class actions, none were of the size and scope of this case. When we started the case, we were the sole law firm acting for the Plaintiff, and no application had been was made to the Class Proceeding Fund. Nonetheless, we entered into an agreement to indemnify Cannon for any adverse costs awards. At the outset, we had no intention of partnering with another firm, and we had no way of knowing, should we ultimately decide to partner with another firm, whether such a partner could be found given the size, scope and complexity of the case.

134. The financial risk is illustrated by the quantum of costs awarded to the Plaintiff following the successful certification and summary judgment motions, which totaled almost $1 million. Had the motions been unsuccessful, absent funding from the Class Proceedings Fund, Class counsel would have been obliged to pay costs likely in a similar (if not greater) amount to the 5 sets of Defendants. At the time that we entered into the indemnity agreement with Cannon, that exposure was being borne only by the 3 partners of LMK. This was truly "bet the firm" litigation for our small partnership, and a loss would have been crippling.

135. As discussed below, LMK has 5 years of unbilled time on this file totalling approximately $2 million. To do battle with the Defendants on a contingent basis was an enormous undertaking and daunting financial risk for LMK. The unbilled time to date on this file is approximately 3700 hours - a significant financial liability.

Risks assumed by Paliare Roland

136. Paliare Roland became involved in the prosecution of the action in July 2010, and went on the record in October, 2010. The Paliare Roland team consists primarily of Margaret Waddell and Andrew Lewis, (and Susan Brown until her departure to the United States in 2012), with assistance from other lawyers, law clerks and students, as required. The other professionals have typically performed task-specific roles. Karen Jones, for example has expertise in managing the discovery process for large, document intensive files, and Gregory Ko is fluently bilingual and therefore assists in communications with French speaking class members, as well as taking on research and specific projects as required.

137. Until the action received funding from the Class Proceedings Fund in 2011, Paliare Roland joined LMK in providing an indemnity to Cannon for any adverse costs award.

138. Paliare Roland is not a large, national firm, either. It has 34 lawyers and 21 partners. It too has borne the financial risk of working on a contingency basis on this large, complicated and massively time-intensive proceeding. In addition, after joining as co-Class Counsel, it assumed primary responsibility for the payment of most of the disbursements on this matter to the extent that they were not funded by the Class Proceedings Fund, or (now) from adverse costs awards paid by the Defendants.

139. To date, the Plaintiff has been awarded costs in the total amount of $1,014,573.10, plus taxes. It stands to reason that, prior to receiving funding from the Class Proceedings Fund, Class Counsel were jointly assuming the risk to pay costs in at least a like amount if the Plaintiff had not been successful on the motions and appeals.

140. While the Plaintiff has been granted funding from the Class Proceedings Fund, the Fund did not advance funds to cover all of the disbursements incurred by Class Counsel. The difference was borne by Class Counsel until the costs orders were paid by the Defendants, most of which were received in late 2012 or early 2013, which were then available to Class Counsel to reimburse the disbursement expenses.

The Work Performed by Class Counsel

141. The following is a summary of the main elements of the work that has been undertaken by Class Counsel in prosecuting the action:

(a) Initial meetings with Cannon and review of relevant documentation, and ongoing communications with Cannon regarding the litigation;

(b) Investigation of the ParkLane Donations for Canada Gift Program, including making freedom of information requests from CRA for information regarding its audit of the Gift Program and Mr. Cannon's reassessment;

(c) Drafting the statement of claim and amendments to the claim from time to time as settlements were reached with some individual defendants, more information became available, and in response to demands by the Defendants;

(d) Addressing the Defendants challenges to proposed amendments to the claim in submissions to the court at case management conferences and hearings;

(e) Reviewing and considering the Defendants' Statements of Defence (and Counterclaims) and drafting Replies;

(f) Settlement negotiations with certain former individual defendants and drafting settlement agreements and obtaining court approval for those settlements;

(g) Conducting cross-examinations of the individual defendants against whom the action was settled, including travel to the US to conduct the cross-examination of Wayne Robertson who would not attend in Canada, and obtaining documentary productions from those defendants;

(h) Responding to, and arguing ASBL's motion contesting the jurisdiction of the Ontario court, and its appeal from the dismissal of the motion, including attendance in Bermuda to conduct a cross-examination of ASBL's witness;

(i) Extensive direct communications, by mail, by email and by telephone with over 1600 Class Members, including receipt of many sets of Class Members' documents regarding the Gift Program, and indirect communications with Class Members through newsletters and website updates;

(j) Retaining and instructing experts in damages calculations, taxation issues, lawyers' duty of care, trustees' duty of care, and Bermuda law;

(k) Making application to the Class Proceedings Fund for funding of this proceeding;

(l) Preparing the Plaintiff's motion record (6 volumes in total) for certification and responding to the motions for summary judgment brought by the ParkLane Defendants and the Law Firm Defendants;

(m) Reviewing the Defendants' responding motion records, including the motions for summary judgment brought by ParkLane and the Law Firm Defendants;

(n) Researching, preparing and settling a motion for production of documents and waiver of solicitor-client privilege in respect of the motions for summary judgment;

(o) Preparing for and attending at 18 cross-examinations of witnesses for a total of 16 days for the certification and summary judgment motions;

(p) Follow up from the cross-examinations regarding gathering undertakings, and the preparation and settlement of an omnibus refusals motion;

(q) Reviewing thousands of documents produced by the ParkLane Defendants and the Law Firm Defendants and Sarah Stanbridge as the Trustee of the Donations Canada Financial Trust;

(r) Successfully resisting a motion to strike the expert affidavit evidence of Vern Krishna, Q.C.;

(s) Drafting facta and reply facta for the certification and summary judgment motions, preparing extensive case books and compendia of key documents and evidence;

(t) Preparing for and attending at week-long certification and summary judgment motions;

(u) Drafting responding facta and preparing case books on the Defendants' motions for leave to appeal;

(v) Preparing for and attending at a full day motion for leave to appeal;

(w) Drafting orders and making written cost submissions on motions and appeals;

(x) Preparing the notice of certification and effecting publication and delivery of same to class members;

(y) Receiving and reporting on total opt outs;

(z) Attending multiple case conferences with the case management judge and the case management master;

(aa) Addressing several motions that were resolved or withdrawn, including, Rule 21 motions, and a motion to strike the defence of the ParkLane Defendants;

(bb) Obtaining production of insurance policies from ASBL, FFCF and the Law Firm Defendants;

(cc) Bringing a motion for payment of specific funds into court, settling same with ASBL, cross-examining Furtak in respect of same, and arguing a motion on refusals re same;

(dd) Extensive investigative work for the purposes of preparing the litigation brief against all Defendants;

(ee) Extensive legal research dealing with a multitude of legal issues, including the various causes of action asserted, the scope and effect of bar orders, cross-claims and indemnity claims, tracing, preservation of funds pending judgment, jurisdiction issues, trust issues, etc.;

(ff) Receipt and review of Third Party Claims and communications with Distributor Third Parties and the Lawyers for some Third Parties;

(gg) Preparation of motion to stay Third Party Claims and amend the common issues;

(hh) Engaging and instructing document review experts;

(ii) Negotiations with Defendants regarding discovery plan;

(jj) Settlement negotiations with the FFCF/Gleeson Defendants and drafting a comprehensive settlement agreement and this settlement approval record;

(kk) Settlement negotiations with the Law Firm Defendants and drafting a comprehensive settlement agreement and this settlement approval record;

(ll) Bringing a motion to end the extended opt out period for the Distributor Class Members;

(mm) Ongoing communications with all lawyers for Defendants and Third Parties;

(nn) Ongoing communications with Department of Justice and CRA re pending test case tax appeals;

(oo) Communications with Class Members re pending settlements and third party claims;

(pp) Communications with and instructing the Notice Administrator;

(qq) Preparing the notices with respect to these settlements, and effecting publication and delivery of same to Class Members; and

(rr) Ongoing communications with Defence counsel regarding all steps in the proceeding.

142. Since 2008, Landy Marr Kats has docketed time totaling of approximately 3700 hours, with a dollar value of approximately $2 million (not including applicable taxes). We will provide a more precise summary at the hearing of this motion.

143. I am advised by Margaret Waddell that since 2010, Paliare Roland has docketed time totaling over 4,300 hours, with a dollar value of almost $2,000,000 (not including applicable taxes).

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144. In order to preserve privilege, the time dockets of class counsel will be available to the court in a sealed envelope at the fee approval hearing.

> Attached hereto and marked as **Exhibit Q** is a chart setting out an estimate of the total value of time expended by Paliare Roland, and the disbursements incurred to date.

145. The costs awards received by the Plaintiff have been used to repay funds advanced by the Class Proceedings Fund that covered $150,000 of expert fee the disbursements incurred by Class Counsel, and to pay for the disbursements that have been incurred by Class Counsel in the prosecution of this action since 2008. The total disbursements that have been incurred total in excess of $500,000. The balance of the costs awards received remain in an interest bearing trust account, and will continue to be drawn down to pay for the ongoing disbursements as the action proceeds, and are available to respond to any potential adverse costs awards. LMK had disbursements paid from our own resources from the commencement of the action until June 10, 2011 of $73,755.32 (inclusive of HST). In June 2011, $44,991.88 of these initial disbursements were reimbursed from monies received from ASBL for Court ordered costs (the balance of that costs order was applied to disbursements incurred by Paliare Roland). The rest of LMK's initial outlay of disbursements was reimbursed months later in 2011 when we received funding from the Class Proceeding Fund. For our firm the disbursements of over $73,000 represented a significant drain on the firm's cash flow.

146. The ongoing disbursements will include, among other things, the costs of the document production and review which will involve tens of thousands of documents, photocopying and laser copies, research and investigations, experts fees and

disbursements, special examiners' fees for the examinations for discovery and possible preservation of the evidence of Edwin Harris, witness fees and expenses, court filing fees, communications with class members, travel to Bermuda for examinations of witnesses, and so on.

The Contingency Agreement

147. Class Counsel entered into a contingency fee retainer agreement with Cannon. Under the terms of the Retainer Agreement, Class Counsel are entitled to receive 33% of the amounts recovered for the benefit of the Class (excluding costs awards or any amounts attributed to costs and disbursements), plus disbursements and taxes, subject to court approval.

148. The Class was given notice of the Retainer Agreement and the fact that Class Counsel would be asking for in fees in an amount not exceeding 33% of the recovery, plus disbursements and taxes in both the notice of certification of this action as a class proceeding, and in the notice of hearing for settlement approval.

> Attached hereto and marked as **Exhibit R** is a true copy of the notice of certification
>
> Attached hereto and marked as **Exhibit S** is a true copy of the notice of hearing for settlement approval

149. As of the date hereof, no Class Member has objected to Class Counsel receiving fees equivalent to 33% of the settlement funds. I am advised by Margaret Waddell that she has communicated with many Class Members specifically on this issue, and none have objected to Class Counsel receiving fees in this percentage.

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150. Class Counsel therefore asks that their fees be paid from the settlement funds as follows, plus HST:

(a)	FFCF/Gleeson Settlement:	$ 950,000 x .33 = $ 313,500
(b)	Law Firm Settlement:	$23,130,789 x .33 = $7,633,160
(c)	Law Firm Settlement Bonus:	$ 4,112,054 x .33 = $1,356,978
	Total	$9,303,638 + HST

151. Class Counsel submit that the amount sought for their fees is reasonable given the time they have expended over the past five years, the extreme complexity of the case, the substantial risks they have assumed, the continued success they have achieved in this hard-fought litigation, and the quantum of recovery that has been achieved for the Class in these settlements.

152. As set out in his affidavit in support of the settlements and fee approval motions, the representative plaintiff, Mr. Cannon, agrees that these fees are reasonable in all the circumstances of this case.

Conclusion

153. I make this affidavit in support of the Plaintiff's motion for approval of the FFCF/Gleeson Settlement and the Law Firm Settlement and approval of Class Counsel's fees, and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on the 13th day of September, 2013

David Fogel

Commissioner for Taking Affidavits

David Fogel

Keith M. Landy

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

MICHAEL CANNON
Plaintiff

-and-

FUNDS FOR CANADA FOUNDATION et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF KEITH M. LANDY
(Sworn September 13, 2013)

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Andrew C. Lewis (LSUC# 39149E)
Tel: 416.646.4310

Class Counsel

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Jogel

A Commissioner, etc.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL CANNON

Plaintiff

and

FUNDS FOR CANADA FOUNDATION, MATT GLEESON AND SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES (BERMUDA) LTD. as trustee for the BERMUDA LONGTAIL 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, GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

SETTLEMENT AGREEMENT

BETWEEN:

MICHAEL CANNON (the Representative Plaintiff)

and

FUNDS FOR CANADA FOUNDATION, MARY-LOU GLEESON, GLEESON MANAGEMENT ASSOCIATES INC., and MATT GLEESON (together, the FFCF/Gleeson Defendants)

Executed on June , 2013.

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SETTLEMENT AGREEMENT

This Agreement is made and entered into as of this day of June, 2013 (the "Execution Date"), by and between Michael Cannon, the Representative Plaintiff, on behalf of himself and the Class, and Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc.

RECITALS

A. **WHEREAS** the Plaintiff has brought a certified class action against, among others, the FFCF/Gleeson Defendants bearing Court File No.: CV-08-362807-00 CP in which he asserts multiple causes of action;

B. **AND WHEREAS** the deadline for Class Members to opt-out of the Action has passed, except for those Class Members who are also defendants to the Third Party Actions;

C. **AND WHERAS** the FFCF/Gleeson Defendants have denied and continue to deny all the Plaintiff's claims in this Action, have vigorously denied any wrongdoing or liability of any kind whatsoever, and would have actively and diligently pursued affirmative defences and other defences had this Action not been settled;

D. **AND WHEREAS** the Plaintiff and the FFCF/Gleeson Defendants agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the FFCF/Gleeson Defendants or evidence of the truth of any of the Plaintiff's allegations;

E. **AND WHEREAS** the Plaintiff has agreed to enter into this Agreement, in part, because of the limited amount of insurance and other assets available to the FFCF/Gleeson Defendants, the liabilities and potential liabilities of the FFCF/Gleeson

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Defendants to other non-parties, the intrinsic value of the cooperation and documentary production the FFCF/Gleeson Defendants agree to render or make available to the Class pursuant to this Agreement, and based upon Class Counsel's analysis of the facts and law applicable to the Plaintiff's claims, and taking into account the extensive burdens, risks and expenses of continued litigation, including any potential appeals by or against the FFCF/Gleeson Defendants, and the fair, cost-effective and assured method of resolving the claims of the Class, the Plaintiff, with the benefit of advice from Class Counsel, has concluded that this Agreement is fair and reasonable and in the best interest of the Class;

F. **AND WHEREAS** this Agreement has been reached following extensive and hard-fought arm's-length settlement negotiations between counsel for the FFCF/Gleeson Defendants and Class Counsel;

G. **AND WHEREAS** the Plaintiff and the FFCF/Gleeson Defendants therefore wish to, and hereby do, subject to the Court's approval, and without any admission of liability by the FFCF/Gleeson Defendants, fully and finally resolve the Action as against the FFCF/Gleeson Defendants;

H. **NOW THEREFORE**, in consideration of the payment of the Settlement Amount, and the covenants, promises, mutual promises, agreements and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, and for other good and valuable consideration,

IT IS HEREBY AGREED by the Plaintiff and the FFCF/Gleeson Defendants that, subject to the approval of the Court, the Action shall be settled and dismissed without

costs as against the FFCF/Gleeson Defendants only, on the terms and conditions of this Agreement.

SECTION 1 - DEFINITIONS

For the purpose of this Agreement only, including the Recitals hereto:

(a) ***Action*** means the class proceeding commenced by Michael Cannon against the FFCF/Gleeson Defendants, among others, bearing Court File No. CV-08-362807-00 CP.

(b) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to notice, approval, implementation and administration of the Settlement including the fees, disbursements and taxes paid to the Claims Administrator, and any other expenses approved by the Court which shall all be paid from the Settlement Amount.

(c) ***Approval Motion*** means the motion brought by Class Counsel to seek the Court's approval of the settlement provided for in this Agreement.

(d) ***Agreement*** means this settlement agreement, including the recitals and any schedules thereto.

(e) ***Approval Motion*** means a motion to be brought by the Plaintiff for the Approval Order.

(f) ***Approval Order*** means the Court order:

(i) approving this Agreement;

(ii) appointing the Claims Administrator;

(iii) approving the form of the Notice of Settlement Approval; and

(iv) approving the plan for publication of the Notice of Settlement Approval,

substantially in the form attached as Schedule C hereto.

(g) ***Claims*** means any and all actions, suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, legal and lawyers' fees, costs, expenses, penalties, debts, liabilities, judgments, or remedies, whether equitable or legal, and whether class, individual, or otherwise.

(h) ***Claims Administrator*** means the person proposed by Class Counsel and appointed by the Court to administer the Settlement Fund in accordance with the provisions of this Agreement, and any employees of such firm.

(i) ***Class*** means:

> Any person who participated in the ParkLane Donations for Canada Charitable Gift Program while resident in Canada during the period between January 1, 2005 and December 31, 2009 (the "class period"), excluding Edward Furtak, Wayne Robertson, the Defendants, their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the families of the Individual Defendants, Wayne Robertson and Edward Furtak, and any entity in which any of the foregoing persons or entities has a legal or *de facto* controlling interest.

(j) ***Class Counsel*** means Landy Marr Kats LLP and Paliare Roland Rosenberg Rothstein LLP.

(k) ***Court*** means the Ontario Superior Court of Justice.

(l) ***Defendants*** means all defendants named in the Action and against whom this Action remains in force as of the Execution Date, particularly, Funds for Canada Foundation, ParkLane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, Appleby Services (Bermuda) Ltd. as trustee of the Bermuda Longtail Trust, Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro), McInnes Cooper, Mary-Lou Gleeson and Matt Gleeson.

(m) ***Distribution Protocol*** means the plan for distributing the Settlement Fund to the Class, as approved by the Court.

(n) ***Documents*** means all papers, computer or electronic records, electronically stored information, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions, or summaries of the foregoing.

(o) ***Effective Date*** means (i) the date upon which the Approval Order is granted, if no appeal lies therefrom; (ii) the date upon which the ability to appeal from the Approval Order has expired without any appeal being taken, namely, thirty (30) days after the issuance of the Approval Order, only if an appeal lies from the Approval Order; or (iii) if any appeals have been taken from any Approval Order, the date upon which all such appeals are concluded by way of a Final Order or judgment; but an "appeal" shall not include any appeal that concerns only the issue of either Class Counsel's fees and disbursements, or the Distribution Protocol.

(p) ***FFCF*** means Funds for Canada Foundation, and includes its current or former directors or trustees.

(q) ***FFCF/Gleeson Defendants*** means collectively, Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc.

(r) ***Final*** when used in relation to a court order or judgment, means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order or judgment.

(s) ***Gift Program*** means the ParkLane Donations for Canada Charitable Gift Program for the years 2005 through to and including 2009.

(t) ***Non-Settling Defendants*** means all the Defendants against whom certification was granted by the Court, other than the FFCF/Gleeson Defendants.

(u) ***Notice of Approval Motion*** means the form of notice, agreed to by the Plaintiff and the FFCF/Gleeson Defendants, substantially in the form attached as Schedule B to this Agreement, or such other form as may be approved by the Court that informs the Class of: (i) the date and location of the Approval Motion; and (ii) the core elements of this Agreement.

(v) ***Notice of Settlement Approval*** means the form of notice, agreed to by the Plaintiff and the FFCF/Gleeson Defendants or such other form as may be approved by the Court that informs the Class of the settlement of the Claims against the FFCF/Gleeson Defendants, and of the Court's approval of this Agreement.

(w) ***Notice Protocol*** means the protocol for publication and delivery of the Notices to the Class attached as Schedule A to this Agreement, or as otherwise directed by the Court.

(x) ***Notices*** means the Notice of Approval Motion and the Notice of Settlement Approval.

(y) ***Parties*** means the Plaintiff, Class Members, and the FFCF/Gleeson Defendants, and ***Party*** means any one thereof.

(z) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(aa) ***Plaintiff*** means Michael Cannon.

(bb) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages whenever incurred, and liabilities of any nature whatsoever, including penalties, interest, costs, expenses, Administration Expenses, Class Counsel Fees, accountants' fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasing Parties, or any of them, whether directly, indirectly, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Released Parties or any one or more of them, relating in any way to the ParkLane Donations for Canada Charitable Gift Program as described in the Statement of Claim.

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(cc) ***Released Parties*** means, jointly and severally, individually and collectively, the FFCF/Gleeson Defendants and all of their predecessors, successors, heirs, executors, administrators, and any and all past, present officers, directors, trustees, agents and assigns. Notwithstanding the foregoing, "Released Parties" does not include the Non-Settling Defendants, Edward Furtak, the beneficiaries of the Bermuda Longtail Trust, Wayne Robertson, or any present or former officer, director, employee, agent, or trustee of any of the Non-Settling Defendants.

(dd) ***Releasing Parties*** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, predecessor, successor, executor, parent, subsidiary or assignee.

(ee) ***Royalty Agreements*** means, the agreements entered into between FFCF and Trafalgar Trading Limited at any time between 2005 and 2009 in connection with the Gift Program.

(ff) ***Royalty Payments*** means any amounts payable to FFCF from Trafalgar Trading Limited under the terms of any Royalty Agreements made between FFCF and Trafalgar Trading Limited.

(gg) ***Settlement*** means the settlement provided for in this Agreement.

(hh) ***Settlement Amount*** means the sum of nine hundred and fifty thousand Canadian dollars (Cdn $950,000.00), plus any accrued interest thereon.

(ii) ***Settlement Fund*** means the net balance in the account established pursuant to Section 4.1 of this Agreement.

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

(a) The Parties shall use their best efforts to implement the terms of this Agreement, to obtain an Approval Order, and to secure the prompt, complete and final dismissal of the Action as against the FFCF/Gleeson Defendants, although this does not require any Party to agree to amend this Agreement.

(b) The Plaintiff will prepare and file the motion for Settlement approval as soon as practicable following the Execution Date.

(c) The Parties agree that any proposed order submitted to the Court in connection with this Agreement shall be in a form reasonably satisfactory to Class Counsel, and the Lawyers for the FFCF/Gleeson Defendants.

2.2 Motions for Notice Approval and for Settlement Approval

(a) Promptly after the Execution Date, the Plaintiff and the FFCF/Gleeson Defendants shall use their best efforts to obtain an order from the Court approving the form and content of the Notice of Approval Motion and the Notice Protocol for the Notice of Approval Motion.

(b) The Plaintiff and the FFCF/Gleeson Defendants shall thereafter use their best efforts to obtain an Approval Order.

(c) If this Agreement is approved by the Court, the Plaintiff and the FFCF/Gleeson Defendants shall jointly seek entry of an order that, *inter alia*:

(i) approves this Agreement and its terms as being fair, reasonable, and in the best interests of the Class Members and directing its consummation according to its terms; and

(ii) directs that, as to the FFCF/Gleeson Defendants, the Action is dismissed with prejudice and without costs.

2.3 Determination that Settlement is Final

(a) The Settlement shall be considered final on the Effective Date.

SECTION 3- NOTICE TO SETTLEMENT CLASS

3.1 Notices Required

(a) The Class shall be given the following notices: (i) Notice of Approval Motion and (ii) Notice of Settlement Approval; or (iii) Notice of Termination of this Agreement if it is terminated, or as otherwise ordered by the Court. All notices shall be substantially in a form agreed upon by the Plaintiff and the FFCF/Gleeson Defendants and as approved by the Court.

3.2 Distribution of Notices

(a) The manner of publication and distribution of the Notices will be as set out in the Notice Protocol, or as otherwise approved by the Court.

(b) With the object of reducing the costs of Notices, Class Counsel shall use their reasonable best efforts to coordinate the provision of Notices pertaining to this Agreement with the provision of notice for any other settlements that may be reached in the Action. The costs of provision of Notices shall be allocated proportionally among all such settlements.

(c) The FFCF/Gleeson Defendants and the Released Parties shall not be separately liable or responsible for any such costs.

(d) Class Counsel and/or the Claims Administrator, as the case may be, shall pay the costs of the provision and distribution of the Notices to the Class Members referred to in Section 3 of this Agreement out of the Settlement Fund. Any such costs shall be paid from the Settlement Fund by Class Counsel or the Claims Administrator as they are incurred, and are not repayable in the event of termination of this Agreement.

SECTION 4 - SETTLEMENT BENEFITS

4.1 The Settlement Fund

(a) The Settlement Fund shall be established as separate, interest-bearing trust account at a bank designated by Class Counsel, into which the Settlement Amount shall be paid in accordance with Section 4.2(c), below. All interest earned in the Settlement Fund shall become and remain part of the Settlement Fund. All transactional and administrative costs associated with maintaining and distributing the Settlement Fund shall be paid from the Settlement Fund.

(b) The Settlement Fund shall be held in trust and administered by Class Counsel until the Effective Date, or such later date that Court that appoints a Claims Administrator, and Class Counsel will within 10 days thereafter, pay the net balance of the Settlement Fund to the Claims Administrator, who will then administer the Settlement Fund in accordance with the terms of this Agreement, the Approval Order and the Distribution Protocol (once approved by the Court), subject to the Court's continuing supervision and control.

(c) The Settlement Fund shall be administered pursuant to this Agreement, the Approval Order and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund except in accordance with this Agreement and the Approval Order.

(d) The Court will appoint the Claims Administrator to serve until such time as the Settlement Fund is distributed in full in accordance with the Plan of Allocation, to implement this Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Agreement and in the Plan of Allocation.

(e) The fees and expenses of the Claims Administrator shall be paid from the Settlement Fund, and the Claims Administrator shall report the amount of fees and expenses so incurred to Class Counsel and the Court.

(f) Class Counsel shall account to the Court and the FFCF/Gleeson Defendants for all payments they make from the Settlement Fund prior to its transfer to the Claims Administrator. In the event this Agreement is terminated in accordance with Section 10.1(a), this accounting shall be delivered at the same time that the Settlement Fund is remitted to the FFCF/Gleeson Defendants.

(g) If the Settlement Fund must be returned to the FFCF/Gleeson Defendants pursuant to Section 10.2(c)(ii) of this Agreement, then Class Counsel shall remit to the FFCF/Gleeson Defendants the net balance in the Settlement Fund inclusive of any accrued interest and less any amounts paid from the Settlement Fund as permitted by this Agreement.

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4.2 Payment of the Settlement Benefits

(a) The FFCF/Gleeson Defendants agree to pay the Settlement Amount in full satisfaction of all of the Claims within the scope of the Released Claims made against the Released Parties.

(b) The FFCF/Gleeson Defendants shall have no obligation to pay any amount in addition to the Settlement Amount for any reason, pursuant to or in furtherance of this Agreement or in respect of any of the Released Claims, except as provided in Section 4.4(c) and 10.2(c)(iii), below.

(c) The FFCF/Gleeson Defendants by or through their counsel or designee, shall deliver by wire transfer 100% of the Settlement Amount to Class Counsel, in trust by no later than sixty (60) business days of the written confirmation of this settlement with occurred on May 21, 2013. Class Counsel will provide to the FFCF/Gleeson Defendants the information necessary to complete the wire transfer.

(d) The FFCF/Gleeson Defendants shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution and administration, except as expressly otherwise provided in this Agreement.

(e) Unless this Agreement is terminated as provided herein, the FFCF/Gleeson Defendants shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount, and then only to the extent of and in accordance with the terms provided herein.

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4.3 Distribution to the Class Delayed

(a) With the object of reducing the costs of administration of this Agreement and the costs of distribution of the Settlement Fund to the Class, the distribution of the Settlement Fund may be delayed to be included with the distribution of any other settlement that may be reached with any Non-settling Defendants in the Action, and the Claims Administrator may continue to hold the Settlement Fund less any payments permitted hereunder until additional amounts are available for distribution to the Class from other settlements or judgment(s) approved or granted by the Court.

(b) As soon as practicable, the Plaintiff shall prepare and submit a proposed Distribution Protocol to the Court for its approval. The Distribution Protocol will include a term that none of the Settlement Fund will revert to the FFCF/Gleeson Defendants. The Distribution Protocol will include a term that the Settlement Amount will be distributed in connection with any other settlement that may be reached with any Non-Settling Defendant within a reasonable time of this Agreement, or in connection with the distribution of any proceeds of judgment.

4.4 Taxes

(a) Except as provided in Section 4.4(c) and 10.2(c)(ii), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be the responsibility of the Class and shall be paid by Class Counsel or the Administrator, as appropriate, from the Settlement Fund, or as the Administrator considers appropriate.

(b) Except as provided for in Sections 4.4(c) and 10.2(c)(ii), the FFCF/Gleeson Defendants shall have no responsibility to make any filings relating to the

Settlement Fund, will not be considered payees of any income earned on the Settlement Fund, and will have no responsibility to pay tax on any income earned by the Settlement Fund or pay taxes, if any, on the Settlement Fund.

(c) If the Administrator or Class Counsel returns any portion of the Settlement Amount plus accrued interest to FFCF/Gleeson Defendants pursuant to the terms of this Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the FFCF/Gleeson Defendants.

SECTION 5 – COOPERATION IN THE PROSECUTION OF THE ACTION

5.1 Documentary Production

(a) Beginning within 10 calendar days of the Execution Date, and to be completed within 60 calendar days of the Effective Date, the FFCF/Gleeson Defendants shall, at their own expense, provide Class Counsel with the following documentary production, to the extent it: (1) exists, (2) is in the power, possession, or control of the FFCF/Gleeson Defendants, and (3) is reasonably accessible:

(i) copies of all non-privileged Documents relevant to any of the certified common issues and/or relevant to the issues raised by the Non-Settling Defendants in the Third Party Claims; and,

(ii) any non-privileged electronic Documents relevant to any issues between the Plaintiff and any Non-Settling Defendants, which shall be produced in native format.

The obligation to produce Documents pursuant to this Section shall be a continuing obligation to the extent that additional Documents are identified following the initial productions.

(b) The Plaintiff and Class Counsel shall be bound by the terms and provisions of Rule 30.1 of the Ontario *Rules of Civil Procedure* in respect of all Documents produced by the FFCF/Gleeson Defendants to the Plaintiff and/or Class Counsel.

(c) The Parties agree that all documents provided by the FFCF/Gleeson Defendants to the Plaintiffs and Class Counsel under this Agreement shall be used only in connection with the prosecution of the Claims in the Action against the Non-Settling Defendants, and shall not be used directly or indirectly for any other purpose. The Plaintiffs and Class Counsel agree they will not publicize the documents and information provided by the FFCF/Gleeson Defendants beyond what is reasonably necessary for the prosecution of the Action against the Non-Settling Defendants or as otherwise required by law.

(d) Any questions that Class Counsel have in relation to the documentary production described in Section 5.1(a) shall be addressed in accordance with the following protocol:

(i) Class Counsel shall provide written questions pertaining to the documentary production to counsel for the FFCF/Gleeson Defendants;

(ii) Counsel for the FFCF/Gleeson Defendants shall make reasonable inquiries of the FFCF/Gleeson Defendants and provide written answers to Class Counsel within 30 days of receiving the written questions; and

(iii) The inability of the FFCF/Gleeson Defendants to fully answer Class Counsel's questions shall not constitute a breach or violation of their obligations under this Agreement.

(e) The FFCF/Gleeson Defendants will preserve the original documents until final disposition of the Action, including the final disposition of any individual issues.

5.2 Oral Interviews and Trial Attendance

(a) Mary-Lou Gleeson and Matt Gleeson will, in the company of their respective lawyers, and at their own expense, meet with Class Counsel on no more than two occasions to answer questions concerning documents, witnesses, meetings, communications, and events not covered by privilege or other protections available under any applicable Canadian law.

(i) The first meeting shall take place within 2 months of the date when the documentary production under Section 5.1(a) is completed, or as otherwise agreed between Class Counsel and the lawyers for the FFCF/Gleeson Defendants; and

(ii) The second meeting shall take place after the Plaintiff has put Mary-Lou Gleeson or Matt Gleeson under subpoena for trial, to prepare their trial evidence.

Each such interview shall be limited to no more than 4 hours per person.

(b) The obligations of the FFCF/Gleeson Defendants, and in particular the obligations of Mary-Lou Gleeson and Matt Gleeson, to cooperate shall not be affected by the releases set forth in Section 7 of this Agreement. Unless this Agreement is terminated or otherwise fails to take effect for any reason, the FFCF/Gleeson Defendants' obligations to cooperate under this Agreement shall

continue until the date that a Final judgment has been rendered in the Action against the Non-Settling Defendants, and shall terminate at that time.

SECTION 6 - ROYALTY PAYMENTS

6.1 Motion for Payment into Court

(a) In the event that FFCF receives any Royalty Payments prior to the motion referenced in (b), below:

(i) FFCF shall immediately report receipt of the Royalty Payment(s) and the amount thereof to Class Counsel;

(ii) the Royalty Payment(s) shall be held by FFCF until the final disposition of the motion referenced in (b), below; and,

(iii) in the event that, prior to the motion referenced in (b), below, the Canada Revenue Agency takes the position that the Royalty Payment(s) belong to it, FFCF shall immediately advise Class Counsel;

(b) If the Plaintiff brings a motion for an order directing FFCF to pay into court any Royalty Payments it receives from Trafalgar Trading Limited, then:

(i) the motion shall be brought no later than 60 days after the Effective Date;

(ii) the motion shall be brought on notice to Canada Revenue Agency and the Non-Settling Defendants; and,

(iii) the FFCF/Gleeson Defendants shall take no position on the motion.

6.2 Court Order re Royalty Payments

(a) FFCF shall be bound by the Court order with respect to the Royal Payments or otherwise any Court order made either by way of settlement or the common issues trial of the Action as against Trafalgar.

SECTION 7- RELEASES AND DISMISSALS

7.1 Release of Released Parties

(a) Upon the Effective Date the Releasing Parties shall be deemed to, and do hereby, release, acquit, and forever discharge the Released Parties of and from any and all Claims arising from or in any way related to the Released Claims.

7.2 Covenant Not To Sue

(a) Notwithstanding Section 7.1, for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make any Claim in any way, or to threaten, commence, or continue any Claim in any jurisdiction against the Released Parties, arising from or in any way related to the Released Claims.

7.3 No Further Claims

(a) The Releasing Parties shall not now nor hereafter commence, institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any Claim within the scope of the Released Claims against any of the Released Parties or any other person who may claim contribution or indemnity from any of the Released Parties in respect of any Released Claim or any matter related thereto, except for the continuation of the Action against the Non-Settling Defendants, and any objections or tax appeals in relation to the reassessment of the Class Members' income tax returns with respect to their claims for a charitable deduction in respect of the Class Members' participation in the Gift Program.

7.4 Dismissal of Actions against the FFCF/Gleeson Defendants

(a) Except as provided herein, the Action shall be dismissed, without costs and with prejudice, as against the FFCF/Gleeson Defendants, and such dismissal shall be an express term of the Approval Order.

7.5 Claims Against Other Entities Reserved

(a) Except as provided herein, this Agreement does not settle, compromise, release or limit in any way whatsoever any Claim by Class Members against any other Person, including Non-Settling Defendants, other than the Released Parties.

SECTION 8 - BAR ORDER

8.1 Bar Order

(a) The Plaintiff shall, as part of the Approval Motion, seek a bar order from the Court providing for the following:

(i) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Action or otherwise, by any Non-Settling Defendant against a Released Party, or by a Released Party against a Non-Settling Defendant are barred, prohibited and enjoined in accordance with the terms of this Section.

8.2 Material Term

(a) The form and content of the bar order contemplated in this Section is a material term of this Agreement and the failure of the Court to approve the bar order contemplated herein shall give rise to a right of termination pursuant to Section 10 of this Agreement.

SECTION 9 - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

(a) Neither this Agreement nor anything contained herein shall be interpreted as a concession or admission of wrongdoing or liability by the FFCF/Gleeson Defendants, or as a concession or admission by the FFCF/Gleeson Defendants of the truthfulness of any claim or allegation asserted in this Action. Neither this Agreement nor anything contained herein shall be used or construed as an admission by the FFCF/Gleeson Defendants of any fault, omission, liability or wrongdoing in connection with any opinion, statement, written document, offering document, promotional document, visual presentation, charitable tax receipt, or otherwise, and in fact the Settling Defendants continue to vigorously dispute and contest the allegations made in this Action.

9.2 Agreement Not Evidence

(a) The Plaintiff and the FFCF/Gleeson Defendants agree that, whether or not this Agreement is finally approved, the existence of a settlement agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, are highly confidential and shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, tax appeal, or administrative action or proceeding, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

(b) Notwithstanding Section 10.2(a), this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated

by this Agreement, or in a proceeding to approve or enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

SECTION 10 - TERMINATION OF SETTLEMENT AGREEMENT

10.1 Right of Termination

(a) This Agreement shall be terminated at the option of either the Plaintiff or the FFCF/Gleeson Defendants if:

(i) An order substantially in the form of the Approval Order attached as Schedule C hereto is not granted by the Court; or

(ii) the Approval Order is reversed on appeal and the reversal becomes a Final Order.

(b) Any order, ruling or determination made by the Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol shall not be deemed to be a material modification of this Agreement and shall not provide any basis for the termination of this Agreement.

(c) If any non-material provision of this Agreement is found by the Court to be illegal, invalid or unenforceable for any reason, the remainder of this Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

10.2 Effect of Termination Generally

(a) Except as provided in Section 10.3(a), if this Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(b) If this Agreement is terminated or otherwise fails to take effect for any reason the Parties will be restored to their respective positions prior to the Execution Date.

(c) If this Agreement is terminated or otherwise fails to take effect for any reason:

(i) Class Counsel shall forthwith deliver a consent in writing authorizing the FFCF/Gleeson Defendants to bring a motion, to the extent necessary, for an order:

(A) declaring this Agreement to be null and void and of no force or effect (except for the provisions set out in Section 10.3(a)); and

(B) directing that the balance in the Settlement Fund less any deductions provided for in this Agreement be paid to the FFCF/Gleeson Defendants; and

(ii) Class Counsel shall thereupon remit to the FFCF/Gleeson Defendants the balance in the Settlement Fund, including accrued interest, less the costs of the Notice of Termination to be expended in accordance with Section 3.1(a) of this Agreement.

(iii) Despite Section 4.4(a) and (b), if the Agreement is terminated, to the extent the balance in the Settlement Fund is paid to the FFCF/Gleeson Defendants, they shall be responsible for the payment of any taxes that

may be due with respect to the interest earned on the balance of the Settlement Fund.

(d) In the event that the Agreement is terminated or otherwise fails to take effect for any reason, the Plaintiff shall return to the FFCF/Gleeson Defendants all Documents and all copies of such Documents provided by the FFCF/Gleeson Defendants under this Agreement. In the event any Documents are incapable of being physically returned to the FFCF/Gleeson Defendants, Plaintiff shall destroy all such Documents and provide the FFCF/Gleeson Defendants with a written certification by Class Counsel of such destruction. The requirements of this Section shall also apply to all Documents shared by Class Counsel with the Plaintiff's experts.

10.3 Survival of Provisions After Termination

(a) If this Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(a)(iii), 3.1(d), 4.1(e), 4.1(f), 4.1(g), 4.2(e), 4.4(c), 5.1(b), 6.2(a), 9.1(a), 9.2(a), 10.2 and the definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

SECTION 11- CLASS COUNSEL FEES & ADMINISTRATION EXPENSES

11.1 Administration Expenses

(a) With the object of reducing the costs of claims administration, Class Counsel shall use their reasonable best efforts to coordinate the claims administration process pertaining to this Agreement with the claims administration process pertaining to any other settlements that may be reached in the Action. The costs

of the claims administration process shall be allocated proportionally among settlements.

11.2 Class Counsel Fee Approval

(a) Class Counsel will seek the Court's approval of their contingency fee retainer agreement with the Plaintiff, and will make an application to the Court for payment of their fees, including disbursements, and taxes from the Settlement Fund. This motion may be brought concurrently with the motion for settlement approval; in which case Class Counsel will undertake to the Court not to seek payment of any approved fees, disbursements and/or taxes from the Settlement Fund until after the Effective Date.

(b) Class Counsel shall be reimbursed and paid out of the Settlement Fund for their fees, disbursements, and taxes after the Effective Date, solely as approved by the Court. No Class Counsel fees, disbursements, or taxes, shall be paid from the Settlement Fund prior to the Effective Date, except as otherwise provided in this Agreement.

(c) Except as otherwise provided herein, the FFCF/Gleeson Defendants and the Released Parties shall not be liable for any fees, disbursements, costs, expenses, or taxes of Class Counsel, whether such fees, disbursements, costs, and expenses are approved or not by the Court.

(d) Forthwith after the Court has approved Class Counsel's fees and disbursements and the Effective Date has passed, the Administrator shall pay to Class Counsel the Class Counsel Fees as approved by the Court, from the Settlement Fund.

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SECTION 12- MISCELLANEOUS

12.1 Governing Law

(a) This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario, without regard to its choice of law or conflict of laws principles.

12.2 Ongoing Jurisdiction

(a) The Court shall retain exclusive jurisdiction over the Action, the Parties and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

(b) The Plaintiff or the FFCF/Gleeson Defendants may apply to the Court for directions in respect of the implementation, administration or enforcement of this Agreement.

(c) All motions contemplated by this Agreement shall be on notice to the Plaintiff and the FFCF/Gleeson Defendants.

12.3 Interpretation

(a) The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall in no way define, extend, or describe the scope of this Agreement or the intent of any provision thereof.

(b) The terms "Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement.

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(c) This Agreement shall be construed and interpreted to give effect to the intent of the Parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to the Released Parties.

(d) Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasing Parties and Released Parties any right or remedy under or by reason of this Agreement.

(e) In the computation of time in this Agreement, except where a contrary intention appears:

(i) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens; and

(ii) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

12.4 Entire Agreement

(a) This Agreement, including any schedules and the recitals herein, constitutes the entire agreement among the Plaintiff and the FFCF/Gleeson Defendants, and no representations, warranties, or inducements have been made to any Party concerning this Agreement, other than the representations, warranties, and covenants contained and memorialized this Agreement. This Agreement may not be modified or amended except in writing and signed by all Parties and subject to the Court's approval.

(b) This Agreement supersedes any and all prior and contemporaneous agreements, understandings, undertakings, negotiations, representations, warranties, promises, and inducements concerning the Action between the Parties.

(c) The Plaintiff and the FFCF/Gleeson Defendants further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

(d) The recitals to this Agreement are material and integral parts hereof and are fully incorporated into, and form part of this Agreement.

(e) Neither this Agreement, nor any negotiations or proceedings connected with it shall be deemed or construed to be an admission by any Party to this Agreement or by any Released Parties or evidence of any fact or matter in this Action or in any related actions or proceedings, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, except in a proceeding to interpret or enforce this Agreement.

12.5 Binding Effect

(a) This Agreement shall be binding upon, and enure to the benefit of the Releasing Parties, the Released Parties and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasing Parties and every covenant and agreement made herein by the FFCF/Gleeson Defendants shall be binding upon all of the Released Parties.

(b) This Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement shall have no force and effect.

12.6 Notice

(a) Any and all notices, requests, directives, or communications required by this Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

IF TO THE PLAINTIFF and/or CLASS COUNSEL:

Landy Marr Kats LLP
Barristers & Solicitors
2 Sheppard Avenue East – Suite 900
Toronto, Ontario M2N EY7

Samuel S. Marr (LSUC #28544M)
Tel: 416.221.9343
Fax: 416.221.8928
Email: smarr@lmklawyers.com

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West - 35th Floor
Toronto, Ontario M5V 3H1

Margaret L. Waddell (LSUC# 29860U)
Tel: 416.646.4329
Fax: 416.646.4301
Email: marg.waddell@paliareroland.com

Lawyers for the Plaintiff

IF TO THE FFCF/GLEESON DEFENDANTS:

Ricketts, Harris LLP
Barristers & Solicitors
181 University Avenue - Suite 816
Toronto, Ontario M5H 2X7

Gary H. Luftspring (LSUC #19972M)

Tel: 416.364.6211
Fax: 416.364-1697
Email: gluftspring@rickettsharris.com

Lawyers for Gleeson Management Associates Inc. and
Matt Gleeson

Stieber Berlach LLP
Barristers & Solicitors
130 Adelaide Street West – Suite 900
Toronto, Ontario M5H 3P5

Deborah Berlach (LSUC #23974O)
Tel: 416.594-4671
Fax: 416.366-1466
Email: dberlach@sblegal.ca

Lawyers for Funds for Canada Foundation and Mary-Lou Gleeson

or to any such address or individual as may be designated by further notice in writing given by any Party to another.

12.7 Survival

(a) The representations and warranties contained in this Agreement shall survive its execution and implementation.

12.8 Acknowledgements

(a) Each of the Plaintiff and the FFCF/Gleeson Defendants hereby affirms and acknowledges that:

(i) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Agreement;

(ii) the terms of this Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its lawyer;

(iii) he, she or the Party's representative fully understands each term of this Agreement and its effect; and

(iv) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Agreement, with respect to the first Party's decision to execute this Agreement.

12.9 Authorized Signatures

(a) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute this Agreement.

12.10 Counterparts

(a) This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

(b) For purposes of executing this Agreement a facsimile or .pdf signature shall be deemed an original signature.

12.11 Date of Execution

(a) The Plaintiff and the FFCF/Gleeson Defendants have executed this Agreement as of the date on the cover page.

IN WITNESS WHEREOF the Plaintiff and the FFCF/Gleeson Defendants have caused this Agreement to be executed, by their duly authorized counsel.

THE PLAINTIFF BY HIS COUNSEL:

Per: _____

Name: **Paliare Roland LLP**
Title: Lawyers for the Plaintiff
(Margaret Waddell)

Per:

Name: Landy Marr Kats LLP
Title: Lawyers for the Plaintiff
(Samuel Marr)

THE FFCF/GLEESON DEFENDANTS BY THEIR COUNSEL:

Per:

Name: **Ricketts, Harris LLP**
Title: Lawyers for
Gleeson Management Associates Inc., and
Matt Gleeson
(Gary H. Luftspring)

Per:

Name: **Stieber Berlach LLP**
Title: Lawyers for
Funds for Canada Foundation and Mary-Lou Gleeson
(Deborah Berlach)

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Schedule A

Notice Protocol

Background

1. The ParkLane Defendants have provided to Class Counsel a Master Donor List listing the names and last known addresses and email addresses for the Class Members.

2. The Master Donor List has been edited by Class Counsel following the publication of the notice of certification to update the addresses and email addresses for Class Members, based on responses to the notice of certification. Returned mail from addresses that are no longer current were identified by the Notice Administrator, and total 482; however for some of those Class Members, Class Counsel do have email addresses.

3. Class Counsel have been directly contacted by approximately 1500 Class Members by email, mail and telephone, and their contact information has been added into a database it maintains.

Notice of Approval Motion

4. Class Counsel will send the Notice of Approval Motion by email where available, or alternatively by mail to all Class Members for whom there are current addresses in the Master Donor List and/or Class Counsel's database.

5. Given the broad reach of the email/mailing (approximately 95%), there will be no news release or print media publication of the Notice of Approval Motion.

6. The Notice of Approval Motion, along with a summary of the core terms of the Settlement Agreement with the FFCF/Gleeson Defendants, and a link to the Agreement will be published on the web pages maintained by Class Counsel in respect of this proposed class proceeding.

Notice of Settlement Approval

7. The publication of the Notice of Settlement Approval may be delayed until such time as the Court has approved any other settlement with respect to all or part of this Action, or until such other time as approved by the Court.

8. Class Counsel will send the Notice of Settlement Approval by email where available, or alternatively by mail to all Class Members for whom there are current addresses in the Master Donor List.

9. Internet - The Notice of Settlement Approval, along with a summary of the core terms of the Settlement Agreement with the FFCF/Gleeson Defendants, and a link to the Approval Order will be published on the web pages maintained by Class Counsel in respect of this proposed class proceeding.

10. Print Media - The Notice of Settlement Approval will be published one time in the Saturday national editions of the National Post and Globe & Mail within 14 days of the Effective Date or the Court's approval of this Notice, whichever is later.

11. Press Release – Class Counsel will deliver a national press release including a summary of the core terms of the Settlement Agreement with a link to the Settlement Agreement and the Approval Order.

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SCHEDULE B

NOTICE OF COURT HEARING FOR SETTLEMENT APPROVAL

IN

CANNON v. PARKLANE FINANCIAL GROUP LTD. CLASS ACTION

READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS

Who this Notice is For:

This notice is directed to every person who participated in the ParkLane Donations for Canada Charitable Gift Program while resident in Canada during the period between January 1, 2005 and December 31, 2009, and who has not opted out of the Class Action, or who is not an "Excluded Person".

What the Action is About

The Action alleges, among other things, that the Defendants were negligent in creating and operating the Gift Program, and that the promotional materials about the Gift Program contained misrepresentations. The claim alleges that the Gift Program was a fraud and/or that it was in breach of Consumer Protection Legislation, and that the Class Members are entitled to rescission of the agreements, and should be repaid the money they paid to participate in the Gift Program. The Action seeks, among other things, an order requiring the Defendants to repay to the Class Members the total amount that each Class Member paid to participate in the Gift Program, as well as the amount of any interest or penalties assessed by the Canada Revenue Agency.

Proposed Settlement with Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc.

On January 18, 2012, the Court certified the action *Cannon v. Funds for Canada Foundation et al.,* Court File No. CV-08-362807 CP (the "Action") as a class proceeding.

The Plaintiff has now entered into a settlement with some of the Defendants - Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc. (the "FFCF/Gleeson Defendants"). The settlement requires court approval before it will become effective.

The Action will continue to be prosecuted against all the other Defendants, including ParkLane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, Appleby Services Bermuda Ltd. as trustee for the Bermuda Longtail Trust, Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro), and McInnes Cooper (the "Non-settling Defendants"). The Non-settling Defendants continue to deny liability to the Class.

The Terms of the Proposed Settlements

The Settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the FFCF/Gleeson Defendants, all of whom denied, and continue to deny all the allegations made against them.

Under the terms of the Settlement the FFCF/Gleeson Defendants will pay to the Class a total of $950,000 before deduction of legal fees and expenses, including the expenses to administer the settlement. The net settlement funds will be held by Class Counsel and invested in an interest bearing account for the benefit of the Class. The settlement funds will not be disbursed to the class at this time, but will be held in trust until either additional settlements are made, or there is a final judgment in the Action.

The Plaintiff recommends the Settlement to the Class. Class Counsel recommends the Settlement as fair and reasonable. In reaching the Settlement, Class Counsel considered the estimated total damages suffered by the Class, the likely proportionate liability of the FFCF/Gleeson Defendants for the losses sustained by the Class, the defences that would be asserted by the FFCF/Gleeson Defendants, the value of obtaining co-operation from the FFCF/Gleeson Defendants in providing evidence to the Plaintiff for the

prosecution of the Claim against the Non-settling Defendants, and the limited assets available from the FFCF/Gleeson Defendants to satisfy any judgment made against them.

The Settlement Agreement and other information regarding the Action is available on Class Counsel's websites at:

http://www.thetorontolawyers.ca/class_actions.htm or

http://www.parklaneclassaction.com

or may be obtained by calling: 1-855-666-1053 or 1-855-565-5529

Next Step - Settlement Approval Hearing will be held in Toronto, Ontario

The Settlement must be approved by the Court before it can come into effect.

Class Members may, but are not required to, attend the Settlement Approval Hearing that will be held on •, 2013 at 10 a.m., at the Court House, 361 University Avenue, Toronto, Ontario.

At the same time, Class Counsel will request that the Court approve their retainer agreement with the Plaintiff, and approve that their legal fees be paid out of the Settlement Amount. The legal fees will not exceed 30% of the Settlement, plus disbursements and applicable taxes ("Class Counsel Fees"). Class Counsel Fees and Administration Expenses will be deducted from the settlement amount payable under the Settlement, before the balance is distributed to Class Members. In addition, 10% of the balance of the Settlement Amount, after deduction of Class Counsel Fees will be paid to the Ontario Class Proceedings Fund.

Class Members that approve of or do not oppose the Agreements do not need to appear at the Settlement Approval Hearing or take any other action at this time.

Class Members May Object to the Proposed Settlements

Class Members that wish to comment on or object to the proposed Settlement should do so in writing. **All comments or objections should be received by Class Counsel (at the address listed below) no later than ●, 2013**. Class Counsel will file any and all such submissions with the Court. Class Members may attend the Approval Hearing whether or not an objection was delivered. The Court may permit Class Members to participate in the Approval Hearing whether or not an objection was made.

A written objection should include:

(i) the Class Member's name, address, telephone number, fax number (where applicable) and email address;

(ii) a brief statement outlining why they object to the proposed Settlement; and

(iii) a statement as to whether the objector intends to appear at the Approval Hearing in person or through a lawyer, and, if through a lawyer, the name, address, telephone number, fax number, and email address of the lawyer.

In the Event of Approval, Notice of Approval will be given at a Later Date

If the Settlement is approved by the Court, notice will be given to the Class in accordance with a notice program to be approved by the Court. If, in the interim, Class Members wish to receive an email notifying them that the Settlement has been approved, if that happens, they may contact Class Counsel (at the address listed below) to request email notification.

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The Ontario Superior Court of Justice offices cannot answer any questions about the matters in this notice.

For questions relating to the Action, further information, or to deliver an objection please contact Class Counsel:

ParkLane Class Action
Paliare Roland LLP
155 Wellington St. W., 35th Floor,
Toronto, ON
M5H 3E5
Fax: 416-646-4301
info@parklaneclassaction.com
(t): 1-855-666-1053

or

ParkLane Class Action
Landy Marr Kats LLP
Suite 900 – 2 Sheppard Avenue East.
Toronto, ON, M2N 5Y7

e-mail: parklaneclassaction@lmklawyers.com
(t): 1-855-565-5529

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SCHEDULE "C" – SETTLEMENT APPROVAL ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE BELOBABA	)	DAY, THE DAY
	)	
	)	OF , 2013

B E T W E E N :

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, MATT GLEESON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the BERMUDA LONGTAIL 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, GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

THIS MOTION, made by the Plaintiff for an Order approving a Settlement Agreement dated May ●, 2013 with the Defendants Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc. (collectively, the "Settling Defendants"), was heard this day at the Court House, 361 University Avenue, Toronto, Ontario.

(118)

SCHEDULE "C" – SETTLEMENT APPROVAL ORDER

ON READING the materials filed, including the Settlement Agreement, dated May ●, 2013, attached hereto as **Schedule** "**A**" (the "Agreement") and on hearing the submissions of Counsel for the Class and Counsel for the Settling Defendants;

AND ON BEING ADVISED that the Settling Defendants consent to this Order, and the Non-Settling Defendants do not oppose this Order;

1. **THIS COURT DECLARES** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Agreement.

2. **THIS COURT DECLARES** that the Agreement is fair, reasonable and in the best interests of the Class.

3. **THIS COURT ORDERS** that the Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6.

4. **THIS COURT ORDERS** that the Agreement shall be implemented in accordance with its terms.

5. **THIS COURT DECLARES** that the Agreement, in its entirety, forms part of this Order and is binding upon the Settling Defendants, the Plaintiffs, and all Class Members who have not validly excluded themselves from this action including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are hereby disposed of.

6. **THIS COURT DECLARES** that the Net Settlement Funds shall be held by Class Counsel in trust for the benefit of the Class, in an interest bearing account until further order of this Court.

SCHEDULE "C" – SETTLEMENT APPROVAL ORDER

7. **THIS COURT ORDERS** that on notice to the Court but without the need of a further order of the Court, the Plaintiffs and the Settling Defendants may agree to reasonable extensions of time to carry out any of the provisions of the Agreement.

8. **THIS COURT ORDERS AND DECLARES** that, other than as provided in section 10.2(c)(iii) of the Settlement Agreement, the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Agreement.

9. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasors shall release and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claims.

10. **THIS COURT ORDERS** that, upon the Effective Date, all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in this Action or otherwise, by any Non-Settling Defendant against a Released Party, or by a Released Party against a Non-Settling Defendant are barred, prohibited and enjoined in accordance with the terms of the Settlement Agreement.

11. **THIS COURT ORDERS AND DECLARES THAT**, should it be necessary, it has full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action and any determination by the Court in respect of the Proportionate Liability shall only apply in the Action and shall not be binding on the Releasees in any other proceedings.

(120)

12. **THIS COURT ORDERS** that, upon the Effective Date, the action shall be dismissed against the Settling Defendants, with prejudice and without costs.

THE HONOURABLE JUSTICE E. BELOBABA

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Joyer

A Commissioner, etc.

(122)

DONATIONS FOR CANADA GIFT PROGRAM CLASS ACTION NATIONAL SETTLEMENT AGREEMENT

Made as of July 9, 2013

MICHAEL CANNON

(the **"Plaintiff"**)

and

EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as PATTERSON PALMER LAW, PATTERSON KITZ (Halifax), PATTERSON KITZ (Truro) and McINNES COOPER

(the **"Settling Defendants"**)

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DONATIONS FOR CANADA GIFT PROGRAM CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT

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DONATIONS FOR CANADA GIFT PROGRAM CLASS ACTION NATIONAL SETTLEMENT AGREEMENT

RECITALS

A. WHEREAS the Plaintiff commenced the Class Action in the Court by issuing a statement of claim on September 18, 2008;

B. WHEREAS the Settling Defendants were, among others, all named as Defendants in the Class Action;

C. WHEREAS the Class Action advances claims in relation to the Gift Program;

D. WHEREAS the Class Action advances claims on behalf of the Class;

E. WHEREAS the Class Action advances certain allegations against the Settling Defendants in relation to the structuring and marketing of the Gift Program;

F. WHEREAS the Settling Defendants have commenced the Third Party Claim;

G. WHEREAS the Class Action was certified by the Certification Order, with motions seeking leave to appeal from the Certification Order being dismissed by Justice Sanderson on October 29, 2012;

H. WHEREAS the Certification Order appointed the Plaintiff as the representative plaintiff;

I. WHEREAS the Plaintiff is duly authorized as the representative plaintiff to enter into this agreement, which, if approved by the court, is binding on all Settlement Class Members, pursuant to section 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

J. WHEREAS, despite their belief that the allegations made by the Plaintiff in the Class Action are unfounded and that they have good and reasonable defences, the Settling Defendants have agreed to enter into this Settlement Agreement in order to achieve a final and nation-wide resolution of all of the Released Claims and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

K. WHEREAS the Settling Defendants do not admit through the execution of this Settlement Agreement, or otherwise, any unlawful conduct, liability, wrongdoing or blame of any kind on their behalf or on behalf of their successors or predecessors, either as alleged or at all;

L. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims against the Settling Defendants, and having regard to the burdens and expense in prosecuting the Class Action, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

M. WHEREAS the Plaintiff, Class Counsel, and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Settling Defendants, or evidence of the truth of any of the Plaintiff's allegations against the Settling Defendants, which the Settling Defendants expressly deny; and

N. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, the Class Action and all of the claims, allegations or demands that were, or could have been, advanced therein, as against the Settling Defendants;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action be settled and dismissed on the merits with prejudice as against the Settling Defendants, without costs to the Plaintiff (other than contingency fees which may be awarded out of the Settlement Amount to Class Counsel), the Class, or the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

ARTICLE I
DEFINITIONS

1.1 Definitions

(a) ***Account*** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel or the Claims Administrator, as the case may be, for the benefit of Settlement Class Members.

(b) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.

(c) ***Base Settlement Amount*** means the all-inclusive amount of Twenty-Three Million, One Hundred Thirty Thousand and Seven Hundred Eighty-Nine Canadian Dollars (CDN $23,130,789.00) which, for the avoidance of doubt, shall be inclusive of all amounts, taxes, disbursements, fees, costs, administration and notice costs, interest and all other amounts owing or potentially owing by the Settling Defendants, other than the Bonus Payment.

(d) ***Bonus Payment*** means the all-inclusive amount of Four Million, One Hundred and Twelve Thousand and Fifty-Four Canadian Dollars (CDN $4,112,054) which, for the avoidance of doubt, shall be inclusive of all amounts, taxes, disbursements, fees, costs, administration and notice costs, interest and all other amounts owing or potentially owing by the Settling Defendants, other than the Base Settlement Amount. This amount represents the aggregate amount of cash donations to the Gift Program by Distributor Class Members.

(e) ***Bonus Payment List*** means the list of donations made to the Gift Program by Distributors who, as of June 7, 2013, had not opted out of the Class Action. The Bonus Payment List is attached hereto as Schedule "A".

(f) ***Certification Order*** means the order of Justice Strathy of the Court which certified the Class Action on January 18, 2012.

(g) ***Claims Administrator*** means the person appointed by the Court to administer this Settlement Agreement and the Distribution Protocol as approved by the Court, and any employees of such firm.

(h) ***Class*** means the individuals who participated in the Gift Program while resident in Canada, except Excluded Persons.

(i) ***Class Action*** means the class proceeding commenced by the Plaintiff in the Court, bearing Court File No. CV-08-362807-00CP.

(j) ***Class Counsel*** means the law firms representing the Plaintiff and the Class, namely Paliare Roland Rosenberg Rothstein LLP and Landy Marr Kats LLP.

(k) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel in the prosecution of the Class Action.

(l) ***Court*** means the Ontario Superior Court of Justice.

(m) ***Defence Counsel*** means the law firms retained to defend the Settling Defendants, namely Bennett Jones LLP and Lax O'Sullivan Scott Lisus LLP.

(n) ***Defendant*** means the individuals and entities named as defendants in the Class Action and against whom the Class Action has not been dismissed, namely: Funds For Canada Foundation; ParkLane Financial Group Limited; Trafalgar Associates Limited; Trafalgar Trading Limited; Appleby Services (Bermuda) Ltd. as trustee for the Bermuda Longtail Trust; Edwin C. Harris Q.C.; Patterson Palmer also known as Patterson Palmer Law; Patterson Kitz (Halifax); Patterson Kitz (Truro); McInnes Cooper; Gleeson Management Associates Inc.; Mary-Lou Gleeson; and Matt Gleeson.

(o) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and approved by the Court.

(p) ***Distributor Class Members*** means Distributors who are also Class members, against whom the Settling Defendants commenced the Third Party Claim and who, as of June 7, 2013, had not opted out of the Class Action.

(q) ***Distributors*** means the financial, tax and/or legal advisors who marketed and promoted the Gift Program to the Plaintiff and the Class and any sub-distributors, that is, distributors who worked in association with of for the Distributors.

(r) ***Effective Date*** means (i) the date upon which the ability to appeal from the Second Order has expired without any appeal being taken, namely, thirty (30) days after the issuance of the Second Order; or (ii) if any appeal has been taken from the Second Order the date upon which any such appeal is concluded by way of a Final order or judgment; but an appeal shall not include any appeal that concerns only the issue of either Class Counsel's fees or disbursements or the Distribution Protocol.

(s) ***Escrow Fund*** means the interest bearing account in which Bennett Jones LLP will hold the Bonus Payment.

(t) ***Excluded Persons*** means Edward Furtak, Wayne Robertson, the Defendants, their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the families of the Individual Defendants, Wayne Robertson, and Edward Furtak, and any entity in which any of the foregoing persons or entities has a legal or de facto controlling interest.

(u) ***Final*** when used in relation to a court order or judgment, means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order or judgment.

(v) ***First Order*** means the Final order issued by the Court granting the following relief: (1) the Court's approval of the Notice of Settlement Hearing; (2) the appointment of the Claims Administrator for the purpose of this Settlement Agreement; and (3) the Opt-Out Termination.

(w) ***Gift Program*** means the Donations for Canada charitable donation tax program, Federal Tax Shelter Identification #TS070623, Quebec Tax Shelter Identification #QAF-05-0109, which was offered or otherwise available between 2005 and 2009 and which is the subject of the Class Action.

(x) ***Net Bonus Payment*** means the Bonus Payment, minus the aggregate amount of cash donations made by Distributor Class Members who choose to opt out of the Class Action after June 7, 2013, with the quantum of which shall be determined by reference to the Bonus Payment List at Schedule "A".

(y) ***Non-Settling Defendants*** means a Defendant that is not a Settling Defendant under this Settlement Agreement.

(z) ***Notice of Settlement Hearing*** means the form of notice as approved by the Court to inform the Class of (1) the dates and location of the hearing to approve this

Settlement Agreement; (2) the principal elements of this Settlement Agreement; and, if so ordered by the court, (3) the Opt-Out Termination Order.

(aa) ***Notice of Settlement Approval and Claims Procedure*** means the form of notice as approved by the Court to inform the Settlement Class Members of (1) the approval of this Settlement Agreement; and (2) the process by which the Settlement Class Members may apply to obtain compensation from the Settlement Amount.

(bb) ***Opt-Out Termination*** means a term in the First Order that, if so ordered by the Court, shall terminate the opt out period for the Distributor Class Members with such termination being effective thirty (30) days after the Notice of Settlement Hearing is first published, or such other date set by the court.

(cc) ***Other Actions*** means actions or proceedings against all or any of the Settling Defendants, other than the Class Action, to the extent that such actions or proceedings relate to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(dd) ***Parties*** means the Plaintiff, Settlement Class Members and the Settling Defendants.

(ee) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, in respect of the Gift Program, or relating to any conduct alleged (or which could have been alleged) in the Class Action or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, whether in Canada or elsewhere, against the Releasees as a result of or in connection with the Gift Program, including, without limitation, any claims or allegations of consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement or conduct that occurred anytime prior to the date hereof.

(ff) ***Releasees*** means, jointly and severally, the Settling Defendants and their respective predecessors, successors, affiliates, parent, subsidiaries, partners, assigns, devisees or representatives of any kind.

(gg) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective successors, heirs, executors, administrators, assigns, devisees or representatives of any kind.

(hh) ***Second Order*** means the Final order issued by the Court to approve and implement this Settlement Agreement.

(ii) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(jj) ***Settlement Amount*** means the aggregate total of the Base Settlement Amount and the Net Bonus Payment.

(kk) ***Settlement Class Members*** means a member of the Class who has not opted out of the Class Action in accordance with orders of the Court.

(ll) ***Third Party Claim*** means the third party proceedings commenced by the Settling Defendants against the Distributors in the Court, bearing Court File No. CV-08-362807-00 CPA2.

ARTICLE II
SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete approval and implementation of the settlement, and the final dismissal with prejudice of the Class Action as against the Settling Defendants, and the Third Party Claim as against the Distributor Class Members.

2.2 Motion for Approval of Notice of Settlement Hearing, and Termination of the Distributors' Opt Out Period

At a time mutually agreed to by Class Counsel and Defence Counsel after the Settlement Agreement is executed, the Plaintiff shall bring a motion before the Court for the First Order, seeking to obtain the following relief:

(a) the Court's approval of the Notice of Settlement Hearing;

(b) the appointment of the Claims Administrator; and

(c) the Opt-Out Termination.

The First Order shall be substantially in the form attached hereto as Schedule "B".

2.3 Motion for Approval of the Settlement Agreement

(a) As soon as practicable after the First Order is issued and becomes Final, the Plaintiff shall bring a motion before the Court to obtain the Second Order, substantially in the form attached hereto as Schedule "C".

(b) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality of Settlement Agreement

The Parties shall keep the terms of the Settlement Agreement confidential until the time that they are required to disclose such terms to the Court, but nothing herein shall prevent the Parties from disclosing the fact of a settlement having been reached between the Parties.

ARTICLE III
SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(a) Within thirty (30) business days of execution of this Settlement Agreement, the Settling Defendants shall pay the Base Settlement Amount to Class Counsel in trust, for the benefit of the Settlement Class Members.

(b) Within thirty (30) business days of the execution of this Settlement Agreement, the Settling Defendants shall pay to Defence Counsel the Bonus Payment. Defence Counsel will hold the Bonus Payment in the Escrow Fund.

(c) Upon the termination of the opt out period for the Distributor Class Members, occurring either:

(i) in accordance with the Opt-Out Termination; or

(ii) if the Court does not grant the First Order and/or the Opt-Out Termination, at any other time when the opt out period for the Distributors expires,

Defence Counsel shall pay the Net Bonus Payment, plus any accrued interest in respect of the Net Bonus Payment, to Class Counsel in trust, for the benefit of the Settlement Class Members.

(d) Any balance remaining in the Escrow Fund following payment of the Net Bonus Payment, inclusive of accrued interest, shall be released from the Escrow Fund by Defence Counsel and repaid to the Settling Defendants.

(e) The Settling Defendants' payment of the Settlement Amount to the Settlement Class Members will be in full satisfaction of the Released Claims against the Releasees.

(f) Neither the Settling Defendants nor Defence Counsel shall have any obligation to pay to the Plaintiff or to the Settlement Class Members any amount in addition to the Settlement Amount for any reason, pursuant to or in furtherance of this Settlement Agreement.

(g) Class Counsel shall hold the Settlement Amount in trust and maintain the Account as provided for in this Settlement Agreement, and shall:

(i) transfer the Base Settlement Amount plus accrued interest to the Claims Administrator within ten (10) business days after the Court grants the First Order appointing the Claims Administrator; and

(ii) transfer the Net Bonus Payment to Claims Administrator within ten (10) business days after receiving this payment from Defence Counsel.

(h) Class Counsel shall not pay out all or part of the monies in the Account, except in accordance with this Settlement Agreement or in accordance with an order of the Court obtained on notice to the Settling Defendants.

3.2 Taxes and Interest

(a) Except where otherwise provided in this Settlement Agreement, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Account.

(b) Subject to Article 3.2(c), all Canadian taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount shall be the sole responsibility of the Settlement Class Members. Class Counsel or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account.

(c) The Settling Defendants shall have no responsibility to make any filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

3.3 Litigation Compliance

(a) The Settling Defendants shall, as part of the resolution of the Class Action as against them, comply with any unfulfilled obligations to the Plaintiff under the *Rules of Civil Procedure* related to the continued prosecution of the Class Action as against the Non-Settling Defendants, as though the Settling Defendants remained a party to the Class Action. In particular, the Settling Defendants shall:

(i) provide to Class Counsel, within thirty (30) days of execution of the Settlement Agreement, any non-privileged relevant documents in the possession of the Settling Defendants that have not yet been disclosed, which shall be coded and produced in electronic format, where available;

(ii) produce a list akin to Schedule B to an affidavit of documents that lists all documents in the possession, power or control of the Settling Defendants over which a claim of privilege is asserted;

(iii) facilitate the attendance by Edwin C. Harris, Q.C., if requested by Class Counsel and if available and fit to testify, at an examination for discovery and/or at trial.

(b) It is understood and agreed that all documents and information provided by the Settling Defendants to any party as specifically provided for under this Settlement Agreement shall be used only in connection with the prosecution of the Class Action, and shall not be used directly or indirectly for any other purpose. In particular, the Plaintiff and Class Counsel specifically agree they will not publicize, circulate or disclose any documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Class Action or as otherwise required by law.

(c) If any documents protected by any privilege and/or any privacy law or other order, regulatory directive, rule or law are accidentally or inadvertently produced, upon request from the Settling Defendants, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.

(d) Any obligations of the Settling Defendants to comply with any unfilled obligations under the *Rules of Civil Procedure* related to the continued prosecution of the Class Action as against the Non-Settling Defendants shall cease at the date of final judgment in the Class Action against all Defendants.

ARTICLE IV
OPT OUT DEADLINE AND DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

4.1 Opt Out Deadline

(a) The procedure for opting out of the Class Action was set out in the Certification Order. The opt out deadline for members of the Class who are not Distributors expired on February 22, 2013.

(b) Pursuant to the Order of Justice Belobaba, dated February 20, 2013, the opt out period for Distributor Class Members will expire 60 days after the final disposition of any motions brought that deal with the status or stay of the Third Party Claim, subject to any further order of the Court. These motions are currently scheduled for October 17 and 18, 2013.

(c) In the motion referred to in Article 2.2, the Plaintiff will seek the Opt-Out Termination which, if granted, will modify the opt out period described in Article 4.1(b). The Opt-Out Termination will terminate the opt out period for Distributor Class Members effective thirty (30) days from the first publication of the Notice of Settlement Hearing, or such other date as may be set by the court. If the Opt-Out Termination is not granted, the opt out period for Distributors will be determined in accordance with Article 4.1(b).

4.2 Distribution Protocol

At a time wholly within the discretion of Class Counsel, which may be at the time of the motion for settlement approval or thereafter, but on notice to the Settling Defendants, Class Counsel will bring a motion to seek an order from the Court for approval of the Distribution Protocol.

4.3 No responsibility for Administration or Fees

Neither the Settling Defendants nor Defence Counsel shall have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, Administration Expenses and Class Counsel Fees.

ARTICLE V
TERMINATION OF SETTLEMENT AGREEMENT

5.1 Right of Termination

(a) The Settling Defendants shall, in their sole discretion, have the option to terminate the Settlement Agreement within thirty days of any of the following events:

(i) the Court declines to issue the Second Order, or approve of any material part of the Settlement Agreement which includes but is not limited to approval of the Base Settlement Amount, the Bonus Payment, the Net Bonus Payment, or the terms of release contemplated in the Settlement Agreement;

(ii) the Court issues the Second Order but approves the Settlement Agreement, or any material part thereof, in a materially modified form other than as amended and agreed to by the Plaintiff and the Settling Defendants;

(iii) the Court issues the Second Order, but the Second Order does not become Final; or

(iv) the Court refuses or declines to grant a bar order that is in accordance with the provisions of Article 7.1 hereof, or if the aspect of the Second Order that pertains to the bar order is in any way altered on appeal.

(b) In addition to Article 5.1(a), the Plaintiff shall, in his sole discretion, have the option to terminate the Settlement Agreement in the event of non-payment of the Base Settlement Amount or the Net Bonus Payment.

(c) If the Settling Defendants elect to terminate the Settlement Agreement pursuant to Article 5.1(a), or the Plaintiff elects to terminate the Settlement Agreement pursuant to Article 5.1(b), a written notice of termination shall be provided. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in Article 5.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(d) Any order, ruling or determination made by any Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not constitute any basis for the termination of this Settlement Agreement.

5.2 If Settlement Agreement is Terminated or Set Aside

If this Settlement Agreement is terminated:

(a) any step taken by the Settling Defendants in the Class Action in relation to this Settlement Agreement shall be without prejudice to any position that any of the Settling Defendants may later take in respect of any procedural or substantive issues in the Class Action or any proceedings in Canada, or in respect of the jurisdiction of the Court or any other court in Canada over such defendants or their deeds or other conduct; and

(b) any order made by the Court pursuant to this Settlement Agreement shall be set aside or vacated on the consent of the Parties.

5.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated, Class Counsel or the Claims Administrator, as the case may be, shall return to the Settling Defendants all monies in the Account including accrued interest, but less the amount of any income taxes paid in respect of any interest earned on monies in the Account within thirty (30) business days of the relevant termination event in Article 5.1, and less any costs and expenses that have been actually incurred as at the date of termination in relation to providing notice as required pursuant to the Settlement Agreement.

5.4 Survival of Provisions After Termination

(a) If this Settlement Agreement is terminated, the provisions of Articles 2.4, 3.1(b), 3.2(c), 3.3(b), 3.3(c), 4.1, 5.1(c), 5.2, 5.3, 5.4, 7.2, 8.1, 8.2, 8.3(b), 9.4, 11.2 and 12.6 (and any additional provisions governing confidentiality) and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited

purpose of the interpretation of Articles 2.4, 3.1(b), 3.2(c), 3.3(b), 3.3(c), 4.1, 5.1(c), 5.2, 5.3, 5.4, 7.2, 8.1, 8.2, , 8.3(b), 9.4, 11.2 and 12.6 (and any additional provisions governing confidentiality) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

(b) The Plaintiff and Class Counsel expressly acknowledge that they will not, in any way whatsoever, use the fact or existence of this Settlement Agreement as any form of admission, whether of liability, wrongdoing, or otherwise, of the Settling Defendants.

ARTICLE VI
RELEASES AND DISMISSALS

6.1 Release of Releasees

Upon the Effective Date, and in exchange for the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

6.2 Covenant Not to Sue

Notwithstanding Article 6.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to sue or make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

6.3 No Further Claims

The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Class Action against the Non-Settling Defendants.

6.4 Dismissal of the Class Action

Upon the Effective Date, the Class Action shall be dismissed with prejudice and without costs as against the Settling Defendants.

6.5 Dismissal of the Third Party Claim

Upon the Effective Date, the Third Party Claim shall be dismissed with prejudice and without costs as against the Distributor Class Members, who have not opted out of the Class Action.

ARTICLE VII
BAR ORDER AND OTHER CLAIMS

7.1 Bar Order

The Plaintiff and the Settling Defendants agree that the Second Order shall contain a bar order which shall include the following provisions:

(a) all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Gift Program which were or could have been brought in the Class Action or in a separate proceeding by any Non-Settling Defendant or any other person or party against any of the Releasees, or by the Releasees against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Article (unless such a claim is made in respect of a claim by a person who has validly opted out);

(b) all claims of any person of any nature whatsoever arising out of or relating in any way to the professional services provided by the Settling Defendants to the defendants ParkLane Financial Services Limited, Trafalgar Associates Limited or Trafalgar Trading Limited relating to or arising from the Gift Program which could have been brought in the Class Action or in a separate proceeding are barred, prohibited and enjoined;

(c) if, in the absence of Articles 7.1(a) and 7.1(b), a Non-Settling Defendant or any other person or party would have the right to make a claim of any kind against any of the Settling Defendants:

(i) the Plaintiff and/or the Settlement Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Settling Defendants proven at trial or otherwise;

(ii) the court shall have full authority to determine the proportionate liability at the trial or other disposition of the Class Action as if the Settling Defendants were parties to the action and any such finding by the court in respect of the proportionate liability shall only apply in the Class Action and shall not be binding upon the Settling Defendants in any other proceedings; and

(d) after the Effective Date, a Non-Settling Defendant may, on motion to the court determined as if the Settling Defendants still remained parties to the Class Action, and on at least ten days notice to Defence Counsel and the Plaintiff, seek orders to conduct discovery of the Settling Defendants according to the Ontario *Rules of Civil Procedure*. The Settling Defendants retain all rights to oppose such motions or seek the costs of compliance, including any such motion brought at trial seeking an order requiring any of the Settling Defendants to produce a

representative to testify at trial. On any motion brought pursuant to this paragraph, the court may make such orders as to costs and other terms that it considers appropriate;

(c) on any motion brought pursuant to Article 7.1(d), the Court may make such orders as to costs and other terms as it considers appropriate;

(f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided in a timely manner by the Settling Defendants to Class Counsel;

(g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for these purposes only; and

(h) a Non-Settling Defendant may effect service of the motion(s) referred to in Article 7.1(d) on the Settling Defendants by service on Defence Counsel.

7.2 Reduction on Recovery

For greater certainty, to the extent that the Settling Defendants are found in any proceeding to have any liability to any of the Non-Settling Defendants for damages or losses arising from or related to amounts for which the Non-Scttling Defendants are found liable to the Settlement Class Members, the Settlement Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants.

7.3 Claims Against Other Entities Reserved

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

ARTICLE VIII
EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Settling Defendants, or of the truth of any of the claims or allegations contained in the Class Action or any other pleading filed by the Plaintiff or any other Settlement Class Member.

8.2 Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

8.3 No Further Litigation

(a) Neither the Plaintiff nor Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Class Action against any Non-Settling Defendant or other co-conspirators who are not Releasees.

(b) Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Class Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court in Canada.

ARTICLE IX
NOTICE TO CLASS

9.1 Notice Required

(a) The Plaintiff and the Class shall be given the following notices: (1) Notice of Settlement Hearing; (2) Notice of Settlement Approval and Claims Procedure; and (3) termination of this Settlement Agreement if it is properly terminated under Article 5.1 of this Settlement Agreement, or as otherwise ordered by the Court, the costs of which shall be paid from the Account.

9.2 Form of Notices

The notices required under Article 9.1 shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

9.3 Method of Disseminating Notices

The notices required under Article 9.1 shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated in a manner ordered by the Court.

9.4 Settling Defendants or Defence Counsel Not Responsible for the Costs of Notice

For greater clarity, neither the Settling Defendants nor Defence Counsel have any responsibility for any costs and expenses relating to providing notices as required by this Article or otherwise, except for the costs of the Notice of Settlement Hearing, if this Settlement Agreement is terminated after that Notice has been disseminated, as provided for in Article 5.3.

ARTICLE X
ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and Distribution Protocol shall be determined by the Court on motion brought by Class Counsel.

ARTICLE XI
CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

11.1 Counsel Fees

(a) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Administration Expenses from the Settlement Amount contemporaneous with seeking approval of this Settlement Agreement.

(b) Except as provided in Articles 3.2, 5.3, 9.1, 11.1, and 12.11 Class Counsel Fees and Administration Expenses may only be paid out of the Account after the Effective Date.

11.2 Administration Expenses

Subject to Article 5.3, the Settling Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of: Class Counsel, the Plaintiff or the Settlement Class Members.

ARTICLE XII
MISCELLANEOUS

12.1 Motions for Directions

(a) Class Counsel, Defence Counsel or the Claims Administrator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol.

(b) All motions contemplated by this Settlement Agreement shall be on notice to the Parties to this Settlement Agreement. For certainty, notice need not be provided to Settlement Class Members in the event of a motion unless so required by the Court.

12.2 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

12.3 Headings, *etc.*

In this Settlement Agreement:

(a) the division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

(b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

12.4 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

(a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

(b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

12.5 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

12.6 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

12.7 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and the Settling Defendants.

12.8 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of the Plaintiff, the Settlement Class Members, the Settling Defendants, the Releasors, and the Releasees.

12.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

12.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.11 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exige que la presente convention et tous les documents connexes soient rediges en anglais. Nevertheless, a French translation of the Notices shall be prepared, the cost of which shall be paid for from the Settlement Amount. The Parties agree that such translation is for convenience of French speaking Class members, only.

12.12 Recitals

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

12.13 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

12.14 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

(a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

(b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;

(c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

(d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

12.15 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.16 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

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For Plaintiff and for Class Counsel:

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
Barristers
155 Wellington St. W., 35th Floor,
Toronto, ON M5V 3H1

Margaret Waddell
Telephone: 416.646.4329
Facsimile: 416.646.4301
Email: marg.waddell@paliareroland.com

LANDY MARR KATS LLP
2 Sheppard Avenue East
Suite 900
(Sheppard Centre)
Toronto, ON M2N 5Y7

Samuel S. Marr
Telephone: 416.221.9343
Facsimile: 416.221.8928
Email: smarr@lmklawyers.com

For the Settling Defendants and Defence Counsel:

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto ON M5X 1A4

John F. Rook Q.C.
Telephone: 416.863.1200
Facsimile: 416.863.1716
Email: rookj@bennettjones.com

LAX O'SULLIVAN SCOTT LISUS LLP
145 King Street West
Suite 2750
Toronto ON M5H 1J8

Eric R. Hoaken
Telephone: 416.645.5075
Facsimile: 416.598.3730
Email: ehoaken@counsel-toronto.com

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12.17 Date of Execution

The Parties have executed this Settlement Agreement as of the date on the cover page.

MICHAEL CANNON
by his counsel

Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:

Paliare Roland Rosenberg Rothstein LLP
Class Counsel

Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:
Samuel
S. Marr

Landy Marr Kats LLP
Class Counsel

EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as PATTERSON PALMER LAW, PATTERSON KITZ (Halifax), PATTERSON KITZ (Truro) and McINNES COOPER
by their counsel

Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:
John Rook
Bennett Jones LLP
Defence Counsel

Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:
per: Eric Hoaken
Lax O'Sullivan Scott Lisus LLP
Defence Counsel

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SCHEDULE "A" – BONUS PAYMENT LIST

FIRST NAME	LAST NAME	TOTAL
David	Abbott	$ 19,500.00
Serge	Ah-Hee	$ 32,700.00
Shirley	Alexander	$ 414,025.00
Jacques	Allard	$ 2,600.00
Perlita	Ancheta	$ 10,000.00
Bill	Anderson	$ 48,700.00
Richerd G.	Andrusiak	$ 32,650.00
Rod	Baker	$ 3,900.00
Robert (Bob)	Ballard	$ 14,012.50
Jean	Baril	$ 13,850.00
Priya	Batchelor	$ 5,250.00
Ken	Bateman	$ 2,500.00
Keith	Bates	$ 5,000.00
Maureen	Baulne	$ 2,500.00
Larry	Beaton	$ 70,000.00
Marcel	Beaulieu	$ 6,350.00
Stephen D.	Beaumont	$ 12,700.00
Susan	Blakey	$ 5,125.00
Dave	Blanchard	$ 2,525.00
Jules	Bosse	$ 18,750.00
Adrian	Boyko	$ 5,000.00
Kathleen	Brennen	$ 15,325.00
Gilles	Brine	$ 17,700.00
David	Brodigan	$ 66,500.00
Richard B.	Brouillard	$ 15,150.00
Albert	Brule	$ 2,500.00
Charmaine	Bucknor	$ 2,500.00
Belinda	Butler	$ 32,500.00
Phillip	Butler	$ 59,875.00
Frank	Cambridge	$ 57,987.50
Tracey	Cambridge	$ 107,275.00
Lawrence	Chang	$ 7,500.00
Jamie	Chappell	$ 60,000.00
Richard	Chartrand	$ 5,150.00
Eric	Clark	$ 10,075.00
Beverley	Currie	$ 7,500.00
Doug	Currie	$ 30,000.00
James (Jim)	Cyr	$ 2,525.00

FIRST NAME	LAST NAME	TOTAL
Mike	Cyr	$ 15,125.00
Terry	Dempsey	$ 6,250.00
Roland	Desaulniers	$ 10,000.00
Frank	Di Marco	$ 17,850.00
Gregory James	Doiron	$ 50,175.00
Francis	Dolar-Angue	$ 13,750.00
Armel	Drapeau	$ 10,300.00
David	Dyck	$ 10,000.00
Joanne	Edwards	$ 22,500.00
Michael	Edwards	$ 15,000.00
Pierre	Emond	$ 95,600.00
Eduardo	Fagioli	$ 11,250.00
Eugenio Jay	Falcone	$ 74,275.00
Alan	Farey	$ 5,175.00
Nestor	Fostey	$ 15,200.00
W	Francis	$ 2,600.00
Rocco	Frangione	$ 7,500.00
Mervyn	Fried	$ 15,000.00
David	Fudge	$ 6,300.00
Ted	Gacich	$ 32,500.00
George	Gadula	$ 11,475.00
Paul	Gagne	$ 12,650.00
Francois-Simon	Gauthier	$ 3,750.00
Michel	Gauthier	$ 5,100.00
Helene	Gendron	$ 2,500.00
Normand	Giguere	$ 2,525.00
Raymond	Giguere	$ 2,500.00
Charles	Goguen	$ 13,962.00
Rick	Gozdek	$ 50,000.00
Kevin	Gray	$ 7,550.00
Ryan	Gray	$ 2,500.00
Trevor	Gray	$ 10,050.00
Clair	Green	$ 356,250.00
Aime	Grenier	$ 7,800.00
Joe	Hanrahan	$ 5,225.00
Ryan	Hansen	$ 13,050.00
Brent	Harker	$ 2,500.00
Allan	Harper	$ 2,500.00
N. Charles	Henriques	$ 5,000.00

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FIRST NAME	LAST NAME	TOTAL
Lenn	Herritt	$ 30,225.00
Wade	Hoffman	$ 14,000.00
John A.	Horne	$ 32,750.00
Trevor	Hughes	$ 9,012.50
Paul	Iannicca	$ 10,000.00
Gloria	Joaquin	$ 2,500.00
Richard	Julien	$ 58,800.00
Douglas	King	$ 7,500.00
Jim	Kinnell	$ 5,000.00
Tim	Klein	$ 15,150.00
Michael	Kron	$ 2,500.00
Philip	Kung	$ 10,000.00
Shy	Kurtz	$ 8,750.00
Ian	Laliberte	$ 5,100.00
Karl J.	Larson	$ 2,500.00
Philip	Lassman	$ 2,500.00
Guy	Lavigne	$ 36,250.00
Rachel	Lavigne	$ 8,750.00
Bernise	Leblanc	$ 6,250.00
Michel B.	Leblanc	$ 28,937.50
Rejean	Lessard	$ 56,925.00
Ross	Libbey	$ 21,362.50
Bob	Lloyd	$ 5,200.00
Paul	Lula	$ 5,100.00
Bobby	MacKay	$ 12,600.00
David	MacKenzie	$ 10,000.00
Braden	MacKinnon	$ 27,500.00
Doug	MacLean	$ 24,487.50
Marcel	Mah	$ 41,250.00
Wayne	Mallett	$ 321,250.00
Paul	Mancuso	$ 10,000.00
Paul	Mangion	$ 3,750.00
Narinder S.	Mann	$ 25,150.00
Anne-Marie	McGrath	$ 15,000.00
Kirk	McIntyre	$ 67,300.00
Paul J.	McKinley	$ 34,600.00
John	McLellan	$ 5,000.00
Kevin	Meier	$ 20,287.50
Peter J.	Minott	$ 15,150.00

FIRST NAME	LAST NAME	TOTAL
Evan W.	Morrison	$ 5,075.00
Pauline	Murphy	$ 7,525.00
Denis	Nadeau	$ 17,500.00
Michel	Nazair	$ 19,250.00
Hari S.	Nesathurai	$ 5,200.00
Robert	Nicholson	$ 2,500.00
Terri	Noble	$ 2,500.00
Charles	Olivier	$ 2,600.00
Alcksandra	Ochocinska	$ 10,180.00
Barb	Papin	$ 2,550.00
Rene	Papin	$ 5,100.00
David	Parish	$ 5,100.00
Colin M.	Payne	$ 8,787.50
Jean-Philippe	Peretti	$ 18,850.00
James	Peters	$ 2,600.00
Brett	Pitblado	$ 15,000.00
Kurt	Pitblado	$ 15,200.00
Jean-Lou	Pitre	$ 15,200.00
Marc-Andre	Pouliot	$ 12,500.00
Jim	Power	$ 5,000.00
Nigel	Purai	$ 5,000.00
John	Reath	$ 28,075.00
James	Redekop	$ 10,000.00
Henry	Reinelt	$ 15,100.00
Keith	Rendall	$ 63,125.00
Albert	Resnick	$ 15,300.00
Francois	Rioux	$ 13,837.50
David	Rounthwaite	$ 25,000.00
Scott	Ryan	$ 13,750.00
Francis	Sabourin	$ 40,000.00
Aline	Saintonge	$ 20,000.00
Robert W.	Saintonge	$ 50,000.00
Samuel	Saintonge	$ 2,500.00
W.J.	Samaroden	$ 12,875.00
Garry	Schultz	$ 12,525.00
Lorraine	Schultz	$ 5,025.00
Bert	Senechal	$ 56,900.00
Gerard	Senechal	$ 37,500.00
George	Shields	$ 23,025.00

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FIRST NAME	LAST NAME	TOTAL
Wes	Simons	$ 10,150.00
Tim	Small	$ 2,500.00
Richard	Smith	$ 42,750.00
Rich	Sobkowich	$ 20,125.00
Jean-Guy	St Pierre	$ 22,500.00
George	Stephens	$ 10,000.00
Randy	Stevens	$ 5,000.00
Alvarez	St-Gelais	$ 10,000.00
Luella R.	Stuart	$ 10,100.00
Rick	Tone	$ 20,600.00
Belal	Uddin	$ 12,500.00
Charles	Vander Griendt	$ 31,812.50
Jane M.	Waldron	$ 15,600.00
Gary	Ward	$ 7,500.00
Nadine	Wellwood	$ 2,600.00
Gerard	White	$ 19,287.50
Doug	Williamson	$ 35,550.00
James	Woloshen	$ 3,900.00
Seija	Young	$ 2,500.00
	TOTAL:	**$ 4,112,054.50**

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SCHEDULE "B" – FIRST ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	**_____, the _____ day**
	)	
JUSTICE BELOBABA	)	**of _____2013**

BETWEEN:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, MATT GLEESON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the 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

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order terminating the opt out period for Distributor Class Members, and approving the Notice of Hearing for Settlement Approval and the method of dissemination of that notice was heard this day at •, Toronto, Ontario.

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ON READING the materials filed, including the Settlement Agreement between the Plaintiff and the Settling Defendants, and on hearing the submissions of Class Counsel and the Lawyers for the Defendants and Third Parties,

1. **THIS COURT ORDERS** that the Notice of Hearing for Settlement Approval is approved substantially in the form attached hereto as Schedules "1".

2. **THIS COURT ORDERS** that the plan of dissemination of the Notice of Hearing for Settlement Approval (the "Notice Plan") is hereby approved in the form attached hereto as Schedule "2" and that the Notice of Hearing for Settlement Approval shall be disseminated in accordance with the Notice Plan.

3. **THIS COURT ORDERS** that the opt out deadline for members of the class who are named as Third Parties in the Third Party Claim in this proceeding shall be thirty (30) days after the first date of publication of the Notice of Hearing for Settlement Approval.

4. **THIS COURT ORDERS** that • is appointed as the Claims Administrator to administer the Settlement Agreement.

5. **THIS COURT ORDERS** that the Settlement Approval Hearing shall take place on _____, 2013, at • Toronto, Ontario.

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SCHEDULE "1"

See Attached.

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SCHEDULE "2"

See Attached.

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SCHEDULE "C" – SECOND ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	**_____, the _____ day**
	)	
JUSTICE BELOBABA	)	**of _____2013**

B E T W E E N :

MICHAEL CANNON

Plaintiff

- and –

FUNDS FOR CANADA FOUNDATION, MATT GLEESON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the 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

Proceeding Under the *Class Proceedings Act, 1992*

O R D E R

THIS MOTION made by the Plaintiff for an order approving the Settlement Agreement entered into with the defendants Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro) and McInnes Cooper (the "**Settling Defendants**") was heard this day at Toronto, Ontario.

(15)

ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule "1" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants and Third Parties:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.

3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.

4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the Plaintiff and all Settlement Class Members in this proceeding.

5. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon the Plaintiff and each Settlement Class Member who has not validly opted-out of this action including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7. 08(4) of the Rules of Civil Procedure are dispensed with in respect of this action.

6. **THIS COURT ORDERS AND DECLARES** that any Other Action commenced in Ontario by any Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.

7. **THIS COURT ORDERS AND DECLARES** that each Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

8. **THIS COURT ORDERS** that each Releasor who has not validly opted-out of this action shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Class Action against the Non-Settling Defendants or name or unnamed co-conspirators that are not Releasees.

9. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

10. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall not make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

11. **THIS COURT ORDERS** that all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Gift Program which were or could have been brought in the Class Action or in a separate proceeding by any non-settling defendant or any other person or party against any of the Releasees, or by the Releasees against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such a claim is made in respect of a claim by a person who has validly opted out).

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12. **THIS COURT ORDERS** that all claims of any nature whatsoever relating to the professional services rendered by the Settling Defendants to ParkLane Financial Services Limited, Trafalgar Associates Limited or Trafalgar Trading Limited relating to or arising from the Gift Program which could have been brought in the Class Action or in a separate proceeding are barred, prohibited and enjoined.

13. **THIS COURT ORDERS** that if, in the absence of paragraphs 11 and 12, a Non-Settling Defendant or any other person or party would have the right to make a claim of any kind against any of the Settling Defendants:

    (a) The Plaintiff and/or the Settlement Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Settling Defendants proven at trial or otherwise; and

    (b) the Court shall have full authority to determine the proportionate liability at the trial or other disposition of the Class Action as if the Settling Defendants were parties to the action and any such finding by the court in respect of the proportionate liability shall only apply in the Class Action and shall not be binding upon the Settling Defendants in any other proceedings.

14. **THIS COURT ORDERS** that to the extent that the Settling Defendants are found in any proceeding to have any liability to any of the Non-Settling Defendants for damages or losses arising from or related to amounts for which the Non-Settling Defendants are found liable to the Settlement Class Members, the Settlement Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants.

15. **THIS COURT ORDERS** that after the Effective Date, a Non-Settling Defendant may, on motion to the court determined as if the Settling Defendants still remained parties to the Class Action, and on at least ten days notice to Defence Counsel and Class Counsel, seek orders to conduct discovery of the Settling Defendants according to the Ontario

Rules of Civil Procedure, RRO 1990, Reg 194 (the "***Rules***"). The Settling Defendants retain all rights to oppose such motions or seek the costs of compliance, including any such motion brought at trial seeking an order requiring any of the Settling Defendants to produce a representative to testify at trial. On any motion brought pursuant to this paragraph, the court may make such orders as to costs and other terms that it considers appropriate.

16. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 14 above on the Settling Defendants by service on counsel of record for the Settling Defendants in this action.

17. **THIS COURT ORDERS** that the Settling Defendants shall produce the documents required to be produced to Class Counsel pursuant to the Settlement Agreement within the timelines, if any, contemplated by the Settlement Agreement.

18. **THIS COURT ORDERS** that any document or information produced to Class Counsel pursuant to the Settlement Agreement shall be, and is, subject to the implied and/or deemed undertaking rules including Rule 30.1 of the *Rules*.

19. **THE COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants in this action.

20. **THIS COURT ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

21. **THIS COURT ORDERS** that Class Counsel transfer the Settlement Amount including the interest accrued in the Account to the Claims Administrator to be held in trust for the benefit of the Settlement Class, pending distribution to the Settlement Class Members in accordance with the Distribution Protocol, which is hereby approved.

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22. **THIS COURT ORDERS** that the form of Notice of Settlement Approval and Claims Procedure is hereby approved substantially in the form attached hereto as Schedule "2".

23. **THIS COURT ORDERS AND ADJUDGES** that this action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.

24. **THIS COURT ORDERS AND ADJUDGES** that the Third Party Claim be and is hereby dismissed without costs and with prejudice against the Distributor Class Members who have not opted out, as set forth in Schedule "3" hereto.

E. Belobaba J.

SCHEDULE "1" – SETTLEMENT AGREEMENT

See attached.

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SCHEDULE "2" – NOTICE OF SETTLEMENT APPROVAL AND CLAIMS PROCEDURE

See attached.

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Vogel

A Commissioner, etc.

CLASS ACTION
Contingency Fee Retainer Agreement

Retainer

1. Michael Cannon (the "Client") hereby retains and employs Landy Marr Kats LLP and Paliare Roland Rosenberg Rothstein LLP, ("Class Counsel") as his lawyers to act on his behalf with respect to a proposed class action on behalf of the Client and other members of the proposed class against the promoters and organizers and/or related entities of Parklane "Funds for Canada Foundation" charitable tax shelter (the "Defendants").

Institution of Class Action

2. Class Counsel shall institute a class proceeding pursuant to the *Class Proceedings Act 1992*, S.O. 1992, c. 6, and shall, subject to instructions from the Client, take such actions and conduct such proceedings as it may consider necessary and proper to prosecute the class action.

3. If, (a) another class member wishes to act as the class representative, (b) the Client is content that such other class member serve as the class representative, and (c) such other class member is acceptable to Class Counsel as a class representative, then this agreement shall be amended to substitute or add such person as the representative plaintiff and as a "Client" under this agreement. The class action shall not be amended until a written agreement making any necessary modifications to this agreement is prepared and executed by the Client, Class Counsel and the new class representative.

Terms of Payment of Fees and Disbursements

4. The Client has chosen to retain Class Counsel by way of a contingency fee agreement. The provisions of this agreement regarding fees and disbursements are subject to court approval as provided in the *Class Proceedings Act 1992*, S.O. 1992, c. 6, and the *Solicitors' Act* R.S.O. 1990, c. S.15.

5. Legal Fees shall be paid only in the event the class action is successful in obtaining judgment on the common issues in favour of some or all class members, or in obtaining a settlement that benefits one or more class members. The fees shall be paid by a lump sum payment or payments out of the proceeds of such judgment or settlement.

6. Class Counsel's Legal Fees shall be 33% of the amounts recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s) (including damages and interest, but excluding any amount(s) awarded or

agreed to that is separately specified as being in respect of costs and disbursements), plus the applicable taxes.

7. In addition to the Legal Fees, Class Counsel shall be reimbursed from the proceeds of any judgment or settlement for all disbursements inclusive of taxes expended on behalf of the Client and/or the class, as further specified below.

8. Class Counsel and the Client acknowledge it is difficult to estimate what the expected Legal fees will be, however, the following are examples:

(a) If the class action results in a recovery of $1 million for damages and interest, and $100,000 for costs then Class Counsel's Legal Fees shall be ($1,000,000 x 25%) = $250,000 plus taxes, and plus disbursements and taxes expended, and the class shall receive $850,000, less the taxes on $250,000, and less the disbursements and taxes incurred;

(b) If the class action results in a recovery of $1 million for damages inclusive of interest and costs, then Class Counsel's Legal Fees shall be ($1,000,000 x 25%) = $250,000 plus taxes, and plus disbursements and taxes incurred, and the class shall receive $750,000, less the taxes on $250,000 and less the disbursements and taxes incurred.

9. In the event that a settlement is reached or the judgment obtained does not provide for the payment of monetary damages by the Defendants to the class, or monetary damages are not the primary relief sought or obtained, then the Legal Fees to be paid to Class Counsel will not be a percentage of the amounts recovered by the class or class members. Rather, the Legal Fees will be the costs agreed to be paid by the Defendants, and approved by the court in any settlement, or the costs as awarded by the court in respect of any judgment at the trial of the common issues.

10. The Client shall not be obliged to fund any disbursements. Any disbursements paid by Class Counsel shall be secured by way of a first charge on the results of any judgment or settlement. If an application to the Class Proceedings Fund is made, and it makes an award to cover costs of any disbursements, then the disbursement will first be paid from the Class Proceedings Fund payments, to the extent provided for in the award. Ultimately, if the action is successful, the disbursements paid by Class Counsel and the Class Proceedings Fund will be reimbursed out of the proceeds of judgment or settlement. The disbursements that are likely to be incurred will include, but are not limited to, such expenses as photocopying and binding, laser copies, court filing fees, official examiner's fees, expert witness fees, courier charges, telephone and facsimile charges, document processing and imaging fees, travel expenses, internet management, and the costs of publishing notices to the class. The Client authorizes Class Counsel to incur such disbursements as it considers reasonably necessary to prosecute the class action.

11. If during the course of the class action the court awards costs to the Client on a motion or other interlocutory proceeding and such costs are paid by the Defendants,

such costs shall be paid to Landy Marr Kats, in trust, and Class Counsel may apply such costs against disbursements incurred, or may hold such funds in trust to be applied towards future disbursements, or to be applied toward the ultimate Legal Fees payable under this agreement. Costs awards are generally made by the court to a litigant who is successful in a proceeding, or a step in a proceeding and are meant to indemnify the litigant for part of the expenses incurred by them. They are generally based upon factors set forth in the Rules of Civil Procedure and what the losing party would reasonably be expected to pay for costs. Substantial indemnity costs will reimburse a greater proportion of the costs than will partial indemnity costs. Unless otherwise ordered by a judge, a litigant entitled to costs will be awarded costs on either a partial indemnity or a substantial indemnity basis. Similarly, if the Client is responsible for paying any costs contribution or award, he will be liable to pay them on a partial indemnity or substantial indemnity scale, unless the court orders otherwise.

12. The Client acknowledges that he has discussed with Class Counsel options for retaining Class Counsel other than by way of a contingency fee agreement, including retaining Class Counsel by way of an hourly-rate retainer. The Client acknowledges that he has been advised that hourly rates may vary among solicitors, and that he can speak to other solicitors to compare rates. The Client further acknowledges that he understands that all the usual protections and controls in retainers between a solicitor and client as defined by the Law Society of Upper Canada and the common law apply to this agreement.

13. The Client acknowledges that he has been advised of his right to ask the Superior Court of Justice to review and approve Class Counsel's bills rendered under this agreement within six months after their delivery.

14. Subject to paragraph 9, in no event shall Class Counsel recover more in Legal Fees than the class recovers in damages or receives by way of settlement.

15. The Client agrees and directs that all funds claimed by Class Counsel for Legal Fees, costs, disbursements and taxes shall be paid to Landy Marr Kats, in trust, from any judgment or settlement.

Appeal

16. If there is an appeal of any judgment rendered in this action following a summary judgment motion brought by the Client, or following the common issues trial, then Class Counsel shall be entitled to fees equal to 40% of the total proceeds, calculated on the same basis as paragraphs 5-8, above, subject to the increased percentage amount.

Consortium for Common Issues and Class Wide Issues

17. The Client acknowledges that, in view of the complex nature of the case, Class Counsel may require the assistance of additional lawyers to work on the common issues and class wide issues in the contemplated class action. The Client hereby authorizes Class Counsel to assemble and maintain a consortium of lawyers to conduct

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the class action, as they deem fit. Class Counsel shall have overall responsibility for the conduct of the case. Class Counsel may change their composition and assign tasks among consortium members as they consider advisable from time to time. The legal fees for the consortium shall be treated as part of Class Counsel's Legal Fees and shall be determined as set out above.

Class Proceedings Fund Application

18. In the event the Client wishes to apply for financial support to the Class Proceedings Fund, Class Counsel will represent the Client in such application, and will make all necessary submissions to seek funding and if granted, to obtain the funding and give the necessary notices, and take all other actions necessary in respect thereto.

Change of Solicitors

19. The Client acknowledges that Class Counsel is incurring a significant financial risk in agreeing to be paid only in the event the action is successful, and that Class Counsel is doing so on the basis that they will have carriage of the lawsuit. If the Client changes solicitors (or otherwise terminates Class Counsel's retainer) the Client agrees:

(a) he will pay for all the disbursements incurred by Class Counsel; or he will agree in writing that these disbursements will be a first charge on any proceeds of settlement or judgment in the action;

(b) in the event the action is successful Class Counsel will be entitled to be paid a fee based upon either: (a) the number of hours worked, multiplied by the usual hourly rate of the lawyers, students and clerks who worked on prosecuting the action during the currency of the retainer (the "Base Fee"), and multiplied by the "Multiplier" set by the court, or (b) if a percentage fee is approved by the court, then its pro-rata share of the total costs award, based upon Class Counsel's Base Fee, and the Base Fee of the firm or firms who subsequently are retained by the Client where the ratio is determined by taking Class Counsel's Base Fee as the numerator and the total of all firms' Base Fees as the denominator, and such amounts shall be a first charge on the proceeds of any judgment or settlement; and

(c) in the event the lawsuit is unsuccessful or discontinued or abandoned by the Client and the change of solicitors was not for just cause, the Client will be personally liable to Class Counsel for the amount of the Base Fee notwithstanding paragraphs 4 - 10 of this agreement. Any dispute as to whether just cause exists shall be determined by a single arbitrator, to be mutually agreed upon, and the *Arbitration Act, 1991* shall apply.

Client to Act in Best Interests of the Class

20. The Client retains the right to make all critical decisions regarding the conduct of the action only up to certification as a class proceeding. Thereafter, all decisions must be made solely in the best interests of the class.

21. The Client acknowledges the obligation to act in the best interests of the class and that Class Counsel is not obliged to follow instructions from the Client which are, in their professional opinion, not in the best interests of the class once the action has been certified as a class proceeding.

Disagreement regarding Settlement

22. If (a) the Defendants, or any one or more thereof, make an offer to settle the claims of the class, (b) Class Counsel considers the proposed settlement to be in the best interests of the class, (c) Class Counsel recommends acceptance of such offer to the Client, and (d) the Client does not consider the proposed settlement to be acceptable, then a counteroffer to settle shall be made to the Defendant upon such terms as the Client considers to be appropriate. If, within 14 days, such counteroffer is not accepted by the Defendant and no improved Defendant's offer is made which is acceptable to the Client, then Class Counsel is hereby irrevocably authorized to accept the Defendant's offer or the improved Defendant's offer, as the case may be, subject to court approval, and on the motion for such court approval an affidavit fully disclosing Client's concerns about the proposed settlement shall be filed with the court.

Class Members' Individual Lawyers

23. (a) It is acknowledged that the court may require separate individual damage assessments for class members. Further, the court could (i) provide for an "aggregate" assessment of damages for class members and then distribute shares to the individual members.

(b) It is acknowledged that every class member is entitled (i) to retain a personal lawyer to deal with individual issues affecting that class member (e.g. the quantum of damages for the individual class member) and/or (ii) to opt out of the class action, in the manner prescribed by the court, and sue separately or not sue at all.

(c) To the extent practical, Class Counsel will endeavour to conduct the class action (i) to minimize the number of class members who retain personal lawyers and (ii) to co-operate with the personal lawyers retained by various class members for individual issues.

(d) Class Counsel will provide summary advice to class members who do not have personal lawyers, but they are not responsible for preparing the individual damage claims of such class members or performing other individual work for individual class members under this agreement.

Confidentiality

24. The Client acknowledges being advised that the communications between Class Counsel and the Client relating to the claims of the class are legally privileged and that such privilege may be lost if the Client discloses such information to third persons, and that the interests of the class could thereby be adversely affected. The Client agrees to

protect the confidentiality of such information and to discuss the matter with Class Counsel prior to disclosing any solicitor-client communications (whether oral or written) to any third person.

Severability

25. In the event that any particular provision or provisions of this agreement or a part of any provisions in this agreement is found to be void, voidable, or unenforceable for any reason whatever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this agreement and all other provisions shall remain in force.

Entire Agreement

26. It is agreed there is no representation, warranty, collateral agreement, or condition affecting this agreement except as expressed in it.

Dated at Toronto this 4th day of November, 2010.

(Witness)

Michael Cannon

address: 724 Highland Blade Road
Newmarket, ON L3X 1P9
telephone: 905-898-3715

Landy Marr Kats LLP
Per:

(Witness)

Suite 900, 2 Sheppard Avenue East
Toronto, ON M2N 5Y7
416-221-9343

Paliare Roland Rosenberg Rothstein LLP
Per:

(Witness)

250 University Avenue, Suite 501
Toronto, ON M5H 3E5
416-646-4300

I acknowledge having read, executed and received a copy of this contingency fee retainer agreement, executed this 1st day of November, 2010.

Michael Cannon

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THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Jogel

A Commissioner, etc.

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PARK LANE

DONATIONS FOR CANADA

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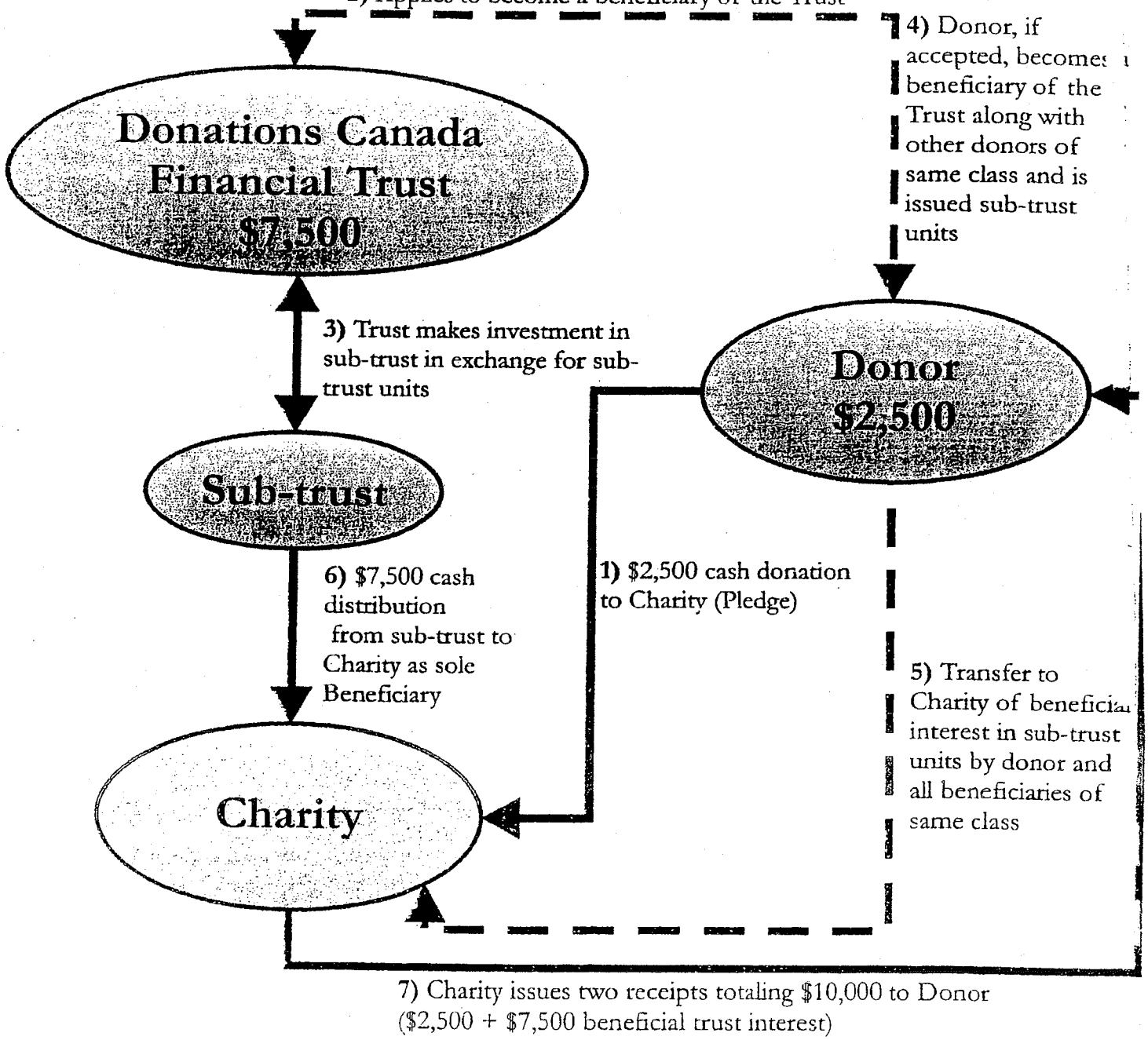
PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

Example of $10,000 Aggregate Donation



ParkLane Financial Group Ltd. 1455 Lakeshore Road, Suite 205 South Burlington, ON L7S 2J1
Tel: 1-877-776-3486 Tel: 905-639-5646 Facsmile: 905-639-2127

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PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

2006 Donation Schedule

Per $10,000 Aggregate Donation

Date	Donor Cash	Net Tax Credit/Cash Ratio BC	MB/ON	QC	NS
Jan 1 - June 30	$2,500.00	74.80%	85.60%	92.80%	93.00%
July 1 - Aug 31	$2,600.00	69.76%	80.25%	87.24%	87.43%
Sept 1 - Sept 30	$2,700.00	65.09%	75.29%	82.09%	82.28%
Oct 1 - Oct 31	$2,800.00	60.75%	70.69%	77.31%	77.49%
Nov 1 - Dec 31	$2,900.00	56.72%	66.40%	72.86%	72.03%

2006 Financing Payment Schedule

~62%

2006	Cash Donation	Financing Fee	Total	Deposit	15-Mar-06	15-Jun-06	15-Sept-06	15-Dec-06
Jan 1 - Mar 14	$2,500.00	$100.00	$2,600.00	$850.00	$437.50	$437.50	$437.50	$437.50
Mar 15 - June 14	$2,500.00	$100.00	$2,600.00	$850.00	-	$583.33	$583.33	$583.34
Jun 15 - Jun 30	$2,500.00	$100.00	$2,600.00	$850.00	-		$875.00	$875.00
July 1 - Aug 31	$2,600.00	$75.00	$2,675.00	$850.00	-	-	$912.50	$912.50
Sept 1 - Sept 14	$2,700.00	$50.00	$2,750.00	$850.00	-	-	$950.00	$950.00
Sept 15 - Sept 30	$2,700.00	$50.00	$2,750.00	$850.00	-	-	-	$1,900.00
Oct 1 - Oct 31	$2,800.00	$50.00	$2,850.00	$850.00	-	-	-	$2,000.00
Nov 1 - Dec 31	$2,900.00	-	$2,900.00	$2,900.00	-	-	-	-

revised May 1, 2006

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PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

Payment Options

Effective Mar 15 to June 30, 2006

Option 1: Payment in Full

Cash per $1,000 $ 250.00

Minimum Donation is $ 10,000.00 increasing in $5000 increments

Option 2: Financed Payments*

	CHEQUE AMOUNTS			
Aggregate Donation	Current Dated	Jun-15	Sept-15	Dec-15
$ 10,000.00	$ 850.00	$ 583.33	$ 583.33	$ 583.34
$ 15,000.00	$ 1,275.00	$ 875.00	$ 875.00	$ 875.00
$ 20,000.00	$ 1,700.00	$ 1,166.66	$ 1,166.66	$ 1,166.68
$ 25,000.00	$ 2,125.00	$ 1,458.33	$ 1,458.33	$ 1,458.34
$ 30,000.00	$ 2,550.00	$ 1,750.00	$ 1,750.00	$ 1,750.00
$ 35,000.00	$ 2,975.00	$ 2,041.66	$ 2,041.66	$ 2,041.68
$ 40,000.00	$ 3,400.00	$ 2,333.33	$ 2,333.33	$ 2,333.34
$ 45,000.00	$ 3,825.00	$ 2,625.00	$ 2,625.00	$ 2,625.00
$ 50,000.00	$ 4,250.00	$ 2,916.66	$ 2,916.66	$ 2,916.68
$ 55,000.00	$ 4,675.00	$ 3,208.33	$ 3,208.33	$ 3,208.34
$ 60,000.00	$ 5,100.00	$ 3,500.00	$ 3,500.00	$ 3,500.00
$ 65,000.00	$ 5,525.00	$ 3,791.66	$ 3,791.66	$ 3,791.68
$ 70,000.00	$ 5,950.00	$ 4,083.33	$ 4,083.33	$ 4,083.34
$ 75,000.00	$ 6,375.00	$ 4,375.00	$ 4,375.00	$ 4,375.00
$ 80,000.00	$ 6,800.00	$ 4,666.66	$ 4,666.66	$ 4,666.68
$ 85,000.00	$ 7,225.00	$ 4,958.33	$ 4,958.33	$ 4,958.34
$ 90,000.00	$ 7,650.00	$ 5,250.00	$ 5,250.00	$ 5,250.00
$ 95,000.00	$ 8,075.00	$ 5,541.66	$ 5,541.66	$ 5,541.68
$ 100,000.00	$ 8,500.00	$ 5,833.33	$ 5,833.33	$ 5,833.34
$ 150,000.00	$ 12,750.00	$ 8,750.00	$ 8,750.00	$ 8,750.00
$ 175,000.00	$ 14,875.00	$ 10,208.33	$ 10,208.33	$ 10,208.34
$ 200,000.00	$ 17,000.00	$ 11,666.66	$ 11,666.67	$ 11,666.67

** ALL cheques made payable to ParkLane Financial Group Ltd., In Trust. **

*included in the Current Dated payment are an interest charge and financing fee totaling 1% of the donation amount

ParkLane Financial Group Ltd. 1455 Lakeshore Road, Suite 205 South Burlington, ON L7S 2J1

Tel: 1-877-776-3486 Tel: 905-639-5646

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

A number of prominent Canadian charities have been accepted by the Foundation as participating beneficiary charities including:

- **Canadian Community Living Foundation**, registered charity #89163 4974 RR0001, supports people with intellectual disabilities and their families
  http://www.cclfoundation.ca

- **Loyola House (Ignatius College)**, registered charity #11896 6373 RR0001, provides a variety of spiritual retreats and training programs.
  http://www.loyolahouse.ca

- **Variety - The Children's Charity**, registered charity #11895 5137 RR0001, the leading charity for children with special needs and their families.
  http://www.varietyontario.com

- **Scarboro Foreign Missions**, registered charity #11914 2164 RR0001, a missionary community providi g social and spiritual programs for the needy around the world and in Canada.
  http://www.scarboromissions.ca

- **Starlight Starbright Children's Foundation**, registered charity #13129 5693 RR0001, provides programs to brighten the lives of seriously ill children and their families.
  http://www.starlightcanada.org

- **Canadian Amateur Wrestling Association**, registered charity #12362 4009 RR0001, provides development programs involving technical skill development for athletes, and the National Team Programs.
  http://www.wrestling.ca

- **Royal Canadian Academy of Arts Foundation**, registered charity #87237 4202 RR0001, a 125 year old cultural institution which nurtures and celebrates divers visual arts disciplines.
  http://www.rca-arc.ca

- **New Brunswick Foundation for the Arts**, registered charity #89328 6765 RR001, which encourages and promotes the artistic and cultural life of New Brunswick.
  www.nbfa-fanb.ca

- **The Family Support Centre of Winnipeg Inc.**, registered charity #10120 5904 RR0001, whose mission is to provide non-judgmental and meaningful support for high-risk families.
  http://members.shaw.ca/juergen/fsc-main.htm

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PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

The five founding Trustees of Funds for Canada Foundation (Directors) are:

Sam Albanese - Markham, Ontario
Ken Ford - Pickering, Ontario
Riyad Mohammed - Oshawa, Ontario
David Raby - Pickering, Ontario
Greg Wade - Oshawa, Ontario

Funds for Canada Foundation

ParkLane Financial Group Ltd. 1455 Lakeshore Road, Suite 205 South Burlington, ON L7S 2J1
Tel: 1-877-776-3486 Tel: 905-639-5646 Facsmile: 905-639-2127

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PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

McINNES COOPER

BARRISTERS SOLICITORS & TRADE MARK AGENTS

Our File: EH-3784
March 20, 2006

Edwin C. Harris, Q.C.
Direct Dial 902 444 8479
edwin.harris@mcinnescooper.com

Bank of Montreal Tower
1600 5151 George Street
PO Box 730
Halifax, Nova Scotia
Canada B3J 2V1
T. 902 425 6500
F. 902 425 6350
www.mcinnescooper.com

ParkLane Financial Group Ltd.
1455 Lakeshore Road, Suite 205 South
BURLINGTON, ON L7S 2J1

Dear Sirs:

ParkLane Donations for Canada (the "Program")

You requested our opinion concerning the consequences under the Canadian Income Tax Act and Regulations of participation in the Program by an individual who makes a cash donation and a donation in kind to a charitable organization, a charitable foundation, or a registered Canadian amateur athletic association.

We reviewed the Program and its compliance with the Income Tax Act and Regulations, and issued an opinion to you dated March 14, 2006.

The opinion that we provided to you on March 14, 2006 may be viewed by the professional adviser of any potential donor provided that the adviser signs a non-distribution agreement that agrees that the opinion is the property of ParkLane Financial Group Ltd. and is provided to the adviser, without responsibility on our part, for his or her sole use in assessing the Program and in determining its suitability to a donor's specific circumstances.

Yours very truly,
McINNES COOPER
E C Harris

Edwin C. Harris

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Charities participating through the **Funds for Canada Foundation**:

- **Multiple Sclerosis Society of Canada,** registered charity # 10774 6174 RR0001. The mission of the Multiple Sclerosis Society of Canada is: To be a leader in finding a cure for multiple sclerosis and enabling people affected by MS to enhance their quality of life.

www.mssociety.ca

- **Canadian Community Living Foundation**, registered charity #89163 4974 RR0001, supports people with intellectual disabilities and their families.

www.cclfoundation.ca

- **Canadian Centre for Abuse Awareness,** registered charity #89047 2442 RR0001, provides help for children and adults who are affected by or exposed to severely abusive situations.

www.ccfaa.com

- **Canadian Wheelchair Basketball Association,** registered charity #14082 5191 RR0001. The CWBA is committed to sport excellence in the development, support and promotion of wheelchair basketball programs and services for all Canadians.

www.cwba.com

- **Canadian Amateur Wrestling Association,** registered charity #12362 4009 RR0001, provides development programs involving technical skill development for athletes and the National Team Programs.

http://www.wrestling.ca

Family Support Centre of Winnipeg Inc., registered charity #10120 5904 RR0001, whose mission is to provide non-judgmental and meaningful support for high-risk families.

http://members.shaw.ca/juergen/fsc-main.htm

- **Loyola House (Ignatius College)**, registered charity #11896 6373 RR0001, provides a variety of spiritual retreats and training programs.

www.loyolahouse.ca

- **New Brunswick Foundation for the Arts,** registered charity #89328 6765 RR001, which encourages and promotes the artistic and cultural life of New Brunswick.

www.nbfa-fanb.ca

- **Royal Canadian Academy of Arts Foundation,** registered charity #87237 4202 RR0001, a 125 year old cultural institution which nurtures and celebrates diverse visual arts disciplines.

www.rca-arc.ca

- **Scarboro Foreign Missions,** registered charity #11914 2164 RR0001, a missionary community providing social and spiritual programs for the needy around the world and in Canada.

www.scarboromissions.ca

- **Starlight Starbright Children's Foundation,** registered charity #13129 5693 RR0001, provides programs to brighten the lives of seriously ill children and their families.

www.starlightcanada.org

- **Variety - The Children's Charity,** registered charity #11895 5137 RR0001, the leading charity for children with special needs and their families.

www.varietyontario.com

A number of prominent Canadian charities are participating directly with Trafalgar Trading Ltd. in the **2006 ParkLane Donation** programs, including:

- **Football Canada,** charitable registration #11698 9732 RR0001. For 123 years, the growth of football in our country has been the primary interest of Football Canada. Initially established in 1882, it was known as the Canadian Rugby Union (CRU). It was to this organization, in 1909, that Lord Earl Grey, then Governor-General of Canada, entrusted a trophy to be awarded for the Rugby Football Championships of Canada...The Grey Cup.

www.footballcanada.ca

- **Little League Baseball Canada,** charitable registration #11945 7364 RR0001. For 55 years, Little League Baseball has been teaching Canada's youth the principles of fair play, sportsmanship, teamwork and friendly competition.

www.littleleague.ca

- **Canadian Modern Pentathlon Association,** charitable registration #13300 0018 RR001. Modern Pentathlon is comprised of five events: shooting, fencing, swimming, horseback riding and running. The CMPA is gearing up for the Olympic Games in Beijing in 2008.

www.pentathloncanada.ca

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- **Canadian Scouting Jamboree Association,** charitable registration #83788 5474 RR0001. The Canadian Scouting Jamboree Association was formed to raise funds to assist Scouts Canada in the operation of Jamborees across Canada.

  Fax to P. Joanisse toll-free at (866)669-1808

- **Canadian 5 Pin Bowlers Association,** charitable registration #10077 4124 RR0001. Established on May 22nd, 1978, the Canadian 5 Pin Bowlers' Association is the governing body for the sport of 5 Pin Bowling in Canada. Its membership is comprised of eleven (11) Provincial/Territorial 5 Pin Bowlers' Associations, encompassing all areas and boundaries within the Dominion of Canada.

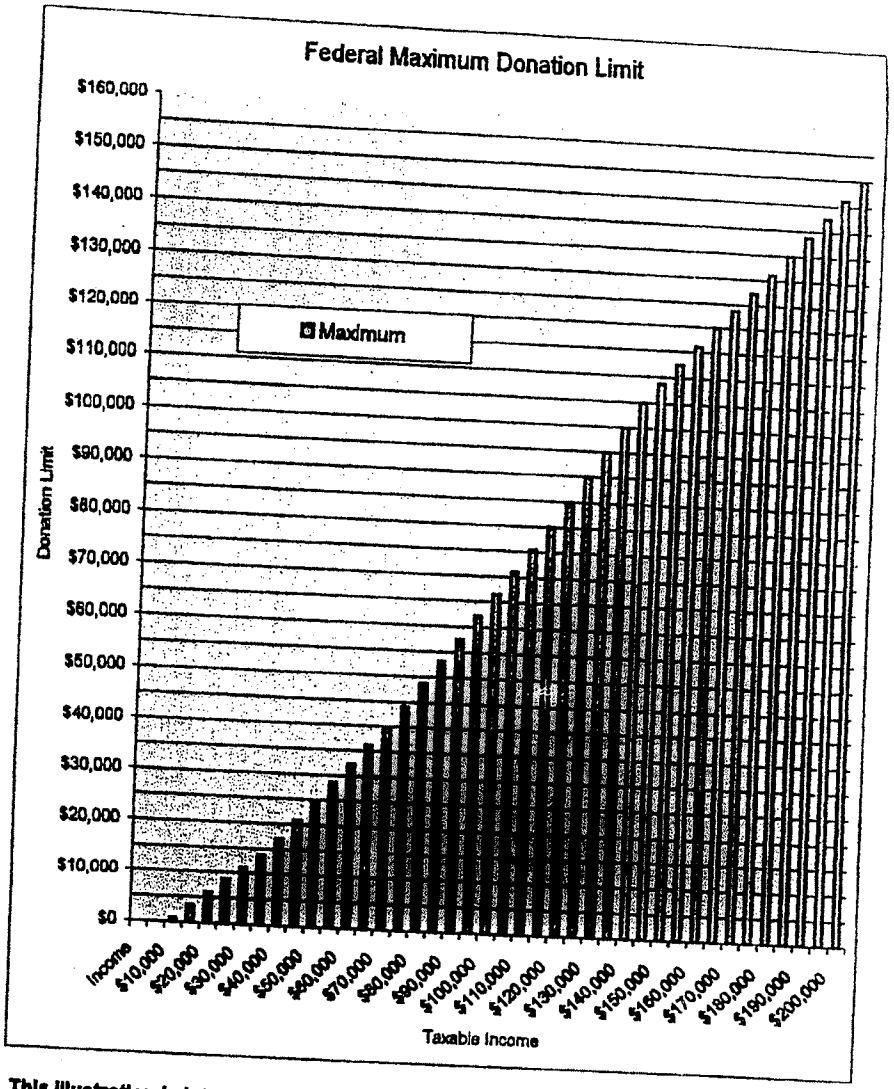
  www.c5pba.ca

- **Henvey Inlet First Nation Community Support Organization,** charitable registration #87165 6765 RR0001. The principal goal of the Henvey Inlet First Nation Community Support Organization is to offer their community membership and aboriginal children from throughout North America an aboriginal inspired educational experience.

  Fax to S. Gajadharsingh (705)857-0730

Maximum Donation Limits for the Donations Canada Program 2005

Income	Maximum Donation	% of Income	% Change per step	Rounded Up Donation	Cashflow Required
5,000	$ -	0.0%			
10,000	$ 826	8.3%	8.3%		
15,000	$ 3,395	22.6%	14.4%		before Sept 30th
20,000	$ 5,963	29.8%	7.2%		
25,000	$ 8,531	34.1%	4.3%	$ 10,000	$ 2,500
30,000	$ 11,099	37.0%	2.9%	$ 15,000	$ 3,750
35,000	$ 13,668	39.1%	2.1%	$ 15,000	$ 3,750
40,000	$ 17,158	42.9%	3.8%	$ 20,000	$ 5,000
45,000	$ 20,921	46.5%	3.6%	$ 25,000	$ 6,250
50,000	$ 24,714	49.4%	2.9%	$ 25,000	$ 6,250
55,000	$ 28,507	51.8%	2.4%	$ 30,000	$ 7,500
60,000	$ 32,301	53.8%	2.0%	$ 35,000	$ 8,750
65,000	$ 36,094	55.5%	1.7%	$ 40,000	$ 10,000
70,000	$ 39,887	57.0%	1.5%	$ 40,000	$ 10,000
75,000	$ 44,205	58.9%	2.0%	$ 45,000	$ 11,250
80,000	$ 48,688	60.9%	1.9%	$ 50,000	$ 12,500
85,000	$ 53,171	62.6%	1.7%	$ 55,000	$ 13,750
90,000	$ 57,654	64.1%	1.5%	$ 60,000	$ 15,000
95,000	$ 62,136	65.4%	1.3%	$ 65,000	$ 16,250
00,000	$ 66,619	66.6%	1.2%	$ 70,000	$ 17,500
05,000	$ 71,102	67.7%	1.1%	$ 75,000	$ 18,750
10,000	$ 75,585	68.7%	1.0%	$ 80,000	$ 20,000
15,000	$ 80,067	69.6%	0.9%	$ 85,000	$ 21,250
20,000	$ 84,991	70.8%	1.2%	$ 85,000	$ 21,250
25,000	$ 89,991	72.0%	1.2%	$ 90,000	$ 22,500
30,000	$ 94,991	73.1%	1.1%	$ 95,000	$ 23,750
35,000	$ 99,991	74.1%	1.0%	$ 100,000	$ 25,000
0,000	$ 104,991	75.0%	0.9%	$ 105,000	$ 26,250
5,000	$ 108,750	75.0%	0.0%	$ 110,000	$ 27,500
0,000	$ 112,500	75.0%	0.0%	$ 115,000	$ 28,750
5,000	$ 116,250	75.0%	0.0%	$ 120,000	$ 30,000
0,000	$ 120,000	75.0%	0.0%	$ 120,000	$ 30,000
5,000	$ 123,750	75.0%	0.0%	$ 125,000	$ 31,250
0,000	$ 127,500	75.0%	0.0%	$ 130,000	$ 32,500
5,000	$ 131,250	75.0%	0.0%	$ 135,000	$ 33,750
0,000	$ 135,000	75.0%	0.0%	$ 135,000	$ 33,750
,000	$ 138,750	75.0%	0.0%	$ 140,000	$ 35,000
,000	$ 142,500	75.0%	0.0%	$ 145,000	$ 36,250
,000	$ 146,250	75.0%	0.0%	$ 150,000	$ 37,500
,000	$ 150,000	75.0%	0.0%	$ 150,000	$ 37,500



This illustration is intended for information purposes only. For detailed client analysis software of the Donations Canada Program, contact Jim Redekop by phone - (519) 883-8195 or e-mail - JimR@on.aibn.com.

E. & O. E.

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PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

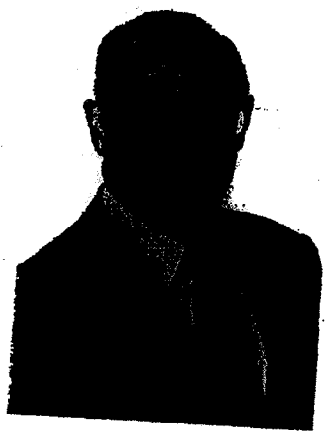
January 15, 2006

To Donors:

Re: Parklane Donations for Canada Program

ParkLane Financial Group Ltd. has received a tax opinion from Mr. Edwin C. Harris, Q.C., of McInnes Cooper, Halifax, with respect of the ParkLane Donations for Canada Program.

Mr. Harris' opinion is available for review by your professional tax advisor. For more information, please have your accountant or tax lawyer contact our Burlington, Ontario office at 1-877-776-3486.



Mr. Edwin C. Harris, Q.C.

B. Com. (Dalhousie) 1954; LL.B (Dalhousie) 1958; LL.M. (Harvard) 1959; C.M.A (1956); C.A. (1957); Admitted to Nova Scotia Bar (1959); Q.C. (1975); F.C.M.A (1984); F.C.A (1984).

Mr. Harris is counsel with the law firm of McInnes Cooper, Halifax. The author of many articles on taxation and estate planning, and texts on Canadian income taxation, he is an adjunct professor at Dalhousie Law School, Halifax and the Former Chair of the Canadian Tax Foundation.

ParkLane Financial Group Ltd. 1455 Lakeshore Road, Suite 205 South Burlington, ON L7S 2J1
Tel: 1-877-776-3486 Tel: 905-639-5646 Facsmile: 905-639-2127

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PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

A Unique Tax-Assisted Donation Structure

Canadian residents ("**Donors**") are invited to participate in the **ParkLane Donations for Canada Program** (the "**Program**"), a unique charitable donation program enabling them to effect cash donations to the Funds for Canada Foundation ("**FCF**") or to a registered charitable organization or registered Canadian amateur athletic association that participates in the Program. Where donations are made to the FCF, it will in turn direct gifts to one or more such organizations or associations. Donors may also enhance their cash donations through gifts to FCF or directly to such an organization or association of beneficial interests in a sub-trust of a Canadian resident trust. The Program has been designed to assist the charities in raising much needed funding and, at the same time, to provide significant tax advantages to the Donors.

Highlights: Example of a $10,000 Aggregate Donation

- The Program assists in the funding and development of various charitable organizations and foundations in Canada
- The Donor donates cash of $2,500 to the FCF or another participating registered organization
- The Donor applies to become a beneficiary of a Canadian-resident trust with a mandate and commitment to fund Canadian charities
- The Donor, if accepted as a beneficiary of the trust, is issued a beneficial interest in the trust; and the trust, in satisfaction of such beneficial interest, distributes to the Donor units in a sub-trust of the trust in the amount of $7,500 and the Donor donates these units to the FCF or a participating organization or association
- The donee issues the Donor two official tax receipts totaling $10,000 (one a cash receipt in the amount of $2,500 and the other a donation-in-kind receipt in the amount of $7,500)

Anticipated Tax Benefit
Example of a $10,000 Aggregate Donation

Prior to April 30th	BC	AB	SK	MB	ON	QC	NB	NS	PE	NL
Tax Credit*	$4,370	$4,175	$4,400	$4,640	$4,640	$4,820	$4,680	$4,825	$4,740	$4,860
Cash Contribution	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500
Net Tax Credit	$1,870	$1,675	$1,900	$2,140	$2,140	$2,320	$2,180	$2,325	$2,240	$2,360
Tax Credit/Cash Contribution (%)	75%	67%	76%	86%	86%	93%	87%	93%	90%	94%

ParkLane Financial Group Ltd. 1455 Lakeshore Road, Suite 205 South Burlington, ON L7S 2J1
Tel: 1-877-776-3486 Tel: 905-639-5646 Facsmile: 905-639-2127

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PARKLANE

DONATIONS FOR CANADA

CANADIANS SUPPORTING CANADIANS

Benefits:

- Enhanced gifting program without the need to borrow funds
- Tax receipts entitle Donors to claim favourable tax credits based upon the Donor's aggregate donation
- Attractive financing options are available for Donor aggregate donations
- Tax opinion by top Canadian legal professionals
- 40% of 2005 donations in the Program referred by chartered accountants
- Registered with Canada Revenue Agency and Revenu Quebec as a tax shelter**
- The trust receives cash as its asset, rather than merchandise or goods. This eliminates any valuation risk
- Donors are granted, on a discretionary basis, a beneficial interest in the trust (which is satisfied by a distribution of units in a sub-trust of the trust). Naming the Donors as beneficiaries and distributing sub-trust units to them would not, in our view, be construed as a material benefit or an advantage to the Donors
- The donee receives units which it redeems for cash, rather than merchandise or goods of questionable or uncertain value. This cash will be used to fund its current and long term charitable objectives.

The Funds for Canada Foundation has been established to assist in supporting a wide variety of Canadian charitable organizations. Decisions regarding the use of a donation made to the FCF, particular where the donation has been directed for a specific charitable purpose by the donor, ultimately rest with th FCF. FCF will, where possible, act in concert with and be respectful of the donor's wishes.

*Based on the highest marginal tax rate of 46.4%, assuming a previous $200 donation.

**Although the Program is not considered to fit within the tax shelter definition in the Income Tax Act, it has been registered as a tax shelter to afford protection to the Donors and those assisting in raising funds for the charities in the event that the CRA should consider this arrangement a tax shelter.

The Program is registered federally with CRA as a tax shelter under Tax Shelter Identification No. TS-070623. The Program is registered in the Province of Quebec as a tax shelter under Tax Shelter Identification No. QAF-05-01097.

The identification numbers issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in anyway confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter.

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Vogel

A Commissioner, etc.

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In the Matter Of:

Michael Cannon v.
Funds For Canada Foundation et al

EDWARD FURTAK

June 21, 2013

Neeson & Associates
COURT REPORTING AND CAPTIONING INC.

141 Adelaide Street West | Suite 1108
Toronto, Ontario M5H 3L5
1.888.525.6666 | Fax: 416.413.0230

A. Ultimately, it's me.

116 Q. So I take it that this trading that's going on is going on currently. Is that correct?

A. Correct.

117 Q. And how much is the trading facility?

MR. BROWN: What do you mean by "trading facility", Mr. Marr?

BY MR. MARR:

118 Q. I don't know. When you're doing these trades, how much is being traded?

MR. BROWN: So that's how much is being traded in the trading account?

MR. MARR: Yes.

THE WITNESS: A minimal amount.

BY MR. MARR:

119 Q. Well, what does that mean, "A minimal amount"?

A. It's around $100,000.

120 Q. And has that been going on for some period of time?

A. Yes.

121 Q. Why? Why is it so small?

A. Because at the moment, it's

difficult for us to borrow funds to trade.

122 Q. Why is it difficult to borrow funds?

A. Well, typically, we would borrow funds from the Trust, the Longtail Trust.

MS. WADDELL: When you say "we", just to clarify --

MR. BROWN: Have Sam ask.

BY MR. MARR:

123 Q. "We" is Trafalgar Trading?

A. Correct.

124 Q. Okay. So these funds -- I take it, this trading was on a margin facility. Is that correct?

A. Correct.

125 Q. And so you were, you had funds available to support of the margin facility. Is that correct?

A. Correct.

126 Q. And those funds were coming from the Longtail Trust?

A. Correct.

127 Q. And that's no longer happening, you're telling me. Is that correct?

A. Correct.

128 Q. And when did that stop happening?

A. Some time shortly after this action began.

129 Q. So some time in what; 2008 or 2009?

A. That's correct.

130 Q. And why did that stop happening because the action started?

MR. BROWN: Let me answer that question.

Longtail Trust just decided to put a freeze on the relationship at that point because of the litigation.

BY MR. MARR:

131 Q. So presumably, that happened shortly after the Motion to add them as a party Defendant. Is that --

MR. BROWN: I don't recall the exact dates of all that, but it was some time -- I suspect it was some time in 2009. I don't have the exact dates, but it was shortly after.

BY MR. MARR:

132 Q. Well, can you get us the exact date on that?

U/T MR. BROWN: I will see if I can

"...TTL does not hold the cash of any Charities after the month end distributions are made."

A. Yes.

299 Q. So these are... You're speaking there about the monthly profits --

A. Correct.

300 Q. -- their portion. So where does that money go that doesn't go to the charities?

A. What I'm saying is, once we pay the money that's owing to the charities,--

301 Q. Right?

A. --there are no other funds that we are holding for a charity.

302 Q. No other funds you're holding for a charity. But there's other funds you're holding?

A. There are other funds that we, that are in the company, but this relates to anything that's being held in for, in this case, the specific purpose of the charity and that only... A profit distribution is the only event that would give rise to the company holding funds for a charity--

303 Q. Okay.

A. --until they're paid.

304 Q. All right. Well, I think we'll come back to that in another way, from another part of the Affidavit.

But if we look at Paragraph 63 for a second.

A. Sixty-three?

305 Q. Yes, of your Affidavit.

A. Okay.

306 Q. So, the charities have paid a total of $514-million-and-change to the, to -- for the purchase price for the royalty agreements; correct?

A. Correct.

307 Q. Okay. So that's the amount upon which -- that's the amount upon which the trading occurs to get them their 60 per cent and so on under the formula; correct?

A. That is the amount of trading facility that is established in aggregate in respect of the purchase prices for those royalty agreements.

308 Q. So right now, today, there should be a trading facility of $514-million upon which monthly profits will be earned; correct?

MR. BROWN: Well...

THE WITNESS: Sorry?

BY MR. MARR:

309 Q. Well, I would like to know the answer to that.

MR. BROWN: No, of course.

Answer the question.

I think you're missing the big point here, but go ahead.

MR. MARR: All right. Well,--

THE WITNESS: Yes.

MR. MARR: --let's have the --

MR. BROWN: I'll let you answer. Go ahead.

BY MR. MARR:

310 Q. So what's the -- the answer is, "Yes"?

A. Umm. Yes. There is a total of $514-million in trading facilities in respect of the purchase prices for the royalty agreements.

311 Q. So... And those trading facilities for that $514-million are currently with the most, the EF and Man (sic) company, right?

A. No.

312 Q. Okay. Where are they?

A. Well, the trading facility is a

notional entry, a book entry as to the amount, the maximum amount that we will trade for any given charity. It's not --

MR. BROWN: For all the charities, you mean.

THE WITNESS: Right. For all, in aggregate.

BY MR. MARR:

313 Q. Sorry. For all the charities--

MR. BROWN: Yeah.

BY MR. MARR:

314 Q. --in the Gift Program that we are talking about, this action?

A. Correct.

315 Q. Not the charities in other programs. We're only talking, there's...

So a notional amount of $514-million; that's what you're saying?

A. Correct.

316 Q. But you... So the amount of trading that they're going to get a monthly profit on, on 514 -- the monthly profit on, on the notional amount of $514-million is not actually being -- they're not actually getting -- you're not actually trading $514-million?

A. Not today, for reasons of the fact that we can't borrow the funds that we traditionally had.

317 Q. But you can't borrow the funds, but then they're entitled to, on a monthly basis, 60 per cent of the profits on the $514-million, aren't they?

A. No. They are entitled to 60 per cent of the profits that are earned, trading on a facility up to an amount of $415-million.

318 Q. Five hundred and --

A. Sorry. $514-million.

319 Q. $514-million. But how do you determine the amount that needs to be traded under the agreements you have with the charity?

A. Well, that is a function of the number of programs that are actually active at any given time. As I mentioned, the Trafalgar Global Index Futures Program is comprised of these 21 different programs. And it's a function of the trading margin, the cash portion of the trading margin that we have borrowed and available to us from the Trust.

320 Q. So if Trafalgar Trading has no funds available to it, that means the charities

would get no profits, at all?

A. That's true.

321 Q. And now that Trafalgar Trading apparently can only trade, I think - what did you say the amount -- what's the amount currently being traded for this last month?

A. Well, between 4- and 6-million of notional funds.

322 Q. What do you mean by "notional funds"? Are they trading $4- to $6-million? Is it real trades? I don't understand.

A. They are real trades, but the cash supporting that at ED&F Man, as I mentioned, is around $100,000.

323 Q. Right. But the real -- okay. $100,000 is supporting trading on $4- to $6-million?

A. Correct. On at least that because we go in and out of the market. We could have a day where we do one trade, we could have a day where we do no trades, or we could have a day where we do eight trades. It's completely determined by the program.

324 Q. So just so that I am clear, you're saying that the royalty agreements don't require

you to trade any specific amount. Whether it's on margin or not, leave aside the margin point, you're saying it doesn't require any specific amount. It just depends on how much money you have available to you?

A. No. The agreement doesn't say that. I believe the agreement says that we will trade up to a maximum amount of the facility.

325 Q. So it's entirely your discretion as to how much to trade, and one of the factors you take into account is how much money you have in exercising your discretion?

A. We don't exercise any discretion as to how many programs trade. That's automatic and dependent on market conditions.

326 Q. But I'm talking about the amount.

A. Well, throughout --

327 Q. The program doesn't tell you how much money you have available to trade. You have to have the money available to trade, don't you?

A. Absolutely.

328 Q. I mean, it could be $1, it could be a million dollars, it could be $500-million. The program is not going to assist you with that point. So you, as the CEO, will have to make the

decision as to how much money is available for trading; correct?

A. I don't know that -- I would use whatever funds are available to the company to trade to the maximum of the trading facilities.

329 Q. Okay. And if the funds aren't available...

But you don't have an obligation, under the agreement, and your understanding of the agreement, to actually trade any specific amount?

A. I don't believe that there's any provision in the agreement that would dictate a minimum amount that would need to be traded.

330 Q. Okay. I'm just talking about your understanding. I'm not asking you for a legal opinion. Your understanding is --

A. Well, I wasn't offering a legal opinion.

331 Q. Right. And when you said you trade whatever amount of money is available, is that all the money that's available to you currently? Are you trading as much as is available?

A. Yes.

332 Q. So there's no other sources of

funds that's available, no place else, other than the Longtail Trust, in which you can obtain the money necessary to make these trades?

A. Ordinarily, I would say yes. Under the circumstances of the litigation, having another party loan us money, given what... The current state of affairs of the company, I think, would be and I know is quite challenging.

333 Q. So in Paragraph 63, you say, if I'm understanding correctly, that TTL, from this Gift Program, got $514,815,661; correct?

A. Correct.

334 Q. That went into the accounts of TTL; correct?

A. Over time, yes.

335 Q. Over time. Over the years --

A. Over 89 closings, over the various years.

336 Q. From 2005 to 2009; correct?

A. That is correct.

337 Q. Okay. So, what happened to all that money?

A. Well, firstly, you're aware of the fact that the..., that TTL paid the Longtail Trust four hundred and thirty-seven million, five hundred

and thirty-nine dollars, two hundred and -- sorry -- five hundred and thirty-nine thousand, two hundred and twenty-three dollars and fifty-nine cents--

338 Q. Okay.

A. --which I think we have agreed.

339 Q. Okay. So then, the balance; what happened to the rest of the money?

A. I believe that we have also agreed that after TTL had paid that $437-million to the Trust, and after it had paid commissions to independent distributors, that over time, TTL would have had seventy-seven million dollars, two hundred and twenty-two thousand, three hundred and forty-nine dollars...

340 Q. Okay. What paragraph are you --

A. Paragraph 75.

341 Q. Okay.

A. ...as an amount that it would have received from time to time over a five-year period--

342 Q. Okay. So now, we're down --

A. --that it could use for its general purposes.

343 Q. So my question to you is, okay,

we're down to $77-million. What happened to that?

A. $77-million is -- sorry -- are Canadian dollars. Those funds were converted into U.S. dollars and the average exchange rate over the period of time was 0.85, obviously, when the Canadian dollar was weaker than it is today. So that $77-million resulted in approximately 65-million U.S. dollars.

All of our trading is done in U.S. dollars and all of our, the majority of our expenses are in U.S. dollars.

344 Q. But that still didn't answer me. What happened to the money?

MR. BROWN: He hasn't finished his answer, Mr. Marr.

MR. MARR: Okay.

THE WITNESS: Of that $66-million, we have had an aggregate of payments made to charities in respect of their 60 per cent distribution of profitable months.

MS. WADDELL: Not from that money.

MR. BROWN: Let Mr. Marr ask the questions, please.

BY MR. MARR:

345 Q. Well, I thought that payments to

the charities come from the profits. So presumably, the 65-million, if there's profits, would get a little bigger.

A. Sure. Well, let me -- let me restate what I was about to say.

If you look at the aggregate - and I was beginning to describe an aggregate.

346 Q. Okay.

A. And the aggregate is made up of trading profits--

347 Q. Yes?

A. --less amounts paid to charities.

348 Q. Yes?

A. --less amounts paid to TTL,--

349 Q. Yes?

A. --its 20 per cent, less 20 per cent that was reinvested.

350 Q. But that's all on monthly profits; correct?

A. Right. The aggregate of that plus trading losses for the losing months,--

351 Q. Yes?

A. --that in total is approximately $25-million U.S..

352 Q. But I pause there for a second.

You have included in there profits in that aggregate, right?

A. Yes, but also distributions.

353 Q. Yeah, okay. But that's a wash, isn't it, because the profits, the 77-million Canadian or whatever the American equivalent is; that would get bigger on the months where you made a profit, wouldn't it?

A. Yes. If -- let's say the first month was a profit. Yeah, for sure.

354 Q. But losses, I understand. But profits, you are mixing apples and oranges, I think, because if you're including in the $25-million, the profits, the amount, the original amount has gone up by the months of the profits, and that's coming off. I get what you're saying about that, but that's -- you're mixing up two different things because profits are making the original amount bigger.

A. I agree with your statement.

I was basically describing, I guess, what I would call sources and uses of, of cash.

355 Q. Okay. But --

A. If we agree that the profits will then be distributed,--

356 Q. Yes.

A. --then we can remove them from the calculation and just deal with trading losses.

357 Q. So how much of the $25-million - let me ask you the question this way: 25-million U.S.. You say there's been trading losses in the 2005 to 2012 period. Is that right?

A. Yes.

358 Q. Okay. So -- or roughly. So how much of the $25-million is losses?

A. I don't know that number, but I do know the aggregate and that's why I was trying to explain it to you--

359 Q. All right.

A. --in that manner.

360 Q. Well, I guess I would like to know that, first of all, as an undertaking, to follow up on your answer.

U/A MR. BROWN: Under advisement.

BY MR. MARR:

361 Q. Mr. Brown can think about that. He seems to be taking everything under advisement.

Keep going.

A. Umm... Sorry. So that was approximately $25-million U.S. dollars,--

362 Q. Yes.

A. --the aggregate of those, those amounts.

363 Q. Yes.

A. And TTL's general expenses over that period of time, from 2005 until currently, are approximately $40-million.

364 Q. $40-million for what?

A. For salaries, bonuses, trading operations, all of its general expenses, legal fees, accounting fees, other professional fees.

365 Q. All right. Keep going.

A. That's primarily it.

366 Q. So really, I guess, from the $77-million, you are really saying that you've got $40-million expenses and whatever the trading losses were. Am I right in characterizing your answer because we -- I think we agreed, profits --

A. Well, no. We would have loan -- we also had loan repayments during those many years to the, to the Trust.

367 Q. Well, presumably, are the loan repayments repaying money that you received in the period we're talking about or are we talking about older loans?

A. Well, we had been receiving loans from the trust prior, for years prior to this Gift Program.

368 Q. All right. Well, a couple of things, I think, come out of that.

First of all, I repeat my request. I would like to see the financial statements for the company in the years we're talking about, so we can verify some of the information you have just given me.

In terms of the loan repayments, are there documentation about that, how much borrowed, how much was received, I guess from before 2005, if that's where some of the money has gone?

MR. BROWN: Well --

THE WITNESS: The money didn't go anywhere.

MR. BROWN: Sorry. Just before -- you've already asked us for the loan agreements with BLT and a list or a summary of the loans granted and repaid.

MR. MARR: I guess, the only difference is that it's -- given the witness's answer, I think we have to go back to, from the beginning of the time the Trust was created because it sounds like

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THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Fogel

A Commissioner, etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL CANNON

Plaintiff

- and -

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

AFFIDAVIT OF RORY GORMAN
(sworn June 3, 2010)

I, RORY GORMAN, of the City of Hamilton, Islands of Bermuda, MAKE OATH AND SAY:

1. I am the Managing Director of Appleby Services (Bermuda) Ltd. ("ASBL"). ASBL is the trustee of the defendant The Bermuda Longtail Trust (the "Trust").

2. As such, I have personal knowledge of the facts set out in this affidavit, except where otherwise indicated to be on the basis of my information and belief. Where I have indicated that my knowledge is based on my information and belief, I believe that information to be true.

3. I am swearing this affidavit in connection with ASBL's motion to contest the jurisdiction of the Ontario Superior Court of Justice over the Trust in relation to the action known as *Cannon v. Parklane Financial Group Limited et al.*, Court File No. CV-08-0362807-00CP (the "Action"), and for no other purpose. I have reviewed the Further Fresh as Amended Statement of Claim filed in the Action, as amended on May 5, 2010 and attached hereto as **Exhibit "A"** (the "Amended Claim").

4. I joined ASBL as its Managing Director in 2009. Prior to this, I held management positions at Attorneys' Liability Assurance Society (Bermuda) Ltd. and at Marsh Management Services (Bermuda) Ltd. I am also a Fellow of the Institute of Chartered Accountants of Ireland. A copy of my most recent curriculum vitae is attached hereto as **Exhibit "B"**.

No Connection Between the Trustee and Ontario

5. ASBL was incorporated under the laws of Bermuda in 1956 and has its office at Canon's Court, 22 Victoria Street, Hamilton, Bermuda. A copy of ASBL's certificate of deposit of memorandum of association is attached hereto as **Exhibit "C"**. Previous names for ASBL were Harrington Limited, Harrington Trust Limited, and Appleby Trust (Bermuda) Ltd. A copy of the certificate of incorporation on change of name for each of these changes is attached hereto as **Exhibit "D"**.

6. ASBL is licensed to conduct trust business by the Bermuda Monetary Authority (the "BMA"). A copy of this license is attached hereto as **Exhibit "E"**. ASBL administers trusts for public and private corporations, financial institutions, individuals, and families. A copy of a client brochure for Appleby's Fiduciary and Administration group of companies, which includes ASBL, is attached hereto as **Exhibit "F"**. ASBL is an independent, corporate trustee that performs its obligations in compliance with the Bermuda law of trusts and any other applicable law, whether domestic or international, and is also regulated by the BMA.

7. ASBL is a wholly-owned subsidiary of Appleby, one of the largest and most respected offshore professional service firms in the world. Appleby provides legal, fiduciary, and administration services to a wide range of clients, including global public and private companies, financial institutions, and individuals. In addition to Bermuda, Appleby has offices in the other key offshore jurisdictions; namely, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius, and the Seychelles. Appleby also has offices in international financial centres such as London, Hong Kong, Zurich, and Bahrain. Appleby has over 800 lawyers and other professional specialists that advise clients in a variety of areas, including corporate and commercial law, litigation, insolvency, trust law, and property.

8. Appleby's Bermuda office traces its history back to 1897. Bermuda has long been an economic centre for industries such insurance/reinsurance and financial services. It is also a jurisdiction of choice for funds, asset finance, and for incorporating global companies seeking to list on internationally recognized stock exchanges. Bermuda is widely regarded as one of the highest quality offshore jurisdictions. Consequently, it is on the so-called "White List" of the Organization for Economic Cooperation and Development ("OECD"). This is a select group of jurisdictions the OECD has recognized as having substantially implemented the internationally agreed tax standards defined by the OECD and the countries of the G-20. A copy of a recent Appleby client brochure for its Bermuda office is attached hereto as **Exhibit "G"**.

9. Contrary to allegations in the Amended Claim (at para. 8), neither ASBL nor Appleby share common offices, employees, officers, directors, shareholders, owners, and/or professional advisers with any of the Defendants in the Action. Neither ASBL nor Appleby has any offices in Ontario or indeed in any part of Canada. Neither Appleby nor ASBL is affiliated with any of the Defendants.

Only a Minimal Connection Between the Trust and Ontario

10. As discussed in further detail below, the Trust is firmly rooted in the jurisdiction of Bermuda and ASBL, as trustee, has wide-ranging powers to manage the Trust

as an independent corporate trustee. To the best of my knowledge, all of the agreements into which ASBL has entered on behalf of the Trust were executed in Bermuda and are governed by Bermuda law. The parties to all of these agreements have been non-Canadian, and almost always Bermudian. To the best of my knowledge, the Trust also has no assets in Canada.

The Settlement of The Bermuda Longtail Trust

11. The Trust was created by a Deed of Settlement dated October 30, 1998 (the "Deed") between Mr. Edward Furtak, as settlor (the "Settlor") and Harrington Trust Limited (now ASBL) as trustee. The Settlor is a resident of Bermuda who holds Canadian citizenship. Pursuant to the Second Schedule to the Deed, the beneficiaries of the Trust are the Settlor, his wife, and his children. The Trust was settled under, and remains governed by, Bermuda law. A copy of the Deed is attached hereto as **Exhibit "H"**.

12. The Deed defines the trust period as being one hundred years. Initially, the ultimate beneficiaries of the Trust were the Salvation Army and McMaster University. However, pursuant to a Deed of Appointment and Variation dated December 29, 2007 the Deed was amended to make the Salvation Army the sole ultimate beneficiary of the Trust. A copy of this Deed of Appointment and Variation is attached hereto as **Exhibit "I"**.

13. Pursuant to the Deed, ASBL has wide-ranging powers with which to administer the Trust. These include powers to manage the assets of the Trust as if the Trustee were an absolute owner beneficially entitled to the trust fund (subsection 10.1.1), to receive additions to the trust fund (subsection 10.1.2), along with powers to borrow and to charge assets held in the trust fund (subsection 10.1.3) and to invest trust monies (section 7).

14. The Deed also contains a provision known as an "anti-Bartlett" clause at section 14. Such clauses as so called as they are commonly inserted in trust deeds to avoid the consequences of the English case of *Bartlett v. Barclays Bank Trustee Co. Ltd.*, [1980] 1 Ch. 515 (C.A.). Pursuant to this clause, ASBL is not required to interfere in the management or conduct of any company owned by the Trust. In the absence of notice that the affairs of an underlying company are not being properly managed, ASBL is entitled to leave the conduct of the business of any company owned by the Trust wholly to that company's directors.

The Trafalgar Index Program

15. As indicated in Recital B of the Deed, the Settlor wanted to provide his personal services to the Trust for the development of a computer software program referred to as the Trafalgar Index Program (the "TIP"). Pursuant to section 1.20 of the Deed, the trust fund is defined as being made up of the property listed in the First Schedule ($10,000), plus the TIP and any other property thereafter added to the trust fund (the "Trust Fund"). The Deed indicates the TIP is a set of software programs used to trade S&P 500 futures contracts.

16. Pursuant to section 21 of the Deed, ASBL was directed to enter into a series of agreements on behalf of the Trust; that is, a Loan Agreement, a Charge, and a License Agreement (each term defined below).

17. The loan agreement is between Trafalgar Trading Limited ("TTL") and Harrington Trust Limited (now ASBL) as trustee for the Trust (the "Loan Agreement"). This agreement is dated October 30, 1998. TTL is a company incorporated under the laws of Bermuda. As specified in section 16, Bermuda law governs the Loan Agreement. Pursuant to the terms of the Loan Agreement, the Trust loans funds to TTL on a secured and collateralized basis. A copy of the Loan Agreement is attached hereto as **Exhibit "J"**.

18. As required by both the Deed and the Loan Agreement, TTL and ASBL also executed a floating charge, dated October 30, 1998 in favour of ASBL in its capacity as trustee of the Trust (the "Charge"). As specified in section 15, Bermuda law also governs this agreement and the courts of Bermuda have jurisdiction to hear any proceeding related to the Charge. A copy of the Charge is attached hereto as **Exhibit "K"**.

19. As required by the Deed and as contemplated in both the Loan Agreement and the Charge, ASBL also entered into a licence agreement with TCL Trafalgar B.V. (the "License Agreement"). This agreement is dated November 4, 1998. TCL Trafalgar B.V. is a company incorporated under the laws of the Netherlands. As specified in subsection 11.5, Bermuda law governs the agreement and the courts of Bermuda are granted jurisdiction over it. Pursuant to the terms of the License Agreement, TCL Trafalgar B.V. was granted a non-

exclusive, limited-use license to use the TIP in exchange for paying the Trust a license fee. A copy of this License Agreement is attached hereto as **Exhibit "L"**.

The Trafalgar Global Index Futures Program

20. On November 19, 2003 ASBL resolved, pursuant to its "Power to Receive Additions" as specified in subsection 10.1.2 of the Deed, to accept as an addition to the Trust Fund the services of the Settlor in developing for the Trust a software program known as the Trafalgar Global Index Futures Program (the "TGIFP"). As defined in the license agreements ASBL entered into on behalf of the Trust that are related to this software, the TGIFP is a set of software programs to trade S&P 500 futures contracts. A copy of this resolution is attached hereto as **Exhibit "M"**.

21. On November 20, 2003 ASBL resolved, pursuant to its "Power to Manage as if Absolute Owners" as specified in subsection 10.1.1 of the Deed, to execute a Master License Agreement between ASBL as trustee of the Trust and TTL 2003 Limited ("TTL 2003"). A copy of this resolution is attached hereto as **Exhibit "N"**.

22. The Master License Agreement between ASBL as trustee of the Trust and TTL 2003 is dated November 20, 2003 (the "TTL 2003 MLA"). A copy of the TTL 2003 MLA is attached hereto as **Exhibit "O"**. TTL 2003 is a company incorporated under the laws of Bermuda. Pursuant to the terms of this MLA, TTL 2003 obtained a non-exclusive, limited-use license to use and sub-license the TGIFP in exchange for: (1) a license fee, by way of promissory note in an amount equal to fifty million dollars ($50,000,0000), payable to the Trust; and (2) a covenant to pay to the Trust ninety-five percent (95%) of TTL 2003's share of any and all net profits derived from its trading activities in respect of the Trafalgar Global Index Futures Program. A copy of the promissory note is attached hereto as **Exhibit "P"**. As specified in section 10.8 of the TTL 2003 MLA, this agreement is governed by the law of Bermuda and the courts of Bermuda have jurisdiction over it. Further, as specified in subsection 2.1, the license ASBL granted to TTL 2003 specifically excluded Canada. Thus TTL 2003 is prohibited from using the TGIFP in Canada or sub-licensing the TGIFP for use in Canada. Legislating such restrictions is not uncommon in contracts of this nature, as it

reduces the tax and/or regulatory exposure of the Trust. Accordingly, ASBL did not expect that the TGIFP would ever be used in Canada.

23. Subsequent to the TTL 2003 MLA, ASBL entered into another license agreement concerning the TGIFP. This is the Master License Agreement dated November 26, 2004 between ASBL as trustee of the Trust and Trafalgar 2004 Limited (the "T04L MLA"). A copy of the T04L MLA is attached hereto as **Exhibit "Q"**. Trafalgar 2004 Limited ("T04L") is a company incorporated under the laws of Bermuda. Pursuant to the terms of this agreement, T04L obtained a non-exclusive, limited-use license to use and sub-license the TGIFP. In consideration for this license, T04L agreed to pay the Trust a license fee of one hundred million dollars ($100,000,000), by way of a promissory note; payments of principal and interest thereunder were to be satisfied through an annual payment in the amount of ninety-five percent (95%) of T04L's share of any and all net profits derived on an annual basis from its trading activities in respect of the TGIFP. As specified in section 10.8 of the T04L MLA, this agreement is governed by the law of Bermuda and the courts of Bermuda have jurisdiction over it. Further, as specified in subsection 2.1, the license ASBL granted to T04L specifically excluded Canada. Thus T04L is prohibited from using the TGIFP in Canada or sub-licensing the TGIFP for use in Canada. Again, ASBL did not expect that the TGIFP would ever be used in Canada.

24. After the T04L MLA was executed, ASBL passed a resolution, pursuant to its "Power to Manage as if Absolute Owners" as specified in subsection 10.1.1 of the Deed, ratifying the execution of the T04L MLA. A copy of this resolution is attached hereto as **Exhibit "R"**.

25. Subsequent to the T04L MLA, ASBL executed a third license agreement concerning the TGIFP. This is the Master License Agreement dated September 1, 2005 between ASBL as trustee of the Trust and TTL (the "TTL MLA"). A copy of the TTL MLA is attached hereto as **Exhibit "S"**. As indicated earlier, TTL is a corporation incorporated under the laws of Bermuda. Pursuant to the terms of the TTL MLA, TTL obtained a non-exclusive, limited-use license to use the TGIFP in respect of royalty agreements between TTL and third parties executed in the 2005 calendar year, in respect of a charitable donations

program (which program is discussed in further detail below). In consideration for this license, TTL agreed to pay the Trust a license fee equal to eighty-five percent (85%) of TTL's gross revenues generated from payments it was to receive pursuant to royalty agreements with third parties. As specified in section 10.8 of the TTL MLA, this agreement is governed by the law of Bermuda and the courts of Bermuda have jurisdiction over it. Further, as specified in subsection 2.1, the license ASBL granted to TTL specifically excluded Canada. Thus TTL is prohibited from using or operating the TGIFP in Canada. Again, ASBL did not expect that the TGIFP would ever be used in Canada.

The Documents Do Not Suggest a Substantial Connection Between the Trust and Ontario

26. As indicated in subsection 2.1 of the TTL MLA, in its grant of a license to TTL, ASBL acknowledges TTL's use of the TGIFP was to be in respect of royalty agreements relating to something called the "2005 Donations Canada Program". Although this appears to be a defined term, no definition for it is set out in the TTL MLA. I note the Amended Claim refers at paragraph 2 to a "Donations Canada Charitable Donation program", which is then referred to throughout the Amended Claim as the "Gift Program". ASBL does not know the details of either gift program, or if they are the same thing.

27. While the Amended Claim alleges the TGIFP was used in relation to the Gift Program (at para. 45), ASBL has no knowledge of this. ASBL did not have any involvement in designing, developing, operating, marketing, or promoting the TGIFP, nor did ASBL monitor the ways in which the licensees of the TGIFP may have used the software. More specifically, ASBL expected TTL to comply with subsection 2.1 of the TTL MLA and to refrain from using or operating the software in Canada.

28. Contrary to the allegations in the Amended Claim, ASBL is not responsible for any aspect of the Gift Program. In particular, to the best of my knowledge, ASBL did not:

a) create, promote, market, administer, operate, participate in, or sell to the public the Gift Program, whether in concert with any of the Defendants or otherwise;

b) create, review, draft, supervise, approve or authorize the preparation or distribution of any promotional or other materials related to the Gift Program;

c) enter into any contracts or agreements of any kind with the plaintiff, Michael Cannon (the "Plaintiff"), or any proposed class member, relating to the Gift Program;

d) make any representations of any kind, directly or indirectly, oral or written, to the Plaintiff or any proposed class member, relating to the Gift Program or otherwise; or

e) have any contact with the Plaintiff or any proposed class member relating to the Gift Program or otherwise.

29. Moreover, ASBL would not have engaged in these kinds of activities. As described above, ASBL is an independent, corporate trustee. ASBL administers trusts. In this capacity, even where ASBL may invest in a business or project, ASBL does not become involved in the creation, marketing, promotion, administration or operation of that business or project.

30. In response to the Plaintiff's allegations, ASBL has conducted a review of its files pertaining to the Trust to identify documents that might be related to the "Donations Canada Charitable Gift Program" as alleged in the Amended Claim. We have identified some material that may be relevant. Among these documents are the following, although ASBL does not have detailed knowledge of them or any particular explanation for them or why they were provided to ASBL, and when:

a) ASBL found a number of royalty agreements. One example is titled "2005 Series A Royalty Agreement" between TTL and the Canadian Amateur Football Association, dated May 19, 2005 (the "Series A Agreement"). ASBL had no involvement in negotiating, drafting or closing these agreements, nor in the planning, promoting, selling and operation of any enterprise of which they

might be a part. A copy of the Series A Agreement is attached hereto as **Exhibit "T"**.

b) ASBL also found a tax opinion from one Edwin C. Harris to "ParkLane Financial Group Ltd." dated March 14, 2006 (the "2006 Tax Opinion"). ASBL cannot speak to the details of the relationship, if any, between the 2006 Tax Opinion and the Gift Program as pleaded by the Plaintiff. Contrary to the allegations in the Amended Claim (at paras. 24, 32, and 34), to the best of my knowledge ASBL had no role in requesting this 2006 Tax Opinion or any other legal opinion relating to the Gift Program as pleaded. It is not clear to ASBL, from its records, who received the 2006 Tax Opinion, from whom, when or for what purpose. A copy of the 2006 Tax Opinion is attached hereto as **Exhibit "U"**.

c) Finally, ASBL also found what appears to be application materials entitled "Donations for Canada" and mentioning "ParkLane Financial Group Ltd". ASBL is unaware of the details of the relationship, if any, between this document and the Gift Program as pleaded. ASBL had no involvement in drafting this document, nor in the planning, promoting, marketing, selling, administrating, and operating of any enterprise to which it might relate. The application materials are attached hereto as **Exhibit "V"**.

The Distributions Do Not Suggest a Substantial Connection Between the Trust and Ontario

31. On or around December 19, 2008, the existence of the plaintiff's claim in this Action first came to the attention of ASBL. In a letter of this date, Mr. Wayne Robertson, writing in his capacity as Vice-President of TTL, advised ASBL that TTL had been named as a defendant in a lawsuit in Ontario, Canada. Mr. Robertson indicated that the proposed class action related to a charitable donation program promoted in Canada by ParkLane Financial Group Ltd. Mr. Robertson stated that he was advising ASBL of this suit to be pro-active and transparent and he assured ASBL that the claim was a "strike suit" and had little merit.

32. Mr. Robertson then referred to the Loan Agreement between TTL and the Trust. While he recognized that, pursuant to the terms of this agreement, ASBL had the power to demand repayment of all of TTL's outstanding loan obligations to the Trust, in the circumstances, Mr. Robertson hoped ASBL would continue to abide by the current arrangement. A copy of the letter from TTL dated December 19, 2008 is attached hereto as **Exhibit "W"**.

33. As the December 19, 2008 letter suggests, ASBL had advanced money to TTL from time to time. ASBL was not involved in planning or deciding on these transactions but, rather, received requests from TTL on when to transfer money, in what amount, and to which bank and bank account.

34. From time to time, Mr. Robertson requested that ASBL consider making other distributions from the Trust. In addition to being the Vice-President of TTL, ASBL understands Mr. Robertson to be a senior executive and/or director at other entities in the Trafalgar Group of Companies, and authorized by the Settlor to be his agent.

35. We have reviewed our records concerning the payments to, and distributions from, the Trust from 2005 until 2009. During this period, it appears to me that the Trust received approximately four hundred and forty million dollars ($440,000,000) in loan repayments and master license fee repayments. Also during this period, at the request of Mr. Robertson, distributions were made from the Trust to two destinations: first, approximately ninety million dollars ($90,000,000) was transferred to Aylesworth LLP in Toronto, and approximately three hundred and fifty million dollars ($350,000,000) was transferred to Continental Trust Company Ltd. in Bermuda, a long-established and reputable trust company.

The Trust Becomes Involved in the Action and ASBL Obtains a Beddoe Order

36. On or around February 9, 2010, ASBL received a motion record related to the Action, wherein the plaintiffs sought to add the Trust as a defendant.

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37. Faced with the prospect of litigation, ASBL brought an application in the Supreme Court of Bermuda to obtain a so-called "Beddoe Order" to authorize ASBL to contest the jurisdiction of the Ontario Superior Court of Justice over the Trust in relation to the Action.

38. On May 13, 2010, the Supreme Court of Bermuda issued a Beddoe Order sanctioning the steps ASBL had taken hitherto in relation to the Action, and authorizing ASBL to proceed to contest the jurisdiction of the Ontario Superior Court of Justice over the Trust in relation to the Action. A copy of the Beddoe Order is attached hereto as **Exhibit "X"**.

SWORN BEFORE ME at the City of Hamilton, Islands of Bermuda, on June 3, 2010.

Commissioner for Taking Affidavits

RORY GORMAN

MARGARET BURGESS-HOWIE
Commissioner for Oaths
Wakefield Quin
Victoria Place
31 Victoria Street
Hamilton HM10
Bermuda

MICHAEL CANNON	and	FUNDS FOR CANADA FOUNDATION, et al.	Court File No: CV-08-362807-00 CP
Plaintiff		Defendant	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF RORY GORMAN
(SWORN JUNE 3, 2010)

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Lawyers for the Defendant,
Appleby Services (Bermuda) Ltd. as trustee of
The Bermuda Longtail Trust

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMIED, 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

EXHIBIT "H"

This is the Exhibit marked "H" referred to in the Affidavit of Rory Gorman sworn herein this 3rd day of June 2010.

BEFORE ME:

COMMISSIONER FOR OATHS

A6964734.1

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Dated 30th October 1993

EDWARD KARL FURTAK
AND
HARRINGTON TRUST LIMITED

SETTLEMENT

"The Bermuda Longtail Trust"

APPLEBY, SPURLING & KEMPE
Barristers & Attorneys
Cedar House, 41 Cedar Avenue
P.O. Box HM 1179
Hamilton HM EX, Bermuda

THE BERMUDA LONGTAIL TRUST

INDEX

INDEX (continued)

THIS SETTLEMENT is made the 30th day of October 1998

BETWEEN:

1. EDWARD KARL FURTAK of "Serendipity", 10 Cross Bay Road, Southampton, Bermuda (the "**Settlor**"); and

2. **HARRINGTON TRUST LIMITED,** a company incorporated under the laws of Bermuda and having its registered office at Cedar House, 41 Cedar Avenue, Hamilton, Bermuda (the "**Original Trustee**").

WHEREAS:

(A) The Settlor, wishing to make such irrevocable settlement as is hereinafter contained, has paid to or placed under the control of the Original Trustee the sum of money specified in the First Schedule.

(B) The Settlor wishes to provide his personal services in the development of the Trafalgar Index Program, to the original Trustee for the benefit of the Settlement.

(C) It is anticipated that further property may be paid or transferred to or otherwise placed under the control of the Trustees by way of addition to the Trust Fund.

NOW THIS DEED WITNESSES as follows:

1. **Definitions and Construction**

In this Settlement, wherever the context permits, the following definitions and rules of construction shall apply:

1.1 the "**Agency Agreements**" means the agency agreements (in the form attached hereto as the Third Schedule) to be entered into between Trafalgar Trading, TCL Trafalgar and various Licencees.

1.2 the "**Appointor**" means:

(d) the Settlor or, if the Settlor shall be dead,

(d) the executors or administrators of the Settlor;

1.3 the "**Beneficiaries**" has the meaning attributed to it in the Second Schedule and "**Beneficiary**" means any one of the Beneficiaries;

1.4 the "**Charge**" means the charge agreement (in the form attached hereto as the Fourth Schedule) which is to be entered into between Trafalgar Trading, as chargor and the Original Trustee, in its capacity as trustee of the Settlement, as chargee.

1.5 "**charity**" means any trust, foundation, institution or other organization which is established only for purposes regarded as charitable under the Proper Law of this Settlement;

1.6 "**company**" means any body, incorporated or established in any part of the world, which has a legal existence independent of that of its members;

1.7 "**deed**" means any instrument in writing which is signed, witnessed and dated, or otherwise validly executed in accordance with the law of the place where it is executed;

1.8 the "Trafalgar **Index Program**" means the set of application software programs used to trade S&P 500 contracts, to be developed by the Settlor for the Settlement and licensed to TCL Trafalgar pursuant to the Licence Agreement.

1.9 "**Licence Agreement**" means the licence agreement (in the form attached hereto as the Fifth Schedule) between the Original Trustee in its capacity as trustee, of the Settlement, as licensor and TCL Trafalgar as licensee pursuant to which TCL Trafalgar will be granted a licence of the Trafalgar Index Program.

1.10 The "**Loan Agreement**" means the loan agreement (in the form attached hereto as the Sixth Schedule) which is to be entered into between the Original Trustee, in its capacity as trustee of the Settlement, as Lender and Trafalagar Trading as Borrower.

1.11 "**minor**" means any individual who has not attained full age and legal capacity under the Proper Law of this Settlement;

1.12 "**person**" includes any individual, company, partnership and unincorporated association and any person acting in a fiduciary capacity;

1.13 the "**Proper Law of this Settlement**" means the law of the jurisdiction under which questions affecting the validity, construction and effect of this Settlement and each and every provision hereof are to be determined;

1.14 "**Secured Obligations**" shall have the meaning ascribed to that term in the Share Charge;

1.15 the "**Settlement**" means the settlement known as The Bermuda Longtail Trust, and constituted by this Deed.

1.16 the **"Settlor's Consent"** means the prior written consent of the Settlor and (for the avoidance of doubt) any power or discretion made subject to the Settlor's Consent shall, after the death of the Settlor, be exercisable free from that requirement;

1.17 **"TCL Trafalgar"** means TCL Trafalgar B.V. a corporation incorporated pursuant to the laws of the Netherlands with its office at Koningslaan 44, 1075 AD, Amsterdam, Netherlands.

1.18 **"Trafalgar Trading"** means Trafalgar Trading Limited, a Bermuda exempted company with its registered office at Cedar House, 41 Cedar Avenue, Hamilton, Bermuda.

1.19 the **"Trust Period"** means the period commencing on the date hereof and ending on the expiration of one hundred years;

1.20 the **"Trust Fund"** means:

(a) the said sum of money specified in the First Schedule;

(b) the Trafalgar Index Program and any other property developed for the Settlement;

(c) all property hereafter paid, transferred to or otherwise placed under the control of and accepted by the Trustees as additions to the Trust Fund and in respect of which a memorandum signed by the Trustees shall be conclusive evidence;

(d) all income which shall, in accordance with the provisions of this Settlement, be accumulated by the Trustees and added to the capital of the Trust Fund; and

(e) the money, investments and other property from time to time representing the said sum of money specified in the First Schedule, the said additions and accumulations;

1.21 the **"Trustees"** means the Original Trustee or such other trustees or trustee for the time being hereof and **"Trustee"** means any one of the Trustees;

1.22 words denoting any gender shall include both the other genders;

1.23 words denoting the singular shall include the plural and vice versa;

1.24 the index and headings (other than those of the Schedules) in this Settlement are inserted for convenience of reference only and shall have no legal effect, nor shall they affect in any way the construction of any clause contained herein;

1.25 any reference to a sub-clause or paragraph shall, unless the context precludes such a construction, be read as a reference to the particular sub-clause or paragraph of the clause or sub-clause in which the reference occurs.

2. **Name and Proper Law**

2.1 This Settlement shall be known as **"The Bermuda Longtail Trust"** or by such other name as the Trustees may from time to time determine.

2.2 This Settlement is established under, and (subject to Clause 19.1) the Proper Law of this Settlement shall be, the laws of Bermuda and the courts of Bermuda shall be the forum for the administration thereof.

3. **Provision for Sale and Investment**

3.1 The Trustees shall hold any investments from time to time comprised in the Trust Fund upon trust in their discretion either to retain the same in the existing state thereof for such period as they shall think fit or at any time, but subject to the Licence Agreement and to the Settlor's Consent, to sell, vary or transpose the same or any part thereof.

3.2 The Trustees shall hold the net proceeds of any sale of investments and all other monies held or received by them as capital upon trust to invest the same in their discretion in or upon any of the investments hereby authorised by Clause 7.

4. **Powers regarding Capital and Income and Trust to Accumulate Surplus Income**

4.1 The Trustees may, subject to the obligations on their part under the Loan Agreement during the Trust Period, pay, transfer, appropriate or apply the whole or any part of the capital or income of the Trust Fund to or for the maintenance, advancement, education or other benefit of all or such one or more exclusively of the other or others of the Beneficiaries in such shares and manner as the Trustees shall in their discretion and without being liable to account for the same think fit.

4.2 The Trustees shall, during the Trust Period, accumulate the whole or such part of the annual income of the Trust Fund as shall not have been paid or applied under Clause 4.1 as an accretion to the capital of the Trust Fund, by investing the same in or upon any of the investments hereby authorised, with power to vary the same for others so authorised.

5. Ultimate Trust

Subject as aforesaid, the Trustees shall, at the expiration of the Trust Period, hold the capital and income of the Trust Fund Upon Trust in equal shares for McMaster University, Hamilton, Ontario, Canada and The Salvation Army absolutely.

6. Provision to Avoid Resulting Trust

In the event of the failure or determination of the trusts hereinbefore contained, the Trustees shall, at the expiration of the Trust Period, hold the capital and income of the Trust Fund upon trust for such charities and in such shares as the Trustees shall in their absolute discretion determine.

7. Investment of Trust Fund

7.1 Subject to Clause 21, trust monies to be invested under the trusts hereof may be applied or invested in the purchase or acquisition of, or upon the security of, such stocks, shares, funds, securities (whether bearing interest or paying dividends or not), land or other investments (including derivative investments) or property of whatever nature and wheresoever situate, whether of a wasting nature or involving liability or not, whether producing income or not or upon such personal or other credit, with or without security, as the Trustees shall, with the Settlor's Consent, think fit, to the intent that the Trustees shall have the same powers in all respects as if they were an absolute owner beneficially entitled thereto.

7.2 In addition to, but without prejudice to the generality of, the foregoing, the Trustees shall have power to invest the whole or any part of the Trust Fund in any one or more types of assets, whether real or personal, without the need for diversification and without being liable for any loss occasioned thereby.

8. **Addition and Exclusion of Beneficiaries**

8.1 During the lifetime of the Settlor, the Trustees may, with the Settlor's Consent, or shall, at his direction, by deed revocable during the Trust Period or irrevocable, declare that:

8.1.1 any person or class or description of persons shall, as from either the date of such deed or such later date as is therein specified and permanently or for such period as is therein mentioned, be included as a Beneficiary for the purposes of this Settlement, and any such declaration may be expressed to refer either to the whole or to some part or share only of the Trust Fund and shall have effect accordingly; and

8.1.2 any person or class or description of persons then included as a Beneficiary shall, as from either the date of such deed or such later date as is therein specified and either permanently or for such period as is therein mentioned, cease to be a Beneficiary for the purposes of this Settlement, and any such declaration may be expressed to refer either to the whole or to some part or share only of the Trust Fund and shall have effect accordingly.

8.2. After the death of the Settlor, the Trustees may, by deed revocable during the Trust Period or irrevocable, declare that any charity or class or description of charities shall, as from either the date of such deed or such later date as is therein specified and permanently or for such period as is therein mentioned, be included as a Beneficiary for the purpose of this Settlement, and any such declaration may be expressed to refer either to the whole or to some part or share only of the Trust Fund and shall have effect accordingly.

9. **Payments for the Benefit of a Minor**

9.1 The Trustees may, in exercise of their powers to pay, transfer, appropriate or apply any capital or income of the Trust Fund for the benefit of a Beneficiary who is a minor, pay or transfer the same to such minor's parent or guardian or some other person for the time being having the care or custody of such minor upon the recipient undertaking to apply the same for the benefit of the minor.

9.2 The Trustees shall not be under any obligation to see to the further application of the capital or income paid or transferred pursuant to Clause 9.1 and the receipt of such parent, guardian or other person shall be a full, sufficient and complete discharge to the Trustees.

10. **Additional Powers**

10.1 The Trustees shall, during the Trust Period and such further period (if any) as the law shall allow, have the following additional powers, provided however subject only to Clause 21 that the powers contained in sub-paragraphs 1,3,4,5,6,7,8,13,16,17 and 18 of this Clause 10.1 shall be exercisable only with the Settlor's Consent:

Power to Manage as if Absolute Owners

10.1.1 power to effect any transaction concerning or affecting any part of the Trust Fund or any other property whatsoever, if the Trustees consider the transaction is for the benefit of the Trust Fund or of the Beneficiaries or any of them, as if the Trustees were an absolute owner beneficially entitled to the Trust Fund and, for the purpose of this sub-clause, "**transaction**" includes any sale, exchange, assurance, conveyance, mortgage, lease, surrender, re-

conveyance, release, reservation or other disposition and any purchase or other acquisition and any covenant, contract, licence, option, right of pre-emption and any compromise or partition and any company reconstruction or amalgamation and any other dealing or arrangement and "effect" has the meaning appropriate to the particular transaction and references to property include references to restrictions and burdens affecting property:

Power to Receive Additions

10.1.2 power to receive any property, including property derived from the provisions of services for the benefit of the Settlement as an addition to the Trust Fund, either by gift inter vivos or by will or under the provisions of any other settlement or trust or otherwise and from any person:

Power to Borrow and to Charge Assets held in the Trust Fund

10.1.3 power to borrow money, whether or not on the security of the whole or any part of the Trust Fund, or property comprised therein, with power to enter into the Share Charge and to charge mortgage, encumber or grant any other form of security interest with respect to the Trust Fund or any part thereof (which may be in the nature of a fluctuating charge, floating charge or fixed charge or any combination thereof as the case may be) or over any specified asset or assets of the Trust Fund to secure:

(i) any obligation created by the Trustees for valuable consideration:

(ii) any borrowing of the Trustee:

(iii) any other liabilities whatsoever of the Trustees:

(iv) or for any other purpose including without limitation to secure subscription for shares or other investments in any corporation, mutual fund or other investment made by the Trustees.;

Power to Lend

10.1.4 power to lend any part of the Trust Fund to any Beneficiary and to Trafalgar Trading or to any company formed pursuant to the power conferred pursuant to sub-paragraph 7 of this clause 10.1 upon such terms (if any) as to security, repayment, rate of interest and otherwise as the Trustees shall think fit;

Power to Guarantee

10.1.5 power at any time, in their discretion and on such terms as the Trustees shall think fit, to apply the capital or income of the Trust Fund or any part thereof in securing the payment of money owed by any Beneficiary, or the performance of any obligations of any Beneficiary and to give any guarantee or to become security for any such person and, for these purposes, to mortgage or charge any investment or property for the time being forming part of the Trust Fund or to deposit or transfer any such investment or property with or to any person by way of security;

Power to Vote and Give Proxies

10.1.6 with respect to any investments constituting the whole or part of the Trust Fund, to exercise all voting and other powers which an individual beneficial owner might exercise without being restricted in any way by the office of trustee, including (without prejudice to the generality of the foregoing) power to give proxies or powers of attorney, with or without power of substitution, for voting or acting on behalf of the Trustees;

Power to Incorporate Companies and Contribute Property

10.1.7.1 power, at the expense of the Trust Fund, to incorporate or register or to procure the incorporation or registration of any company or companies in any part of the world, with limited or unlimited liability, for the purpose of engaging in business activities which shall be determined following consultation with the Settlor and for (inter alia) acquiring the whole or any part of the Trust Fund and so that, if thought fit, the consideration on the sale of the Trust Fund or any part thereof to any company incorporated or registered pursuant to this sub-clause may consist wholly or partly of fully-paid debentures or debenture stock or other securities or shares of the company credited as fully-paid, which shall be allotted to or otherwise vested in the Trustees and be capital monies in the Trustees' hands;

10.1.7.2 power to donate, by way of a contribution to its capital, cash or other property to any company all of the share capital of which is owned by the Trustees, either directly or indirectly through one or more intermediate companies;

Power to Grant Options

10.1.8 power to grant options for such proper consideration and exercisable at such time or within such period as the Trustees think fit for the purchase of any property subject to the trusts hereof or the acquisition of any interest therein;

Power to Keep Trust Fund Abroad

10.1.9.1 power to keep the whole or any part of the Trust Fund either within or outside Bermuda and, if the Trustees think fit, to hold in any part of the world all or any securities or other property in bearer form or in the names of the Trustees or in the name of some other appointed nominee without disclosing the fiduciary relationship, with power to remunerate such nominee;

Power to Pay Duties

10.1.10 in the event of any duties, fees or taxes whatsoever becoming payable in any part of the world in respect of the Trust Fund or any part thereof in any circumstances whatsoever, power to pay all such duties, fees or taxes out of the Trust Fund or the income thereof, with discretion as to the time and manner in which the said duties, fees or taxes shall be paid and the Trustees may pay such duties, fees or taxes notwithstanding that the same shall not be recoverable from the Trustees or from any of the Beneficiaries or that the payment shall not be to the advantage of the Beneficiaries or any of them;

Power to Make Reserves and Apportion Expenses

10.1.11 power to make such reserves out of the income or capital of the Trust Fund as the Trustees deem proper for expenses, taxes and other liabilities of this Settlement and to pay from the income or from capital or to apportion between income and capital any expenses of making or changing investments and of selling, exchanging or leasing (including brokers' commissions and charges) and generally to determine what part of the expenses of this Settlement shall be charged to capital and what part to income;

Power to Execute Documents

10.1.12 power to make, execute and deliver deeds, assignments, transfers, leases, mortgages, instruments of pledge creating liens, contracts and other instruments, sealed and unsealed;

Power to Prosecute and Defend

10.1.13 power to institute, prosecute and defend any suits or actions or other proceedings affecting the Trustees or the Trust Fund and to compromise any matter of difference or to submit such matter to arbitration and to compromise or compound any debt owing to the Trustees or any other claims and to adjust any disputes in relation to debts or claims against them as such trustees upon evidence that, to the Trustees, shall seem sufficient, and to make partition upon such terms (including, if thought fit, the payment or receipt of equality money) as the Trustees shall deem desirable with co-owners or joint tenants, besides the Trustees, having any interest in

any property in which the Trustees are interested and to make partition either by sale or by set-off or by agreement or otherwise:

Power to Distribute in Specie

10.1.14 power to make any distribution of the capital of the Trust Fund pursuant to the trusts hereof in cash or in kind or partly in cash and partly in kind and, in the case of a distribution to more than one person, not strictly rateably but on the basis of equal or other proportionate value (as the case may require) according to the judgment of the Trustees, without the necessity of obtaining any consents:

Power to Seek Legal Advice

10.1.15 power, at the expense of the income or capital of the Trust Fund, to seek the opinion or advice of legal counsel concerning any question arising under this Settlement or on any matter in any way relating to the Trust Fund or the duties of the Trustees in connection with this Settlement and the Trustees shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the opinion or advice of such counsel:

Power to Appoint Investment Advisor

10.1.16.1 power to engage the services of such investment counsel, advisor or manager (the **"Investment Advisor"**) as the Trustees may from time to time think fit (including the Settlor or any Trustee or any parent, subsidiary or affiliate of a corporate Trustee) in order to obtain advice on the investment and reinvestment of the Trust

Fund and to delegate to the Investment Advisor, without being liable for any consequential loss, discretion to manage the investments comprised in the Trust Fund or any part thereof and to make such changes therein and to deal in such manner therewith as the Investment Advisor may from time to time think fit and, for that purpose, to deposit with or transfer into the name or under the control of the Investment Advisor all or any of the investments comprised in the Trust Fund and to pay to the Investment Advisor such commission or remuneration as may from time to time be agreed;

10.1.16.2 the Trustees shall not be required to enquire into nor be in any manner responsible for any change in the legal status of the Investment Advisor, whether resulting from the death of any director thereof or its reorganisation, incorporation, merger, consolidation or otherwise;

10.1.16.3 subject to Clause 17, the Trustees shall not be liable for any action taken or not taken by the Investment Advisor or for any action taken by the Trustees pursuant to or otherwise in accordance with the advice of the Investment Advisor, howsoever communicated;

Power to Delegate Generally

10.1.17 power to delegate to any person (including any Trustee), at any time for any period and in any manner and upon any terms whatever, the execution or exercise of the trusts, powers and discretions (or any one or more of them) imposed or conferred on the Trustees by this Settlement or by law or otherwise, and (subject to Clause 17) the Trustees shall not be liable for any acts or

defaults of any such delegate or any loss to the Trust Fund resulting therefrom;

Power to Vary Administrative Powers

10.1.18 power at any time by deed, revocable or irrevocable, if, in their opinion, it is necessary or desirable so as to facilitate or enhance the due administration of this Settlement, to vary all or any of the administrative powers and provisions herein contained or to substitute therefor any other powers or provisions of an administrative nature or to add thereto any additional administrative powers or provisions.

11. **Receipt of Income**

Unless the Trustees in their discretion shall otherwise determine, all dividends and other income received by the Trustees shall be treated for all purposes hereof as income at the date of receipt, irrespective of the period in relation to which such dividends or other income shall have been earned.

12. **Protection of Third Parties**

12.1 No person or corporation dealing with the Trustees and no purchaser on any sale made by the Trustees shall be concerned to enquire into the propriety or validity of any act of the Trustees or to see to the application of any money paid or property transferred to or upon the order of the Trustees;

12.2 No firm, association or corporation, any of whose securities are comprised in the Trust Fund, and no purchaser or person dealing with any Trustee purporting to act under any delegation of authority from any other Trustee shall be required to

ascertain or enquire whether a case exists in which such delegation is permitted or whether such delegated authority is still subsisting;

12.3 When anything is dependent upon the value of any property or the existence of any fact, the certificate of the Trustees as to such value or fact shall be conclusive in favour of anyone acting thereon in good faith.

13. Trustees acting as Directors etc. and Agents

13.1 Any Trustee and any director, officer or employee of a corporate Trustee may act as a director, officer, manager or employee of any company whose securities form the whole or part of the Trust Fund or which is in any way connected with the Trust Fund or as a director, officer, manager or employee of any subsidiary or holding company of any such company and may retain for himself any remuneration which he may receive as such director, officer, manager or employee, notwithstanding that any votes or other rights attached to such securities may have been instrumental either alone or in conjunction with other matters or by reason of their non-exercise in procuring or continuing for him his position as such director, officer, manager or employee or that his qualification for any such position may be constituted in part or in whole by any such securities;

13.2 Any Trustee and, in particular, any corporate Trustee and any parent, subsidiary or affiliate of such corporate Trustee may be appointed by the Trustees to undertake and transact any business or to do any act requiring to be transacted or done in the execution of the trusts hereof (in particular, without prejudice to the generality of the foregoing, in exercise by the Trustees of the powers contained in Clause 10.1.16 and 10.1.17) and, in any such case, shall be entitled to charge and be paid and to retain for its own account all usual and reasonable professional and other fees and commissions normally paid for such services in the ordinary course of business.

14. Overseeing Management of Companies

The Trustees shall not be required to interfere in the management or conduct of the business of any company whose securities comprise the whole or part of the Trust Fund. Where the Trustees' holding of such securities is sufficient to confer voting control of such a company, the Trustees shall nevertheless from time to time use reasonable endeavours to obtain such information from the company as would be made available to a non-executive director in order to satisfy themselves (as far as may be possible from such information) that the affairs of the company are being properly managed. In the absence of any notice to the contrary, the Trustees shall be at liberty to leave the conduct of the company's business, including the payment or non-payment of dividends, wholly to the company's directors.

15. Trustees' Remuneration

15.1 Any Trustee being a lawyer, accountant, or other person engaged in any profession or business shall be entitled to charge and be paid all usual and reasonable professional and other charges for business transacted, time spent and acts done by him or his firm in relation to the trusts hereof, including acts which a trustee not being in any profession or business could have done personally.

15.2 Any Trustee being a company shall be entitled to remuneration for its services in such amount as may from time to time be agreed between that Trustee and the Appointor or, in default of agreement, in accordance with its published terms and conditions from time to time in force.

16. Trustees' Discretion

Except as otherwise expressly herein mentioned, every discretion or power hereby conferred upon the Trustees shall be an absolute and unfettered discretion or power and

the Trustees shall not be obliged to give to any Beneficiary any reason or justification for the exercise or non-exercise of any such discretion or power and no Trustee shall be held liable for any loss or damage occurring as a result of his concurring or refusing or failing to concur in any exercise or non-exercise of any such discretion or power.

17. **Trustees' Exemption from Liability**

No Trustee shall be liable for any loss to the Trust Fund however arising except as a result of the wilful default, recklessness, fraud or dishonesty of such Trustee.

18. **Appointment and Retirement of Trustees**

18.1 If any Trustee shall die or, being a company, shall be dissolved or shall give notice of his desire to withdraw and be discharged from the trusts hereof under the provisions of Clause 18.2 or shall refuse or become unfit to act or shall be required to resign under the provisions of Clause 18.3, then the Appointor may by deed appoint any person, wherever resident, to be a Trustee in place of the Trustee so deceased, dissolved, desiring to withdraw and be discharged, refusing or becoming unfit to act or being required to resign as aforesaid, provided that the number of Trustees shall not be increased to beyond four and provided also that none of the Beneficiaries shall be a Trustee.

18.2 If any Trustee shall at any time desire to withdraw and be discharged from the trusts hereof, he may do so by notice in writing signed by him (or in the case of a corporate Trustee by any of its officers) served on the Appointor and any co-trustee and, upon the expiration of ninety days from the posting or personal delivery of such notice, the Trustee so doing shall cease to be a Trustee hereof to all intents and purposes, except as to acts and deeds necessary for the proper vesting of the Trust Fund in the continuing or new Trustee or otherwise as the case may require.

18.3 The Appointor may at any time, by not less than 10 days prior notice in writing, require any Trustee to resign and thereupon such Trustee shall cease to be a Trustee to all intents and purposes except as to acts and deeds necessary for the proper vesting of the Trust Fund in the continuing or new Trustee or otherwise as the case may require.

18.4 The Appointor may by deed appoint any person, wherever resident, to be an additional or new Trustee, subject however to the provisos contained in Clause 18.1.

18.5 Acts and deeds done or executed for the proper vesting of the Trust Fund in new or additional Trustees shall be done and executed by the continuing or retiring Trustees at the expense of the income or capital of the Trust Fund, provided always that, in the event of the retirement or removal of any Trustee hereunder, such outgoing Trustee shall be entitled to receive from the new Trustee and from the continuing Trustees (if any) an indemnity against any and all liabilities in respect of any debts or probate, succession, estate or any other duties, impositions or taxes of whatever nature, which are then or may thereafter become payable out of the capital or income of the Trust Fund and shall not be bound to do or execute any such acts or deeds as aforesaid except upon his receipt of such an indemnity.

19. **Power to Change Proper Law and Forum and to Transfer Trust Property to other Trusts**

19.1 The Appointor may, at any time and from time to time by deed, change the Proper Law of this Settlement to the law of some other jurisdiction in any part of the world and, as from the date of such deed, the law of the jurisdiction named therein shall be the Proper Law of this Settlement and the courts of that jurisdiction shall be the forum for the administration thereof, but subject to the powers conferred by this Clause 19.1 and until any further change is made hereunder, provided that,

notwithstanding anything herein contained, the Appointor shall not exercise such power in any way which might directly or indirectly result in this Settlement becoming, according to the law applicable thereto, illegal, void or voidable or which might change the beneficial interests hereunder.

19.2 So often as any change of the Proper Law of this Settlement shall be made pursuant to the provisions of Clause 19.1, the Trustees may at any time, either then or thereafter, by deed make such alterations and additions to the trusts, powers and provisions hereof as the Trustees may consider necessary or desirable to ensure that, so far as may be possible, the trusts, powers and provisions hereof shall, mutatis mutandis, be as valid and effective as they were immediately prior to such change.

19.3 The Trustees may, following not less 30 days prior written notice to the Settlor of their intention, distribute, at any time, all or part of the Trust Fund to the trustees of any other trust(s) for the benefit of the Beneficiaries or any Beneficiary to be held subject to provisions of such other trusts and the law applicable thereto whether or not such law shall be the Proper Law of this Settlement.

20. **Irrevocable Settlement**

This Settlement is irrevocable.

21. **Licence Agreement, Loan Agreement and Charge**

21.1 The Trustees are hereby directed to enter into and shall enter into the Licence Agreement, Loan Agreement and the Charge as soon as practicable following the establishment of this Settlement.

21.2 Notwithstanding any other provision of this Settlement which may conflict with any of the provisions of the Licence Agreement, Loan Agreement or the Charge, the following provisions shall prevail until (but not after) the complete satisfaction and discharge of all of the Secured Obligations in accordance with the Charge:

21.2.1 the Trustees will not exercise any powers granted pursuant to this Settlement in any manner which conflicts with the obligations of the Trustees under the provisions of the Loan Agreement or the Charge;

21.2.2 The rights and entitlements of the Beneficiaries in relation to the Trust Fund shall be subordinate to any obligations of the Trustees under the Loan Agreement and the Trustee shall be entitled to fulfill its obligations under the Loan Agreement and the Charge without regard to any claims advanced by the Beneficiaries or any of them whether in respect of the Trust Fund, or against the Trustees.

22. Trafalgar Index Program

22.1 The Settlor has agreed to provide his personal services to the Original Trustee with the goal of developing the Trafalgar Index Program, which will upon its creation form part of the Trust Fund.

22.2 When the Trafalgar Index Program is developed, it shall be represented in the form of an encrypted computer disk and a single printed copy of the program source code.

22.3 The computer disk and hard copy of the program source key will be delivered, in the presence of the Settlor and the Original Trustee and placed into a safety deposit box maintained in a licensed bank in Bermuda. The Trustees shall have sole access to the safety deposit box. The Trustee shall provide to the Settlor 30

days prior written notice of its intention to access the safety deposit box containing the computer disk and hard copy of the program source key. This notice shall be given on each occasion the Trustee seeks access to the safety deposit box.

IN WITNESS WHEREOF the Settlor has hereto set his hand and seal and the Original Trustee has caused its Common Seal to be hereunto affixed the day and year first above written.

FIRST SCHEDULE

Ten thousand dollars in the currency of the United States of America (U.S.$10,000.00)).

SECOND SCHEDULE

IN THE above-written Settlement, the expression "the Beneficiaries" shall, subject to the exercise of any powers conferred upon the Trustees by Clause 8, mean the following persons:

1. The Settlor;
2. Jenny Furtak (the wife of the Settlor); and
3. Any child of the Settlor.

SIGNED, SEALED and DELIVERED)
by the Settlor in the presence of:-)
)
)
)

THE COMMON SEAL of the Original)
Trustee was hereunto affixed in the)
presence of:-)
) DIRECTOR
)
)

Assistant Secretary

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMIED, 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

EXHIBIT "I"

This is the Exhibit marked "I" referred to in the Affidavit of Rory Gorman sworn herein this 3rd day of June 2010.

BEFORE ME:

COMMISSIONER FOR OATHS

Effective as of 29 December 2007

APPLEBY SERVICES (BERMUDA) LTD.

DEED OF APPOINTMENT AND VARIATION

relating to

THE BERMUDA LONGTAIL TRUST

APPLEBY

THIS DEED OF APPOINTMENT AND VARIATION effective as of 29 December 2007 **BY APPLEBY SERVICES (BERMUDA) LTD.**, having its registered office at Canon's Court, 22 Victoria Street, PO Box HM 1179, Hamilton HM EX, Bermuda as Trustee of The Bermuda Longtail Trust (the "Trustee").

SUPPLEMENTAL to an Indenture of Settlement dated 30 October 1998 and made by Edward Karl Furtak as Settlor and the Trustee (then known as Harrington Trust Limited) (the "Trust").

RECITALS:

(A) Clause 4.1 of the Trust confers on the Trustee the power, exercisable during the Trust Period, to pay, transfer, appropriate or apply the whole or any part of the capital or income of the Trust Fund to or for the maintenance, advancement, education or other benefit of all or such one or more exclusively of the other or others of the Beneficiaries in such shares and manner as the Trustee shall in its discretion think fit;

(B) In addition to the power granted to it under Clause 4.1, the Trustee also has conferred upon it by Clause 19.3 of the Trust the power, with prior written notice to the Settlor, to appoint the Trust Fund to the trustees of any other trust(s) for the benefit of the Beneficiaries or any Beneficiary to be held subject to provisions of such other trusts;

(C) The Trustee is the present sole trustee of the Trust and the Trust Period has yet to expire; and

(D) The Trustee has determined, and the Settlor has given written approval for it, to exercise its said power of appointment in the manner hereinafter contained.

OPERATIVE PROVISIONS:

1. In exercise of the power conferred upon the Trustee by Clause 4.1 and 19.3 of the Trust and of any other power (if any) in that behalf enabling it, the Trustee **IRREVOCABLY APPOINTS AND DECLARES** that the Trust Fund and the income thereof shall continue to be held upon the same trusts and with and subject to the same powers and provisions as are contained in the Trust, but so that the Trust shall be varied by deleting in their entirety the following words in Clause 5 "*in equal shares*" and "*McMaster University,*

Hamilton, Ontario, Canada and" after the words *"Trust Fund Upon Trust"* in Clause 5 so that Clause 5 will now read as follows:

> *"Ultimate Trust*
>
> *Subject as aforesaid, the Trustees shall, at the expiration of the Trust Period, hold the capital and income of the Trust Fund Upon Trust for The Salvation Army absolutely."*

2. In this Deed where the context so admits or requires words and expressions used shall have the meanings (if any) assigned to them in the Trust.

3. This Deed shall be governed by and construed in accordance with the laws of Bermuda.

IN WITNESS WHEREOF this Deed has been executed the day and year first above written.

EXECUTED AS A DEED by)
APPLEBY SERVICES (BERMUDA))
LTD. as Trustee of The Bermuda Longtail)
Trust in the presence of:)

Authorised Signatory _____
Director

Authorised Signatory _____
Assistant Secretary

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMIED, 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

EXHIBIT "S"

This is the Exhibit marked "S" referred to in the Affidavit of Rory Gorman sworn herein this 3rd day of June 2010.

BEFORE ME:

COMMISSIONER FOR OATHS

TRAFALGAR GLOBAL INDEX FUTURES PROGRAM

MASTER LICENSE AGREEMENT

Effective as of September 1, 2005

APPLEBY TRUST (BERMUDA) LTD.,

AS TRUSTEE
OF THE BERMUDA LONGTAIL TRUST

- and -

TRAFALGAR TRADING LIMITED

LICENSE AGREEMENT

THIS AGREEMENT is effective as of the 1st day of September, 2005

BETWEEN:

APPLEBY TRUST (BERMUDA) LTD., in its capacity as trustee of **The Bermuda Longtail Trust**, a trust established under to the laws of Bermuda ("the Trust")

-and-

TRAFALGAR TRADING LIMITED, a company incorporated pursuant to the laws of Bermuda ("TTL").

RECITALS:

WHEREAS the Trust owns all trading software, programs, and intellectual property comprising the Trafalgar Global Index Futures Program (as hereinafter defined);

AND WHEREAS the Trust wishes to grant to TTL, and TTL wishes to obtain from the Trust, a non-exclusive, limited-use license to use the Trafalgar Global Index Futures Program on the terms and conditions set out herein;

NOW THEREFORE for the consideration enumerated herein, the premises and mutual covenants herein contained (and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1. DEFINITIONS

1.1 For the purposes of this Agreement, the following terms shall be deemed to have the following meanings:

(a) "**Agreement**" means this agreement between the Trust and TTL, Schedules "A" and "B" attached hereto and any supplementary agreements hereinafter executed;

(b) "**Contracts**" means the Standard & Poor's 500® futures contract quoted on the Chicago Mercantile Exchange and other international stock index futures contracts;

(c) "**Documentation**" means the instruction manuals or other technical documentation for the Trafalgar Global Index Futures Program for the purpose of enabling any persons reasonably skilled in executing software similar to the Trafalgar Global Index Futures Program to use the Trafalgar Global Index Futures Program to its full intended functionality;

(d) "**Enhancement**" means any enhancement, modification, addition or update of the Trafalgar Global Index Futures Program, made by or on behalf of, or acquired by, the Trust, and which accomplish incidental, performance, structural or functional improvements to the Trafalgar Global Index Futures Program;

(e) "**Escrow Agent**" means the law firm of Appleby Spurling Hunter (Canon's Court, 22 Victoria Street, Hamilton HM12, Bermuda; Fax: (441) 298-3425; Attention: Mr. Alex Erskine) or such other person or entity as agreed to by the parties hereto;

(f) "License" means a non-exclusive, limited-use, license to use the Trafalgar Global Index Futures Program;

(g) "**License Fee**" means an amount specified in Section 3.1 hereof;

(h) "**Maintenance Modifications**" means modifications, updates or revisions made by or on behalf of the Trust to the Trafalgar Global Index Futures Program which correct errors, support new releases of operating systems or support new models of the Trafalgar Global Index Futures Program;

(i) "**Royalty Agreement**" has the meaning set out in Section 3.1 hereof;

(j) "**Source Code**" means the counterpart human readable version of every module of the Trading Software required to be provided hereunder in machine-readable object code, and being capable, upon compilation, of being translated into machine executable object code when operated by a computer;

(k) "**Source Materials**" means the Source Code and System Design Specifications, logic diagrams, and all other relevant documentation relating to the Trading Software;

(l) "**System Design Specifications**" means those technical specifications for the Trafalgar Global Index Futures Program developed or to be developed by the developer and owner of the Trafalgar Global Index Futures Program for the purpose of enabling any persons reasonably skilled in software design, analysis or programming to maintain and further develop the Trafalgar Global Index Futures Program, including all new releases, Maintenance Modifications and Enhancements;

(m) "**Term**" means the term of this Agreement which shall commence on the date of this Agreement and terminate on the expiration of the term of the most recently executed Royalty Agreement for the 2005 calendar year, unless terminated earlier in accordance with the terms hereof;

(n) "**Trading Software**" means the Trafalgar Global Index Futures Trading Program application software, the functionality of which is described in Schedule "A" hereto; and

(o) "**Trafalgar Global Index Futures Program**" means the set of application software programs held by the Trust used to trade Contracts and selected technology stocks and options.

2. GRANT OF LICENSE

2.1 As consideration for the payment to which the Trust is entitled pursuant to Section 3.1 of this Agreement and subject to the terms and conditions set out herein, the Trust hereby grants to TTL for the Term a License to use, operate, and trade (anywhere in the world except Canada) Contracts using the Trafalgar Global Index Futures Program in respect of the royalty agreements between TTL and third parties executed in the 2005 calendar year, in respect of the 2005 Donations Canada Program ("**Royalty Agreements**"), a form of which is attached hereto as Schedule "B".

3. LICENSE FEE AND OTHER CONSIDERATION

3.1 In consideration for granting the License to TTL, TTL shall pay to the Trust a license fee ("**License Fee**") equal to eighty-five percent (85%) of TTL's gross revenues generated from payments, defined as the "Purchase Price" under the Royalty Agreements received pursuant to the Royalty Agreements. The License Fee shall be payable by TTL to the Trust as and when the Purchase Price is received by TTL.

4. DELIVERY OF TRAFALGAR GLOBAL INDEX FUTURES PROGRAM

4.1 The Trust shall, as soon as practicable after the execution of this Agreement, deliver to TTL or to such third party as it may direct, a copy of the Trafalgar Global Index Futures Program (containing any and all of the Enhancements, as applicable) and a copy of the Documentation.

4.2 The parties hereto agree that TTL shall have the right to access one (1) copy of the Source Materials, including all Source Materials in respect of Maintenance Modifications and Enhancements, and the Documentation of the Trafalgar Global Index Futures Program for the sole purpose of depositing the Source Materials with the Escrow Agent pursuant to an escrow agreement in respect of the Trafalgar Global Index Futures Program to which TTL will be a party, and for the purposes of ensuring that TTL and the Escrow Agent can comply with their obligations pursuant to such escrow agreement. The Trust shall, simultaneous to delivering Maintenance Modifications and Enhancements to TTL hereunder, deliver or make accessible to TTL the Source Materials in respect of such Maintenance Modifications and Enhancements together with updated Documentation, if any, and, if requested, deliver to TTL a certificate of an officer of the Trust certifying that to the best of the Trust's information and belief that all Source Materials and Documentation so delivered or made accessible are current to at least three (3) months.

5. PROTECTION, MAINTENANCE AND ENHANCEMENT

5.1 TTL hereby acknowledges that the Trafalgar Global Index Futures Program contains valuable proprietary trading information, and hereby agrees (other than as contemplated in the escrow agreement with the Escrow Agent referred to above) not to:

(a) decompile, reverse-engineer, deconstruct, disassemble or recreate the Trafalgar Global Index Futures Program, the Source Code or significant operating functions thereof; defeat or disengage any security measures contained in the Trafalgar Global Index Futures Program; or aid or allow any third party, either on behalf of TTL or independently, to do any of the foregoing; and

(b) disclose to any third party any information concerning the Trafalgar Global Index Futures Program without the prior written consent of the Trust, provided however, that the foregoing disclosure shall not apply to (i) information in the public domain or that becomes public through disclosure by any party other than TTL; (ii) information that is required to be disclosed by law or by a court or tribunal of competent jurisdiction; or (iii) information that is disclosed by TTL, on a confidential basis, to any of its accountants, solicitors or other professional advisors.

5.2 The parties hereto acknowledge that:

(a) The Trust shall make arrangements to provide Maintenance Modifications and Enhancements and the level of software support to TTL, which TTL requires to fulfill any and all of its trading obligations in respect of the Trafalgar Global Index Futures Program;

(b) all Maintenance Modifications and Enhancements completed by the Trust shall be included in the License; and

(c) all Maintenance Modifications and Enhancements shall be considered part of the Trafalgar Global Index Futures Program and shall become and remain the sole and exclusive property of the Trust.

6. REPRESENTATIONS AND WARRANTIES

6.1 The Trust hereby represents and warrants to TTL, to the best of its information and belief, that the following representations and warranties are true and correct from the date hereof, and

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acknowledges that TTL is relying on the following representations and warranties in connection with the performance of its obligations under this Agreement:

(a) the Trust is duly established and properly organized and in good standing under the laws of Bermuda;

(b) this Agreement constitutes a valid and binding obligation of the Trust, enforceable against it in accordance with its terms, and each of the instruments and documents necessary to give effect to the transactions contemplated herein will, when executed and delivered by the Trust, constitute a valid and binding obligation, enforceable against the Trust in accordance with its terms;

(c) the entering into of this Agreement and the consummation of the transactions contemplated herein have not resulted and will not result in the violation of or default under any of the terms and provisions of any trust deed, hypothecation, indenture, mortgage, lease, agreement, written or oral, license or permit to which the Trust is a party or by which it may be bound;

(d) the entering into of this Agreement and the consummation of the transactions contemplated herein will not result in the violation of any statute, regulation, judgement, decree or law to which the Trust may be subject, or any applicable order of any court, arbitrator or government authority having jurisdiction over the Trust or its property;

(e) the Trust is not materially in default or breach of any contract, agreement, lease or other instrument to which it is a party or by which it may be bound, nor is the Trust aware of any state of facts which after notice or the passage of time, or both, would constitute a material default or breach;

(f) the Trust has the full right to license the Trafalgar Global Index Futures Program to TTL, and to deliver the Source Materials and Documentation in the manner contemplated in this Agreement and without any restriction, encumbrance, lien, security interest attaching thereto;

(g) the execution of this Agreement, the License of the Trafalgar Global Index Futures Program to TTL and the use of the Trafalgar Global Index Futures Program by TTL, and the delivery of the Source Materials and Documentation as contemplated hereunder has not and shall not result in the infringement of any copyright, trademark, trade secret, intellectual property right or any other proprietary rights of any third party; and

(h) the Trafalgar Global Index Futures Program is free from any software virus, and shall operate substantially in accordance with its intended functionality for a period of one year from the date of execution of this Agreement. THE TRUST DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR THAT THE SOFTWARE WILL RUN UNINTERRUPTED, OR THAT ALL SOFTWARE ERRORS CAN OR WILL BE CORRECTED.

6.2 The representations and warranties set out in Section 6.1 of this Agreement shall survive and continue in full force and effect for the benefit of TTL until five (5) years after the expiration or termination of this Agreement, including all amendments, extensions and renewals thereof.

6.3 No claim by TTL for breach of representation or warranty by the Trust shall be valid unless the Trust has been given notice thereof before the date on which the representation or warranty shall have terminated in accordance with Section 6.2 of this Agreement, except for a claim with respect to the representations and warranties given in sections 6.1(f) and 6.1(g) above, which shall not be of limited duration.

6.4 TTL hereby represents and warrants to the Trust that the following representations and warranties are true and correct from the date hereof, and acknowledges that the Trust is relying on the

following representations and warranties in connection with the performance of its obligations under this Agreement:

(a) TTL is a duly incorporated company and properly organized under the laws of Bermuda and has the capacity and competence to enter into and be bound by this Agreement;

(b) this Agreement constitutes a valid and binding obligation of TTL, enforceable against it in accordance with its terms, and each of the instruments and documents necessary to give effect to the transactions contemplated herein will, when executed and delivered by TTL, constitute a valid and binding obligation, enforceable against TTL in accordance with its terms;

(c) the entering into of this agreement and the consummation of the transactions contemplated herein have not resulted and will not result in the violation of or default under any of the terms and provisions of any trust deed, hypothecation, indenture, mortgage, lease, Agreement, written or oral, license or permit to which TTL is a party or by which it may be bound;

(d) except as expressly set out in this Agreement, neither the Trust nor any of its officers, directors, employees, affiliates, associates and agents, has made any statement or representation to TTL concerning the License or any intended or expected business or tax consequences resulting from the acquisition of the License by TTL;

(e) the entering into of this Agreement and the consummation of the transactions contemplated herein will not result in the violation of any statute, regulation, judgement, decree or law to which TTL may be subject, or any applicable order of any court, arbitrator or government authority having jurisdiction over TTL or its property;

(f) TTL is not materially in default or breach of any contract, agreement, lease or other instrument to which it is a party or by which it may be bound, nor is TTL aware of any state of facts which after notice or the passage of time, or both, would constitute a material default or breach; and

(g) if required by applicable securities laws, TTL will execute and file or assist the Trust in filing, and hereby agrees that the Trust may file, any reports, undertakings and other documents with respect to the transaction provided for in this Agreement as may be required by any securities commission or other regulatory authority within the applicable time periods.

6.5 The representations and warranties set out in Section 6.4 of this Agreement shall survive and continue in full force and effect for the benefit of the Trust until five (5) years after the expiration or termination of this Agreement, including all amendments, extensions and renewals thereof.

6.6 No claim by the Trust for breach of representation or warranty by TTL shall be valid unless TTL has been given notice thereof before the date on which the representation or warranty shall have terminated in accordance with Section 6.5 of this Agreement.

7. TERMINATION

7.1 The License hereunder and this Agreement shall terminate upon expiration of the Term of this Agreement. For certainty, the License granted hereunder shall not apply and is void in respect of any and all trading of Contracts contemplated under any and all Royalty Agreements executed after December 31, 2005 in respect of the Donations Canada Program.

7.2 Notwithstanding any other term of this Agreement, the Trust and TTL may terminate this Agreement upon mutual written agreement.

7.3 Notwithstanding any other term of this Agreement, the Trust may, upon thirty (30) days' written notice to TTL, terminate this Agreement in the event of any material breach by TTL of this Agreement (which material breach has not been remedied by TTL within such thirty (30) day period).

8. NOTICE

8.1 Any notice, direction or other instrument required or permitted to be given pursuant to this Agreement shall be in writing and may be given by delivering the same or sending the same by pre-paid first-class mail or by facsimile to the Trust at: Canon's Court, 22 Victoria Street, Hamilton HM 12, Bermuda, facsimile number: (441) 292-8666, and to TTL at: 129 Front Street, Hamilton HM 12, Bermuda, facsimile number: (441) 292-2333.

8.2 Any notice, direction or other instrument, if delivered, shall be deemed to have been given on the date on which it was delivered and, if sent by mail, shall be deemed to have been given on the fifth (5th) business day following the date of mailing and, if transmitted by facsimile machine, shall be deemed to have been given at the opening of business in the office of the addressee on the business day next following the transmission thereof.

8.3 Any party hereto may change its address for service or facsimile number from time to time by notice given to the other parties hereto in accordance with the foregoing.

9. LIMITATION OF LIABILITY

9.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE TRUST SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES, OR DAMAGES RESULTING FROM LOST DATA OR LOST PROFITS, OR COSTS OF PROCURING SUBSTITUTE GOODS, SOFTWARE OR SERVICES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TRUST'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THIS AGREEMENT, ITS NEGOTIATION OR TERMINATION, OR THE PROVISION OR NON-PROVISION OF SOFTWARE OR SERVICES (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL IN NO EVENT EXCEED THE LESSER OF:

A) THE AMOUNT PAID BY LICENSEE TO THE TRUST UNDER THIS AGREEMENT;
B) IF SUCH DAMAGES RESULT FROM A SOFTWARE MODULE OR SERVICES, THE FEES PAID FOR THE SPECIFIC SOFTWARE MODULE OR SERVICES GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE; AND
C) THE ASSETS OF THE BERMUDA LONGTAIL TRUST HELD BY THE TRUST AND WHICH ARE AVAILABLE FOR SETTLEMENT OF THE CLAIM AT THE RELEVANT TIME.

9.2 THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION ENTITLED "LIMITATION ON LIABILITY". TTL ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE SOFTWARE AND SERVICES WOULD BE HIGHER.

10. FURTHER ASSURANCES AND ACTIONS

10.1 Each of the parties hereto shall sign and deliver any further and other documents, instruments, notices and papers and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to the purpose and intent of this Agreement and all ancillary Agreements relating to the transactions contemplated herein.

11. GENERAL MATTERS

11.1 In construing this Agreement, the rule of *contra proferentem* shall not apply, which, for certainty, shall mean that no weight or relevance shall be given to the fact that any particular provision under this Agreement may have been drafted by one or the other of the parties hereto, each of the

parties having had adequate opportunity to propose, revise and negotiate all such provisions hereunder.

11.2 The parties hereto agree that neither party shall be held responsible for damages under this Agreement caused by delay or failure to perform its undertakings hereunder, when the delay or failure is due to acts including, without limitation, floods, hurricanes, fires, civil war and unrest, acts of public authorities, enemies of state, strikes, power failures, and all other acts of God, or delays or defaults caused by common carriers, which cannot be reasonably foreseen or provided against and the parties hereto shall, forthwith and in good faith, use all commercially reasonable efforts to rectify and overcome the effect and impact of such *force majeure* event.

11.3 Unless otherwise expressly stated, all dollar amounts referred to in this Agreement are expressed and shall be payable in the lawful currency of the United States of America or Canada.

11.4 In this Agreement, unless the context otherwise requires, words importing number include the singular and plural, words importing gender include all genders, and words importing persons shall include firms, corporations, trusts, estates, government agencies and departments and all other types of entities, and vice versa.

11.5 Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity of unenforceability of one or more provisions of this Agreement by any court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

11.6 This Agreement constitutes the entire Agreement between the parties pertaining to the transaction contemplated herein and supersedes all prior Agreements, and there are no other warranties, representations or Agreements between the parties in connection with the transactions contemplated herein.

11.7 If at any time during the Term the parties hereto deem it necessary or expedient to make any alteration or amendments to this Agreement, they may do so by means of a written agreement between them and any and all such alterations and amendments shall form a part hereof and shall have the same force as if they had originally constituted part of this Agreement.

11.8 This Agreement shall be governed by and interpreted in accordance with the laws of Bermuda. Each of the parties hereto irrevocably attorns and submits to the jurisdiction of the courts of Bermuda.

11.9 Headings used in this Agreement are for convenience of reference only and do not form a part of this Agreement, nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

11.10 Any reference in this Agreement to a statute shall include and shall be deemed to be a reference to such statute and the regulations made pursuant thereto, with amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

11.11 Any reference in this Agreement to any entity shall include and shall be deemed to be a reference to any entity that is a successor to that entity.

11.12 Time shall be of the essence in this Agreement.

11.13 This Agreement may be executed by facsimile and in two (2) counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same Agreement.

11.14 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns, but shall not be assignable by any party hereto without the written consent of the other party hereto.

11.15 No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

IN WITNESS WHEREOF the parties hereto have caused the due execution of this Agreement as of the date written above.

APPLEBY TRUST (BERMUDA) LTD.,
AS TRUSTEE OF THE BERMUDA
LONGTAIL TRUST

Per:
NAME:
TITLE: ~~Pauline Trott~~ Director

Per:
NAME: Lisa Cumberbatch
TITLE: Assistant Secretary

I/we have authority to bind the Trust.

TRAFALGAR TRADING LIMITED

Per:
Wayne Robertson
Vice-President

I have authority to bind the company.

Schedule "A"

DESCRIPTION OF FUNCTIONALITY OF TRADING SOFTWARE

Trafalgar Global Index Futures Program

The Trafalgar Global Index Futures Program ("Software") is comprised of a number of integrated computer programs categorized as either Trading Programs or Equity Management Programs. Each provides an objective, quantitative analysis of index futures contracts based on volatility and pattern recognition algorithms. The Software determines when to enter a trade (long or short), how much capital to risk, when to take a profit, when to accept a loss and whether or not a Trading Program should be used at all in the next trading session based on recent performance as measured against expected profit.

Trading Programs

Overview

Trading Programs analyze the intra-day movement of index futures contracts and, on the basis of that analysis, predict short term movement in the underlying market. Each trading session (approximately 6-7 hours) is divided into discrete intervals and is processed to determine support and resistance levels in the market and to identify recurring patterns that are statistically significant which give an indication of market direction for the balance of the trading session.

Orders are generated based on this analysis and are displayed on an Active Orders screen on a computer terminal. These orders are transmitted to the exchange where the underlying contracts trade.

Stop Loss Orders

Each executed trade that leads to an open position in the market is protected by a stop loss order. This is a resting order in the market that is triggered at levels calculated by the Software for each trade. The purpose of these orders is to protect against large movements in the market which are contrary to an open position.

Market on Close Orders

The Software is designed so that all positions are closed at the end of each trading session. This results in a cash position each night with no overnight risk due to movement of international markets or global events.

Equity Management Programs

Overview

The Equity Management Programs evaluate, on an objective basis, the performance of each Trading Program. The cumulative result of each Trading Program is analyzed daily to determine the likelihood of continued profitability. Those that pass this objective test are implemented in real-time mode during the next trading session. Those that do not are placed in simulation mode whereby the computer continues to keep track of the results of trading the particular Trading Program until the objective tests are met which would allow the particular Trading Program to be again implemented in real-time mode.

Schedule "B"

ROYALTY AGREEMENT

Please see attached.

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMIED, 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

EXHIBIT "T"

This is the Exhibit marked "T" referred to in the Affidavit of Rory Gorman sworn herein this 3rd day of June 2010.

BEFORE ME:

COMMISSIONER FOR OATHS

The Trafalgar Global Index Futures Program

2005 Series A Royalty Agreement

THIS AGREEMENT is made as of the 19th day of May, 2005 (the "Effective Date")

BETWEEN:

TRAFALGAR TRADING LIMITED, a company incorporated pursuant to the laws of Bermuda ("Trafalgar Trading")

- and -

CANADIAN AMATUER FOOTBALL ASSOCIATION, a qualified donee as defined in Subsection 149.1(1) of the *Income Tax Act* (Canada) and with registration number 11698 9732 RR0001 (the "Association").

RECITALS

WHEREAS Trafalgar Trading operates Trading Software (as hereinafter defined) for the purpose of trading S&P 500 and other international stock futures contracts;

AND WHEREAS the Association wishes to receive, in consideration for the Purchase Price (as defined herein), certain royalty payments from Trafalgar Trading computed solely from the income generated from the trading activities generated by the Trading Software and Investments (as hereinafter defined) made hereunder, as more particularly described in this Agreement;

NOW THEREFORE in consideration of the payments made pursuant to this Agreement, the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Trafalgar Trading and the Association, the parties hereto agree as follows:

1. **DEFINITIONS**

1.1 For the purposes of this Agreement, the following terms shall be deemed to have the following meanings:

(a) **"Agreement"** means this agreement between Trafalgar Trading and the Association and any supplementary agreements hereinafter executed, including appendices, if applicable;

(b) **"Contracts"** means S&P 500 and other international stock index futures contracts;

(c) **"Current Trading Facility"** means an amount equal to the Initial Trading Facility plus all Trading Facility Additions less all Trading Facility Deductions;

(d) **"Effective Date"** means the date set out in the preamble of this Agreement;

(e) **"Initial Trading Facility"** means, subject to Sections 2 and 3 hereof, an amount equal to the Purchase Price to be comprised of margin (i.e., cash) and trading leverage, as allocated by Trafalgar Trading in its sole discretion; and such amount shall be converted to United States Dollars at the United States – Canadian Dollar exchange rate posted by the Bank of Bermuda at the end of each calendar month, as and when such amount is available for trading;

(f) **"Investments"** has the meaning set out in Section 3.3. of this Agreement;

(g) **"Monthly Trading Fee"** means an amount equal to one fifth of one percent (1/5 %) of the Current Trading Facility, as at the beginning of each calendar month;

(h) **"Monthly Gross Result"** means the net amount (positive or negative) of all net profits and net losses in respect of: (1) the trading of Contracts using the Trading Software with the Current Trading Facility; and (2) any Investments, during a calendar month;

(i) **"Monthly Loss"** means any negative Monthly Gross Result;

(j) **"Monthly Net Result"** means the Monthly Gross Result less the Monthly Trading Fee;

(k) **"Monthly Profit"** means any positive Monthly Net Result;

(l) **"Profit Distribution"** means, subject to Section 6 hereof, the amount equal to the Current Trading Facility, as at the end of the calendar month in which Trafalgar Trading receives from the Association a Profit Distribution Notice, net of the Initial Trading Facility;

(m) **"Profit Distribution Notice"** means a notice given in writing by the Association to Trafalgar Trading no earlier than four (4) years from the Effective Date, requesting payment of the Profit Distribution;

(n) **"Programs"** has the meaning set out in Section 2.1 of this Agreement;

(o) **"Purchase Price"** means, pursuant to Section 2 hereof, the periodic amounts received by Trafalgar Trading from the Association pursuant to the Programs, less any fees due to the Association and commissions, up to Twenty-Five Million Canadian Dollars (CDN$25,000,000.00), which Purchase Price amount shall be updated and reported to the Association on a monthly basis following the Effective Date;

(p) **"Trading Facility Additions"** means any and all amounts added to the Initial Trading Facility resulting from the trading of Contracts (and realized gains on Investments pursuant to Section 3.3 hereof, if applicable) and, for certainty, shall include the Monthly Profit allocated pursuant to Section 5.1(a) hereof;

(q) **"Trading Facility Deductions"** means any and all amounts deducted from the Initial Trading Facility resulting from the trading of Contracts (and realized losses on Investments pursuant to Section 3.3 hereof, if applicable) and, for certainty,

shall include any and all fees payable to Trafalgar Trading pursuant to Section 4 hereof and any and all fees payable to Trafalgar Trading and to the Association under Section 5 of this Agreement;

(r) **"Trading Software"** means the Trafalgar Global Index Futures Program, a proprietary, software-based, automated trading application as updated and amended, from time to time, in the form of a limited-use, non-exclusive license granted to Trafalgar Trading;

(s) **"Trading Term"** means a period of twenty (20) years from the commencement of trading pursuant to Section 3.5 of this Agreement; and

(t) **"Trading Term Extension"** has the meaning set out in Section 3.7 of this Agreement.

2. CONSIDERATION FOR ROYALTY PAYMENTS

2.1 In consideration for the royalty payments made by Trafalgar Trading to the Association, as contemplated under Sections 5 and 6 of this Agreement, the Association shall pay the Purchase Price to Trafalgar Trading. The payment of the Purchase Price shall be made solely from donation amounts received, from time to time, in the 2005 calender year pursuant to the Trafalgar Charitable Donation Program (marketed by Trafalgar Associates Limited) and the Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities (marketed by ParkLane Financial Group Limited) (collectively, the **"Programs"**).

2.2 The delivery and payment of the Purchase Price by the Association to Trafalgar Trading shall be made on a rolling basis, forthwith, as the Association secures and receives such donation amounts from donors, from time to time pursuant to the Programs. The periodic payments, in the aggregate constituting the Purchase Price, shall be reported to the Association on a monthly basis following the Effective Date.

2.3 The Association's obligation to pay any portion of the Purchase Price that does not become payable (out of donation amounts received), pursuant to Sections 2.1 and 2.2 of this Agreement, on or before December 31, 2005 shall thereupon terminate.

3. TRADING

3.1 Trafalgar Trading shall, for the Trading Term or pursuant to Section 9 hereof, maintain in the name of Trafalgar Trading, a trading facility for the purpose of making investments and trading Contracts, on a leveraged basis, using the Trading Software.

3.2 Notwithstanding any other term of this Agreement, Trafalgar Trading shall commence trading Contracts only to the extent Trafalgar Trading has received the Purchase Price and shall continue to maintain and operate, at Trafalgar Trading's sole discretion, the Current Trading Facility only to the extent payments allocated for trading Contracts are actually received by Trafalgar Trading. Further, Trafalgar Trading shall not be obligated to maintain any trading facility in favour of the Association after this Agreement is terminated.

3.3 Trafalgar Trading shall have the right to use certain proceeds of the Purchase Price to purchase interest-bearing or other income-generating instruments and/or investments and deposits (collectively, "Investments") with financial institutions or corporations, as Trafalgar Trading shall deem appropriate for carrying out the terms of this Agreement and the allocation and type of Investments shall be at the sole discretion of Trafalgar Trading.

3.4 The Association shall not be obligated to provide any funds or trading facilities for the purposes of trading using the Trading Software.

3.5 Trafalgar Trading shall, as soon as commercially practicable after the Effective Date, commence trading Contracts using the Trading Software up to the full amount of the Initial Trading Facility using margin (i.e., cash) and trading leverage, as allocated by Trafalgar Trading in its sole discretion, and Trafalgar Trading shall have the right to allocate across Contracts and adjust the level and allocation of trading of Contracts at its sole discretion.

3.6 Trafalgar Trading shall trade Contracts in strict accordance with the automated buy/sell and trading orders generated by the Trading Software.

3.7 Trafalgar Trading shall, throughout the Trading Term, trade using the Trading Software and shall, upon the expiration of the Trading Term, continue trading for successive one (1) month trading term extensions (each a "Trading Term Extension") until the occurrence of any of the following events (during the Trading Term or Trading Term Extension); (in which case Trafalgar Trading shall cease trading at the end of the calendar month in which such event occurred):

(a) The Initial Trading Facility declines by ten percent (10%) from its level at the time of trading commencement; or

(b) Trafalgar Trading receives from the Association a Profit Distribution Notice; or

(c) upon termination of this Agreement pursuant to Section 9 of this Agreement.

3.8 If Trafalgar Trading ceases trading pursuant to Section 3.7(a) of this Agreement, Trafalgar Trading shall resume trading only upon the prior mutual written agreement of both parties hereto.

3.9 All trading profits and losses generated from the use of the Trading Software shall, at the election of Trafalgar Trading, be in United States Dollars or other non-Canadian currencies.

3.10 The Association hereby acknowledges that Trafalgar Trading undertakes to perform its obligations under this Agreement on a commercially reasonable efforts basis and the Association hereby agrees that Trafalgar Trading shall not be held responsible for, and shall be held harmless from any claim resulting from, realized losses or unrealized, anticipated or forecasted returns, distributions or profits (collectively, "Losses") arising from the performance of its obligations under this Agreement including, without limitation, the trading of Contracts, any Investments made pursuant to Section 3.3 hereof, unfilled orders or the inability of Trafalgar Trading or its affiliates or assignee to execute orders generated by the Trading Software. The Association hereby

agrees and acknowledges that Losses may adversely impact: (1) the performance or viability of the Current Trading Facility; (2) the availability and payment of Monthly Profit under Section 5 hereof; and (3) the Profit Distribution to which the Association is entitled under Section 6 of this Agreement.

3.11 Trafalgar Trading shall be entitled to trade on its own behalf using the Trading Software or other trading software or pursuant to other agreements using the Trafalgar Index Program's set of application software programs licensed to any third parties. The Association acknowledges and agrees that it shall not be entitled to any revenues derived from such trading.

4. PAYMENT OF FEES AND LOSSES

4.1 At the end of each calendar month, any positive Monthly Gross Result shall be used to pay the Monthly Trading Fee to Trafalgar Trading, which Monthly Trading Fee shall, subject to this Section 4, be deducted from the Initial Trading Facility as a Trading Facility Deduction.

4.2 If the Monthly Gross Result is insufficient to pay the Monthly Trading Fee in its entirety, any unpaid portion of the Monthly Trading Fee shall be forfeited by Trafalgar Trading for the relevant month and shall not accrue to a subsequent month.

4.3 If the Association provides Trafalgar with a Profit Distribution Notice during the Trading Term, Trafalgar shall be paid: (1) a fee equal to one fifth of one percent (1/5%) of the Current Trading Facility determined as at the end of the calendar month in which Trafalgar receives from the Association the Profit Distribution Notice, multiplied by twenty-four months; and (2) the aggregate of all unpaid portions of the Monthly Trading Fee forfeited by Trafalgar pursuant to Section 4.2 hereof and such fees shall be subtracted from the Profit Distribution due to the Association.

4.4 The parties hereto agree that the Monthly Trading Fee shall be due and payable until the end of the calendar month in which Trafalgar Trading receives from the Association a Profit Distribution Notice.

4.5 At the end of each calendar month, any Monthly Loss shall be paid from the Initial Trading Facility as a Trading Facility Deduction.

4.6 Trafalgar Trading hereby acknowledges that all trades executed in the Current Trading Facility are for its own risk and account and that the Association shall not be responsible for paying any trading losses generated by Trafalgar Trading using the Trading Software with the Current Trading Facility during the Trading Term or a Trading Term Extension.

5. TREATMENT OF MONTHLY PROFITS

5.1 At the end of each calendar month, any Monthly Profit shall be allocated in the following manner:

(a) an amount equal to twenty percent (20%) of any Monthly Profit shall be added to the Initial Trading Facility as a Trading Facility Addition;

(b) an amount equal to sixty percent (60%) of any Monthly Profit shall be paid to the Association; and

(c) an amount equal to twenty percent (20%) of any Monthly Profit shall be paid to Trafalgar Trading;

and such amount in Section 5.1(b) and Section 5.1(c) above shall be deducted from the Initial Trading Facility as a Trading Facility Deduction.

6. DISTRIBUTION OF ACCUMULATED PROFITS

6.1 In the event that Trafalgar Trading:

(a) ceases trading pursuant to Section 3.7(a) of this Agreement and there is no mutual written agreement of both parties hereto to resume trading and the Association also provides Trafalgar Trading with a Profit Distribution Notice; or

(b) ceases trading pursuant to Section 3.7(b) or 3.7(c) of this Agreement;

then within thirty (30) days of: (1) the termination of this Agreement pursuant to Section 9 of this Agreement; or (2) the end of the calendar month in which the Association provides Trafalgar Trading with a Profit Distribution Notice:

(i) eighty percent (80%) of the Profit Distribution shall be paid to the Association; and

(ii) twenty percent (20%) of the Profit Distribution shall be paid to Trafalgar Trading.

6.2 Payment of the Profit Distribution shall be net of any unpaid Monthly Trading Fees and net of any fees due and payable pursuant to Sections 4.3 and 4.4 of this Agreement. For certainty, after payment of the Profit Distribution pursuant to Section 6.1 of this Agreement, this Agreement shall be deemed terminated.

7. REPORTING AND RETURNS VERIFICATION

7.1 Each month, Trafalgar Trading shall, at its own expense, provide the Association with a trading report expressed in United States Dollars detailing the use and operation of the Trading Software with the Current Trading Facility.

7.2 Trafalgar Trading shall, on an annual basis, at its own expense, engage a firm of auditors to verify the monthly returns reflected in the report prepared by Trafalgar Trading pursuant to Section 7.1 of this Agreement and a copy of such verification shall be furnished to the Association within ninety (90) days of the delivery to Trafalgar Trading of the results of such verification.

8. REPRESENTATIONS AND WARRANTIES

8.1 The Association hereby represents and warrants to Trafalgar Trading that the following representations and warranties are true and correct as of the date hereof and acknowledges that Trafalgar Trading is relying on the following representations and warranties in connection with the performance of its obligations under this Agreement:

(a) the Association is a qualified donee as defined in Subsection 149.1(1) of the *Income Tax Act* (Canada) and has the capacity and competence to enter into this Agreement;

(b) this Agreement constitutes a valid and binding obligation of the Association, duly authorized and approved by it and enforceable against the Association in accordance with the terms of this Agreement, and each of the instruments and documents necessary to give effect to the transactions contemplated herein will, when executed and delivered by the Association, constitute a valid and binding obligation, enforceable against the Association in accordance with its terms;

(c) the entering into of this Agreement and the consummation of the transactions contemplated herein have not resulted and will not result in the violation of or default under any of the terms and provisions of any trust deed, hypothecation, indenture, mortgage, lease, agreement, written or oral, license or permit to which the Association is a party or by which it may be bound;

(d) the entering into of this Agreement and the consummation of the transactions contemplated herein have not resulted and will not result in the violation of any incorporating document or by-law of the Association, or statute, regulation, judgment, decree or law to which the Association may be subject, or any applicable order of any court, arbitrator or government authority having jurisdiction over the Association or its property; and

(e) the Association is not materially in default or breach of any contract, agreement, lease or other instrument to which it is a party or by which it may be bound, nor is the Association aware of any state of facts which, after notice or the passage of time, or both, would constitute a material default or breach.

8.2 The representations and warranties set out in Section 8.1 of this Agreement shall survive and continue in full force and effect for the benefit of Trafalgar Trading, where applicable, until complete performance by both parties of their obligations under this Agreement.

8.3 No claim by Trafalgar Trading for breach of representation or warranty by the Association shall be valid unless the Association has been given notice thereof before the date on which the representation or warranty shall have terminated in accordance with Section 8.2 of this Agreement.

8.4 Trafalgar Trading hereby represents and warrants to the Association that the following representations and warranties are true and correct as of the date hereof, and acknowledges that the Association is relying on the following representations and warranties in connection with the performance of its obligations under this Agreement:

(a) Trafalgar Trading has been duly incorporated and is properly organized and in good standing under the laws of Bermuda;

(b) this Agreement constitutes a valid and binding obligation of Trafalgar Trading, duly authorized and approved by it, enforceable against Trafalgar Trading in accordance with the terms of this Agreement, and each of the instruments and documents necessary to give effect to the transactions contemplated herein will, when executed and delivered by Trafalgar Trading, constitute a valid and binding obligation, enforceable against Trafalgar Trading in accordance with its terms;

(c) the entering into of this Agreement and the consummation of the transactions contemplated herein have not resulted and will not result in the violation of or default under any of the terms and provisions of any trust deed, hypothecation, indenture, mortgage, lease, agreement, written or oral, license or permit to which Trafalgar Trading is a party or by which it may be bound;

(d) the entering into of this Agreement and the consummation of the transactions contemplated herein have not resulted and will not result in the violation of any incorporating document or by-law of Trafalgar Trading, or statute, regulation, judgment, decree or law to which Trafalgar Trading may be subject, or any applicable order of any court, arbitrator or government authority having jurisdiction over Trafalgar Trading or its property;

(e) Trafalgar Trading is not materially in default or breach of any contract, agreement, lease or other instrument to which it is a party or by which it may be bound, nor is Trafalgar Trading aware of any state of facts which after notice or the passage of time, or both, would constitute a material default or breach;

(f) to the best of its knowledge, Trafalgar Trading has the full right to use the Trading Software in the manner contemplated in this Agreement; and

(g) to the best of Trafalgar Trading's knowledge, the execution of this Agreement and the use of the Trading Software by Trafalgar Trading as contemplated in this agreement has not and will not result in the infringement of any copyright, trademark, trade secret, intellectual property right or any other proprietary rights of any third party.

8.5 The representations and warranties set out in Section 8.4 of this Agreement shall survive and continue in full force and effect for the benefit of the Association, where applicable, until complete performance by both parties of their obligations under this Agreement.

8.6 No claim by the Association for breach of representation or warranty by Trafalgar Trading shall be valid unless Trafalgar Trading has been given notice thereof before the date on which the representation or warranty shall have terminated in accordance with Section 8.5 of this Agreement.

9. TERM AND TERMINATION

9.1 The term of this Agreement shall commence on the Effective Date and continue for the Trading Term and any Trading Term Extension, provided that, for certainty, this Agreement shall terminate upon payment of a Profit Distribution due to the Association.

9.2 Notwithstanding any other term of this Agreement the Association shall, upon thirty (30) days' written notice, have the right, but is not obligated, to terminate this Agreement if:

(a) there is a material breach of a material term of this Agreement by Trafalgar Trading which, upon written notice of such breach, is not remedied within thirty (30) days of such material breach;

(b) Trafalgar Trading becomes bankrupt or insolvent or makes an assignment for the benefit of its creditors;

(c) Trafalgar Trading takes steps to wind-up, dissolve or liquidate, except for internal corporate reorganizations, mergers or shareholder reorganizations; or

(d) a trustee, receiver, manager or other custodian is appointed with respect to the assets or undertaking of Trafalgar Trading.

9.3 Notwithstanding any other term of this Agreement, upon thirty (30) days' written notice, Trafalgar Trading shall have the right, but is not obligated, to terminate this Agreement if there is a material breach of a material term of this Agreement by the Association which, upon written notice of such breach, is not remedied within thirty (30) days of such material breach.

10. NOTICE

10.1 Any notice, direction or other instrument required or permitted to be given pursuant to this agreement shall be in writing and may be given by delivering the same or sending the same by pre-paid first-class mail, courier or by facsimile to Trafalgar Trading Limited, 48 Par-la-Ville Road, Suite 567, Hamilton HM 11, Bermuda, Facsimile Number: +1 (441) 292-2333 and to the Association at: 1015 Bank St. Lansdowne Park, Ottawa, ON K1S 3W7, Facsimile: (613) 564-6309.

10.2 Any notice, direction or other instrument, if delivered by hand or courier, shall be deemed to have been given on the date on which it was delivered and, if sent by mail, shall be deemed to have been given on the seventh (7th) business day following the date of mailing and, if transmitted by facsimile machine, shall be deemed to have been given at the opening of business in the office of the addressee on the business day next following the transmission thereof.

10.3 Either party hereto may change its address for service or facsimile number from time to time by notice given to the other party hereto in accordance with the foregoing.

11. FURTHER ASSURANCES AND ACTIONS

11.1 Each party hereto shall sign and deliver any further and other documents, instruments, notices and papers and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to the purpose and intent of this Agreement and all ancillary agreements relating to the transactions contemplated herein.

12. GENERAL MATTERS

12.1 **Independent Legal Advice and Contra Proferentem.** Each party hereby acknowledges that it has had adequate opportunity to seek independent legal advice in respect of this Agreement, to review this Agreement with legal counsel and to propose, revise and negotiate all such provisions hereunder. In construing this Agreement, the rule of *contra proferentem* shall not apply, which, for certainty, shall mean that no weight or relevance shall be given to the fact that any particular provision under this Agreement may have been drafted by one or the other of the parties hereto.

12.2 **Force Majeure.** The parties hereto agree that neither party shall be held responsible for damages under this Agreement caused by delay or failure to perform its undertakings hereunder, when the delay or failure is due to acts including, without limitation, floods, hurricanes, earthquakes, fires, civil war and unrest, acts of public authorities, enemies of state, strikes, power failures, and all other acts of God, or delays or defaults caused by common carriers, which cannot be reasonably foreseen or provided against and the parties hereto shall, forthwith and in good faith, use all commercially reasonable efforts to rectify and overcome the effect and impact of such *force majeure* event.

12.3 **Currency.** Unless otherwise expressly stated, all dollar amounts referred to in this Agreement are expressed and shall be payable in United States Dollars.

12.4 **Gender and Number.** In this Agreement, unless the context otherwise requires, words importing number include the singular and plural, words importing gender include all genders, and words importing persons shall include firms, corporations, trusts, estates, government agencies and departments and all other types of entities, and *vice versa*.

12.5 **Severable Provisions.** Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity of unenforceability of one or more provisions of this Agreement by any court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

12.6 **Headings.** Headings used in this Agreement are for convenience of reference only and do not form a part of this Agreement, nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

12.7 **Successor Entity.** Any reference in this Agreement to any entity shall include and shall be deemed to be a reference to any entity that is a successor to that entity.

12.8 Enurement and Assignment. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective legal personal representatives, successors and assigns. Trafalgar Trading shall have the right, at its sole discretion, to assign all and any of its rights and obligations of this Agreement to an affiliated or related company of Trafalgar Trading, but the Association shall not have any corresponding right of assignment without the prior written consent of Trafalgar Trading.

12.9 No Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

12.10 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereto irrevocably attorns and submits to the jurisdiction of the courts of the Province of Ontario.

12.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the transaction contemplated herein and supersedes all prior agreements, and there are no other warranties, representations or agreements between the parties hereto in connection with the transactions contemplated herein.

12.12 Counterparts. This Agreement may be executed by facsimile (with originals to follow) and in two (2) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

TRAFALGAR TRADING LIMITED

Per: _____ Name EDWARD K. FUAPK

I have authority to bind the corporation.

CANADIAN AMATEUR FOOTBALL ASSOCIATION

Per: _____ Name: Jack Jordan
CEO

I have authority to bind the Association.

Per: _____ Name: _____

I have authority to bind the Association.

278

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMIED, 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

EXHIBIT "U"

This is the Exhibit marked "U" referred to in the Affidavit of Rory Gorman sworn herein this 3rd day of June 2010.

BEFORE ME:

COMMISSIONER FOR OATHS

McINNES COOPER

BARRISTERS SOLICITORS & TRADE MARK AGENTS

Edwin C. Harris, Q.C.
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Our File: EH-3787
March 14, 2006

ParkLane Financial Group Ltd.
ATTENTION: Mr. Ron Olsthoorn
1455 Lakeshore Road, Suite 205 South
BURLINGTON ON L7S 2J1

Dear Sirs:

ParkLane Donations for Canada (the "Program")

You have asked our opinion concerning the Program described in the Statement of Facts as of March 10, 2006, a copy of which is attached to this opinion as schedule A. Terms defined in schedule A are used in the same sense in this opinion.

This opinion is for your use only. It may be shown for information, but copies should not be provided, to Donors, potential Donors, or their professional tax advisers. We assume no responsibility to Donors, potential Donors, Charities, or their advisers.

This opinion takes into account the current provisions of the Canadian Income Tax Act (the "Act"), the Regulations under the Act (the "Regulations"), our understanding of the published administrative practices of the Canada Revenue Agency (the "CRA"), and proposed amendments to the Act and to the Regulations that have been publicly announced. For purposes of this opinion, it is assumed that those proposed amendments will be enacted in the form in which they were last proposed. Our opinion is restricted to the application of the Act and the Regulations to the matters herein described and does not address other federal taxes or provincial, territorial, or foreign taxes. Except where otherwise indicated, this opinion does not take into account possible changes in the law, whether legislative, administrative, or judicial.

A contribution of cash to the Master Trust should not have any Canadian tax implications.

We are aware that the CRA has suggested that an interest in a discretionary trust may have some value, depending upon the circumstances. If the interests in the Master Trust acquired by the Donors were found to have some value at the time when the Donors became Beneficiaries, it would probably follow that the Donors would have received a "benefit", which arguably could be related to the donations of those interests that they would subsequently make. In that event, proposed subparagraph 248(32)(a)(iii) of the Act might apply to deem that value to be an "advantage", which would need to be deducted, under proposed subsection 248(31), from the "eligible amount" of the gift that would qualify for a tax credit.

In our opinion, however, no measurable benefit results when an individual, such as a Donor, is made a discretionary beneficiary of a trust having at least one other discretionary beneficiary with the same type or class of interest, because there is no assurance that any one beneficiary will receive anything from the trust. In those circumstances, in our opinion, the beneficial interests at that point have no value, and this, in our view, is supported by decisions of the English House of Lords in Gartside v. IRC, [1968] A.C. 553, and Vestey v. IRC [No. 2], [1979] 2 All E.R. 225, 235-36 (Ch. D.), affirmed, [1980] A.C. 1148, 1171, 1189 (H.L.). To use the language of the Federal Court of Appeal in Brown v. The Queen, 2003 DTC 5298, at page 5307, the "benefit" is simply too vague to ascribe a value to it ... the benefit referred to is not ascertained or ascertainable".

Consequently, in our opinion, neither the naming of Donors as Beneficiaries of the Master Trust nor the issue to them by the Master Trust of Investment Sub-Trust Units of an Investment Sub-Trust, which, when received by the Donors, are also discretionary interests, would confer a measurable benefit on the Donors.

The next question is whether any benefit is received by such a Beneficiary when all the Beneficiaries of the same class mutually agree to donate their Investment Sub-Trust Units to a Charity. In our view, the only benefit that could be received by a Beneficiary as a result of such an agreement would be the right to claim a tax credit. Such a right, of course, is available for any gift. In the Department of Finance's technical notes to proposed subsection 248(30), it is stated that "the tax benefit available to a taxpayer, by way of a charitable donation deduction or credit, is not considered an advantage or benefit". This also appears to be the position of our tax courts. See Aikman v. The Queen, 2000 DTC 1874, 1875 (T.C.C.; affirmed, 2002 DTC 6874 (F.C.A.)); The Queen v. Friedberg, 92 DTC 6031, 6032 (F.C.A.; affirmed, 93 DTC 5507 (S.C.C.)). In The Queen v. Esskay Farms Limited, 76 DTC 6010, the Federal Court Trial Division held that a tax advantage is not a "benefit" within the meaning of the predecessor of section 246 of the Act.

It does not appear, therefore, that any Donor will have received a "benefit" of the type referred to in proposed paragraph 248(32)(a) of the Act, whether as consideration or in gratitude for the gift or that in any other way is related to the gift. Consequently, on the assumption that the Donor has not incurred a "limited recourse debt", as defined in proposed subsection 143.2(6.1) of the Act, in connection with the gift, it appears that proposed subsection 248(32) should not apply to deem the Donor to have received an "advantage" that must be deducted in determining the "eligible amount of the gift" under proposed subsection 248(31). Therefore, in our view, the tax credit available under section 118.1 of the Act should not be reduced for this reason.

By the acquisition of the Investment Sub-Trust Units from an Investment Sub-Trust for the price of $3,750 per Unit, which amount, as the holder of all Units, the Master Trust could claim to be repaid to it, the Investment Sub-Trust Units would have both a cost to the Master Trust and a fair market value at the time of acquisition of $3,750 each. Consequently, though the Master Trust is deemed, under paragraph 251(1)(b) of the Act, not to deal at arm's length with the Investment Sub-Trust, the cost of each such Unit to the Master Trust for tax purposes should be $3,750, notwithstanding paragraph 69(1)(a) of the Act.

When the Master Trust distributes the Investment Sub-Trust Units to two or more Beneficiaries of a particular class in satisfaction of their respective beneficial interests in the Master Trust, as

previously noted, those Units would not have any fair market value in the hands of the individual Beneficiaries. Since the Master Trust is a "personal trust" under paragraph (b) of the definition in subsection 248(1) of the Act and since subsection 75(2) of the Act should have no application to the Master Trust, the provisions of subsection 107(2) of the Act should apply to the distribution as follows:

(1) The Master Trust is deemed to dispose of the Units for their "cost amount" of $3,750 each, resulting in neither capital gain nor capital loss to the Master Trust;

(2) Each Unit acquired by a Beneficiary is deemed to have been acquired at a cost equal to the same amount, namely $3,750;

(3) Each Beneficiary's proceeds of disposition of his or her beneficial interest in the Master Trust (which would be a "capital interest" as defined in subsection 108(1) of the Act) are deemed to be equal to the cost at which he or she is deemed to have acquired those Units - that is, $3,750 per Unit;

(4) While the Beneficiaries acquired their beneficial interests in the Master Trust at no actual cost, subsection 107(1) of the Act provides that, for purposes of computing any capital gain from the disposition of such an interest, a Beneficiary's adjusted cost base of that interest is deemed to equal the Beneficiary's "cost amount" of that interest. "Cost amount" is defined for this purpose in subsection 108(1) of the Act to equal the cost amount to the trust (that is, $3,750 per Unit) of the Units distributed to that Beneficiary. Consequently the Beneficiaries should not have a capital gain by reason of the disposition of their beneficial interests in the Master Trust.

The collective transfer of Units by all Beneficiaries to the Escrow Agent as their agent for purposes of donating those Units to the Charity would not represent a disposition of those Units because the beneficial ownership of those Units will not have changed. It appears that those Units, held by a single registered holder, would now have a fair market value equal to their redemption amount of $3,750 per Unit plus a pro-rata portion of the Initial Deposit, since the holder could require their redemption for that amount in cash. Even if a Donor's interest in an Investment Sub-Trust is regarded as acquiring some value by reason of the mutual agreement of all Donors of the same class to donate their beneficial interests, we do not believe that this value would represent a "benefit" under proposed paragraph 248(32)(a) of the Act: each Donor, by the mutual agreement is giving consideration to the others, which arguably has the same value as any value received. Again, all that is gained by any Donor is the prospect of receiving a tax credit for the amount donated.

The Charity will issue to each Donor a receipt for the cash gift and a further receipt for the gift in kind of Units equal to the "eligible amount" of the gift, which is defined in proposed subsection 248(31) of the Act as the excess of the "fair market value" of the gifted property over the amount of any "advantage" in respect of the gift. As previously noted, there does not appear to be any such "advantage".

While the actual fair market value of the gift made by each Donor would be in excess of $3,750 per Unit because the Units will now carry a pro-rata right to a distribution, as well, of the Initial Deposit, proposed subsection 248(35) of the Act deems the fair market value of the gift, for this

purpose, to be the lesser of the fair market value otherwise determined (that is, $3,750 plus) and the adjusted cost base of each such Unit to the Donor immediately before the gift is made (that is, $3,750). Since the adjusted cost base of $3,750 per Unit is the lesser amount, the "eligible amount" of the gift should be $3,750 per Unit, and this is the amount for which the Charity should issue receipts for the gifts in kind, even though it will actually receive a higher amount after it calls for the Investment Sub-Trust to redeem its Units.

By making a gift of units having a fair market value in excess of their adjusted cost base of $3,750 each, the Donors will be deemed, under subparagraph 69(1)(b)(ii) of the Act, to have disposed of those Units for proceeds of disposition equal to that fair market value (since it appears that no election can be made under proposed subsection 118.1(9) of the Act). This will require each Donor to report a small capital gain (equal, per Unit, to a pro-rata portion of the Initial Deposit) for the year in which the charitable donation is made.

Anti-avoidance provisions that might apply to gifts are found in proposed subsection 248(38) and section 245 of the Act. The latter section provides the general anti-avoidance rule ("GAAR"), which is also referred to in proposed paragraph 248(38)(b). The apparent effect of that paragraph is, if the GAAR is found to apply to a transaction or series of transactions to which a gift "relates", that the "eligible amount" of the gift is deemed to be nil even if that result might otherwise not follow from an application of the GAAR. It is not clear, if the GAAR is found to apply to the gift in kind, whether the cash gift "relates" to the transactions involving the gift in kind and so might be denied a tax credit. There is no policy reason why this should happen, though the term "relates to" could have broad scope.

As well, proposed paragraph 248(38)(a) of the Act deems the "eligible amount" of a gift to be nil "if it can reasonably be concluded that the particular gift relates to a transaction or series of transactions one of the purposes of which is to avoid the application of subsection (35) to a gift of any property". Like all vague anti-avoidance provisions, this one is difficult to interpret and apply. As indicated in schedule A, the structure of the series of transactions described therein has a number of business purposes. In any event, since, as already indicated, proposed subsection 248(35) of the Act applies in this case to reduce the "eligible amount" of the gift to an amount less than the actual fair market value of the gifted property at the time of the gift, in our opinion it cannot be said that the application of that subsection has been avoided or that one of the purposes of the series of transactions was to avoid its application.

The final question is whether the GAAR might apply to nullify some of the tax advantages that the Donors might otherwise enjoy. It would not be hard to find that the Donors would have received a "tax benefit" under subsection 245(1) in an "avoidance transaction" as described in subsections 245(2) and (3).

The key question here is whether these transactions would give rise to an "abuse" or "misuse" within the meaning of subsection 245(4). It was hoped that the decisions of the Supreme Court of Canada in Canada Trustco Mortgage Company v. The Queen, 2005 DTC 5523, and Kaulius (Mathew) v. The Queen, 2005 DTC 5538, would clarify the distinction between legitimate tax planning, where the GAAR would have no application, and "abusive tax avoidance", to which the GAAR could apply by reason of meeting the requirements of subsection 245(4) of the Act. In Kaulius, the Supreme Court upheld a GAAR assessment, whereas in Canada Trustco a GAAR assessment was overturned. Most commentators have concluded that, while the Supreme Court

has expressed the criteria in new language, the dividing line remains unclear. It may be useful, however, to refer to some of the tests formulated by the Supreme Court (without attempting a full summary of those decisions) and to some subsequent GAAR decisions of the Tax Court of Canada.

The Supreme Court stressed the importance of having some certainty for purposes of tax planning and therefore concluded that the Crown has the burden of demonstrating the "misuse" or "abuse" required by subsection 245(4) of the Act for the GAAR to apply. The Court stated that "the GAAR was enacted as a provision of last resort in order to address abusive tax avoidance, it was not intended to introduce uncertainty in tax planning." The Court refers to the need to determine the "object, spirit and purpose" of the provisions of the Act alleged to have been abused: "the specific provisions at issue must be interpreted in their legislative context, together with other related and relevant provisions, in light of the purposes that are promoted by those provisions and their statutory schemes"; but "the abusive nature of the transaction must be clear".

The Court indicates that this process may involve a reference to "permissible extrinsic aids". Although it does not clarify how one determines what material outside the Act itself is "permissible", it refers several times to the explanatory notes provided by the Department of Finance when the GAAR provisions were first introduced. It is not clear whether, in determining whether certain provisions of the Act have been abused, the Court would treat as "permissible" a reference to the explanatory notes accompanying the introduction of the allegedly abused provisions; this raises a serious question whether the Department of Finance is to be allowed to make law by alleging purposes that are not reflected in the language of the provisions passed by Parliament. Consequently it is not clear how much weight should be assigned to sweeping statements of purpose contained in such "technical notes" when they clearly go beyond the language of a very technical package of amendments, as is the case with the proposed amendments to section 248 of the Act.

The Court stated that "abusive tax avoidance" will be found "when a taxpayer relies on specific provisions of the *Income Tax Act* in order to achieve an outcome that those provisions seek to prevent. As well, abusive tax avoidance will occur when a transaction defeats the underlying rationale of the provisions that are relied upon. An abuse may also result from an arrangement that circumvents the application of certain provisions, such as specific anti-avoidance rules, in a manner that frustrates or defeats the object, spirit or purpose of those provisions." This is apparently the basis on which the Court held in Kaulius that the anti-avoidance provisions of former subsection 18(13) of the Act had been used in a manner not intended by the drafter so as to achieve a "tax benefit".

The question arises whether the Program uses the anti-avoidance provisions of proposed subsections 248(35) and (38) of the Act so as to undermine their intent. The situation here is different from that in Kaulius, where an anti-avoidance provision was used to create a "tax benefit"; here the anti-avoidance provisions of proposed subsection 248(35) would apply so as to create a capital gain, and, as a result, in our opinion, the anti-avoidance provisions of proposed paragraph 248(38)(a) do not apply.

The question then might be what proposed subsection 248(35) was intended to prevent. The technical notes accompanying that subsection (assuming that they are relevant in applying

subsection 245(4)) offer no explanation of its purpose. The technical notes to proposed subsection 248(30) state that "If the primary motivation of a taxpayer for entering into a transaction or series of transactions is to return a profit to the taxpayer by way of a combination of tax and other benefits, the taxpayer may not be impoverished by the transfer of a property to a charity. Subsection 248(30) is not intended to allow a taxpayer to profit by the making of a gift." The technical notes to proposed subsection 248(32) indicate that it "is intended to apply in respect of any transaction or series of transactions having either the purpose or the effect of reducing the economic impact to a donor of a gift". Nevertheless the wording of proposed subsections 248(30) and (32) does not go as far as suggested by the technical notes. It is questionable whether the quoted statements are enough to represent the policy of the proposed subsections that they accompany. As well, the introductory technical notes to proposed subsections 248(30) to (33) state that "In general, these provisions are intended to reflect the policy that the amount eligible for an income tax benefit to a donor, by way of a charitable donation deduction or credit ..., should reflect the economic impact to the donor (before considering the income tax benefit) of the gift or contribution." In our opinion all these statements go beyond the language of the provisions that Parliament is being asked to enact.

Proposed subsection 248(35) of the Act appears to be directed at the "buy low, donate high" programs, several of which have been the subject of tax appeals. The Program is not of that nature. There is no evidence that the proposed amendments were intended to reduce the "eligible amount of a gift" below the amount of cash actually received by a Charity.

Recent decisions of Chief Justice Bowman of the Tax Court of Canada in Evans v. The Queen, 2005 DTC 1762, and XCo Investments Limited v. The Queen, 2005 DTC 1731, indicate that the burden on the Crown approving "misuse" or "abuse" in a GAAR case remains heavy. This is particularly significant because the Supreme Court of Canada in Canada Trustco indicated that appeal courts should not likely overturn a decision of the Tax Court of Canada on this issue.

While the GAAR was raised by the Crown in XCo, the Crown succeeded under a specific anti-avoidance provision, namely subsection 103(1) of the Act, but not to the same extent as if its GAAR argument had been sustained. The following comment by Chief Justice Bowman suggests that the Supreme Court's reference to abuse of an anti-avoidance provision is not being given broad scope:

> "Where a specific anti-avoidance section covers a transaction but does not in the Minister's view provide a remedy that the Minister considers sufficient, section 245 is not there to permit the Minister to top up the remedy that the Minister believes to be inadequate."

This language may counter any argument that, while proposed subsection 248(35) applies here to cause a taxpayer to pay more tax than would otherwise be the case, the GAAR should override it to impose still more tax. Since, however, the Tax Court's decision is under appeal, we shall need to see whether the Federal Court of Appeal agrees with Chief Justice Bowman's approach.

The strongest argument against the application of the GAAR is that the Charity would be receiving more than the full amount for which it would be issuing receipts, so that the total receipts would not be inflated.

Summary

Subject to the remaining uncertainties regarding the possible application of the GAAR, in our opinion a Donor should be entitled to tax credits for both the cash donation and the donation in kind of sub-trust units.

Yours very truly,

McInnes Cooper

E C Harris

Edwin C. Harris

ECH/bc
Enclosure

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMIED, 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

EXHIBIT "V"

This is the Exhibit marked "V" referred to in the Affidavit of Rory Gorman sworn herein this 3rd day of June 2010.

BEFORE ME:

COMMISSIONER FOR OATHS

PARKLANE

DONATIONS FOR CANADA

Signing Documents:

1. Pledge to Charity
2. Application to be designated as a Beneficiary
3. Tax Risk Disclosure Statement
4. Donor Declaration
5. Unit Transfer Form

IF YOUR CLIENT HAS CHOSEN THE FINANCING OPTION:

5. Loan Application
6. Promissory Note
7. Direction to ParkLane Financial Group Ltd. – re: payments to Lender and Financing Fee to ParkLane

Procedure:

1. Donor makes a cash donation of $250.00 per $1,000.00 donation to a participating Charity. The Donor provides a current-dated cheque or bank draft, and if financing, Donor provides post-dated cheques as per the schedule (all cheques are payable to "ParkLane Financial Group Ltd., In Trust").
2. Donor completes and signs Application to be designated as a Beneficiary.
3. Donor reads and signs Donor Declaration.
4. Donor reads and signs Tax Risk Disclosure Statement.
4. Donor reads and signs Unit Transfer form.

IF YOUR CLIENT HAS CHOSEN THE FINANCING OPTION:

6. Donor reads and completes the Loan Application and Agreement and Promissory Note in respect of financing the cash donation.
7. Donor reads and completes direction to ParkLane Financial Group Ltd., in respect of pre-paid interest to the Lender, re-payment of principal to the Lender, and financing fee to ParkLane.

Please return signed original documents plus current-dated cheque or bank draft, and post-dated cheques, to the address shown below:

ParkLane Financial Group Ltd.
1455 Lakeshore Road, Suite 205 South, Burlington, ON L7S 2J1
Telephone # 1-877-774-3486 Fax # 905-639-2127

PRIVACY POLICY

PARKLANE FINANCIAL GROUP LTD. ("PARKLANE")

Your privacy is very important to us. Set forth below are our policies with respect to personal information of clients which we collect, retain, use and disclose.

In connection with the ParkLane Donations for Canada Program (the "Program"), we collect and maintain personal information about our clients who make donations to charities participating in the Program. We collect your personal information to enable us to provide you with services and proper administration in connection with your participation in the Program, to meet legal and regulatory requirements, and for any other purpose to which you may consent in the future. Your personal information is collected from your donor documents or other forms that you submit to us, your transactions with us and our affiliates, and meetings and telephone conversations with you.

Unless you otherwise advise us in writing, by providing us with your personal information, you have consented to our collection, retention, use and disclosure of your information as provided herein. We collect and maintain your personal information in order to give you the best possible service, to allow us to establish your identity, to prevent errors and to prevent fraud, to advise you of future opportunities, and to otherwise comply with provincial and federal laws.

We may disclose your personal information to third parties, when necessary, and to our affiliates in connection with the services we provide related to your participation in the Program, including without limitation:

(a) financial service providers, such as lenders or banks and others used to finance or facilitate transactions by, or operations of, the Program;

(b) other service providers to the Program, such as accounting, legal, or tax preparation services; and

(c) taxation and regulatory authorities and agencies.

We seek to safeguard carefully your private information and, to that end to restrict access to personal information about you only to those employees and other persons who need to know the information to enable ParkLane to provide services to you. Each employee of ParkLane is responsible for ensuring the confidentiality of all personal information he or she may access.

Your personal information is maintained at ParkLane's offices. Your information may also be stored in a secure off-site storage facility. You may access your personal information to verify its accuracy, to withdraw your consent to any of the foregoing collections, uses and/or disclosures being made of your personal information and you may update your information by contacting our ParkLane offices at the following number: 905.639.5646 or toll free at 1.877.776.3486. Please note that the use of your personal information is essential for the successful operation of the Program and should you choose not to give or to withdraw your consent to the collection, retention, use and disclosure of your personal information as outlined above, ParkLane reserves the right at its sole discretion to reject or cancel your participation in the Program.

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PLEDGE

TO: PARKLANE FINANCIAL GROUP LTD. (the "Escrow Agent")

I hereby pledge to make a cash gift in the amount of $ to

_____(the "Charity"),

and I hereby submit my cheque in that amount payable to you, the Escrow Agent, in trust. The amount so pledged by me is made under seal, is fully enforceable by the Charity, and I instruct you to transmit that amount to the Charity on my behalf.

DATED this day of , 2006.

NAME OF PLEDGOR:	
ADDRESS:	
TELEPHONE:	
FAX:	
E-MAIL:	

_____ _____(seal)

Witness:

ACKNOWLEDGMENT

TO:

COPY: THE TRUSTEE OF THE DONATIONS CANADA FINANCIAL TRUST

We hereby acknowledge that we or a law firm designated by us and acting as escrow agent have received your pledge for a cash gift in the amount of $ to:

_____ ("Charity")

and are holding the amount so pledged in escrow for the benefit of the Charity.

DATED this ___ day of _____, 2006.

PARKLANE FINANCIAL GROUP LTD.

Per: _____

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PLEDGE
("Enduring Property")

TO: **PARKLANE FINANCIAL GROUP LTD. (the "Escrow Agent")**

PLEDGE

I hereby pledge to make a cash gift in the amount of $ to

_____(the "Charity"),

and I hereby submit my cheque in that amount payable to you, the Escrow Agent, in trust. The amount so pledged by me is under seal, is fully enforceable by the Charity, and I instruct you to transmit that amount to the Charity on my behalf.

The cash gift, when paid to the Charity, or property substituted for it by one or more substitutions, shall be retained by the Charity (or by a "transferee" as provided for in paragraph (c) of the definition of "endowment property" in subsection 149.1(1) of the *Income Tax Act* (Canada)) for not less than 10 years from the date that the gift was received by the Charity, subject to the exception provided for in that paragraph (c).

DATED this day of , 2006.

NAME OF PLEDGOR:	
ADDRESS:	
TELEPHONE:	
FAX:	
E-MAIL:	

_____ _____(seal) ⊗
Witness:

2006 V2

ACKNOWLEDGMENT
("Enduring Property")

TO:

COPY: THE TRUSTEE OF THE DONATIONS CANADA FINANCIAL TRUST

We hereby acknowledge that we or a law firm designated by us and acting as escrow agent have received your pledge for a cash gift in the amount of $ to:

_____ ("Charity")

and are holding the amount so pledged in escrow for the benefit of the Charity.

DATED this ___ day of _____, 2006.

PARKLANE FINANCIAL GROUP LTD.

Per: _____

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APPLICATION TO BE DESIGNATED AS A BENEFICIARY

To: THE TRUSTEE OF THE DONATIONS CANADA FINANCIAL TRUST (the "Trust")

I hereby apply to be designated as a beneficiary of the Trust.

I am interested in supporting the work of the charity to which I have made a pledge of a cash gift (the "Charity") and would like to see it benefit from further gifts.

I understand that, if my application is accepted, I will be designated as a beneficiary of one or more particular classes but that the entitlement of a beneficiary of each such class to a distribution, if any, from the Trust is purely discretionary with the Trustee, though I understand that I will be able to assign my beneficial interest to the Charity.

DATED this day of , 2006.

NAME OF PLEDGOR:	
ADDRESS:	
TELEPHONE:	
FAX:	
E-MAIL:	

Enclosure

TAX RISK DISCLOSURE STATEMENT

Donations For Canada Program

The ParkLane Donations for Canada Program (the "Program") is being offered by ParkLane Financial Group Ltd. ("ParkLane") to assist registered Canadian amateur athletic associations, foundations, charities and other qualified donees under the *Income Tax Act* (Canada) (the "Act") ("Charity" or "Charities") in raising long-term and short-term charitable funding. The Program is principally designed to provide a donor resident in Canada ("Donor" or "Donors") with the means of effecting: (1) a cash donation to a Charity, entitling such Donor to a cash receipt; and (2) a distribution from a sub-trust ("Sub-Trust") of a Canadian-resident trust ("Master Trust") to a Charity, entitling the Donor to a donation-in-kind receipt.

Tax Opinion & Advice

Edwin C. Harris, Q.C., of McInnes Cooper, tax counsel to ParkLane, has, based on the interpretation of the Act and favourable case law, provided a legal opinion to ParkLane outlining the tax consequences and the intended results for a Donor making a donation under the Program. **ParkLane recommends and urges any prospective donor interested in participating in the Program to review the tax consequences of making a donation with his or her professional legal, accounting and tax advisor.**

Tax Shelter Identification Number

Although the Program is not considered to fit within the tax shelter definition in the Act, it has nevertheless been registered as a tax shelter to afford protection to Donors and those assisting in raising funds for the Charities in the event that the Program might be deemed a tax shelter by revenue authorities. The Program is registered federally with the Canada Revenue Agency ("CRA") as a tax shelter under Tax Shelter Identification No. TS-070623. The Program is registered in the Province of Quebec with Revenu Quebec ("RQ") as a tax shelter under Tax Shelter Identification No. QAF-05-01097.

The identification numbers issued for this tax shelter must be included in any income tax return filed by a Donor. **Issuance of the tax shelter identification number by CRA and RQ is for administrative purposes only and does not in any way confirm the entitlement of a Donor to claim any tax benefits associated with the tax shelter.**

Review of Program by CRA & RQ

CRA or RQ may review or audit the Program and the donations made by Donors in respect of the Program and may request from Donors further information or the completion of questionnaires relating to the Donors' participation in the Program. There is a possibility that, as a result of such audit or review process, CRA or RQ may reassess a Donor in respect of the income tax consequences arising from a Donor's donation under the Program. Any such challenge of the intended income tax consequences under the Program by CRA or RQ may or may not be successful.

ParkLane has worked closely with leading Canadian accounting and tax law professionals in the structure, design and development of the Program. Should CRA or RQ choose to challenge the tax structure of the Program, ParkLane believes that very strong arguments can be made in support of its position. ParkLane has at its disposal a contingency fund of $500,000 set aside to support Donors in dealing with audits, reassessments or challenges made against the Program. This fund will remain in place until December 31, 2010 and will be used exclusively to provide assistance to Donors, which, in the past, has included assisting clients in responding to CRA

questionnaires drafting and filing of notices of objection, preparing appeals and funding tax litigation.

While ParkLane intends to assist and support Donors in the event of such challenges and has committed the funds in this regard, ParkLane cannot guarantee that each Donor will receive the income tax consequences contemplated under the Program and makes no representations in respect of a Donor's entitlement to claim the tax credits in respect of any donations made pursuant to the Program. ParkLane cautions each Donor that he or she may not ultimately obtain the income tax results designed to be achieved under the Program and may, in fact, incur certain costs and interest payments associated with any reassessment by the CRA or RQ.

Income Tax Results – Best Case & Worst Case Scenarios

- **In the event the Program is NOT successfully challenged by the CRA or RQ, the potential tax results are believed to be as follows:**

1. The Donor should be able to claim a tax credit for the donated cash and for a donation of $3,750 per Sub-Trust unit donated;

2. The Donor will be required to report a small capital gain to the extent that the redemption value of the donated Sub-Trust units exceeds $3,750 per Sub-Trust unit.

For Example (assuming the contemplated $10,000 aggregate donation of an Ontario-resident Donor):

Tax Credit*	=$4,640
Cash Contribution	=$2,500
Net Tax Credit	=$2,140
Tax Credit/Cash Contribution Ratio (expressed as a percentage)	= 86%

** Based on the highest marginal tax rate of 46% and assuming a previous donation of at least $200.*

- **In the event the Program is successfully challenged by the CRA or RQ, the potential tax results are believed to be as follows:**

1. The designation of Donors as beneficiaries of the Master Trust, or the mutual agreement of holders of the same class of Sub-Trust units to donate those units, might be regarded as the receipt of an "advantage" relating to their non-cash donations. This would reduce or eliminate, to the extent of the value of the "advantage", the amount of the donation made by a Donor that would qualify for a tax credit;

2. The Donors might be regarded as making a capital gain of $3,750 per Sub-Trust unit received in discharge of the Donors' capital interests in the Master Trust or on their transfer of the Sub-Trust units to the escrow agent in the Program; or

3. The fair market of the Sub-Trust units at the time of their donation might be found to be less than $3,750 per unit, which could reduce, to that extent, the amount of the donation made by a Donor qualifying for a tax credit.

It seems likely, however, that the Donor's cash donation will remain fully eligible for a tax credit and that the mere borrowing of money, on a full-recourse basis, to fund the cash donation would not represent an "advantage" that would reduce the amount of that donation made by a Donor eligible for a tax credit.

For Example (assuming the contemplated $10,000 aggregate donation of an Ontario-resident Donor for which only the $2,500 cash donation is recognized):

Tax Credit*	=$1,160
Cash Contribution	=$2,500
Net Tax Credit	=($1,340) [minus]
Tax Credit/Cash Contribution Ratio (expressed as a percentage)	= (53.6%) [minus]

** Based on the highest marginal tax rate of 46% and assuming a previous donation of at least $200.*

The UNDERSIGNED, by signing below, hereby acknowledges that he/she has read and fully understands the contents of this "Tax Risk Disclosure Statement" prepared by ParkLane Financial Group Ltd.

_____

Signature

_____

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DONOR DECLARATION

THE UNDERSIGNED, (the "**Declarant**") of the Town/City of in the Province of has knowledge of the matters herein declared and hereby declares and agrees as follows:

1. I have read and fully understand all and any written materials and documents in the marketing and donor kit prepared by ParkLane Financial Group Ltd. ("ParkLane"), including, without limitation, the "Tax Risk Disclosure Statement" (the "**Documents**") in respect of my participation in, and donation to, a charity in respect of the ParkLane Donations for Canada Program (the "**Program**"). I acknowledge that, except for what is contained in the Documents, no other promise, representation or warranty has been made by ParkLane to, or relied upon, by the undersigned.

2. I have received independent professional advice in respect of the Program from my own personal advisor/lawyer/accountant (my "**Advisor**"), as the case may be. I fully understand such advice and information provided to me by my Advisor in respect of all and any legal, commercial/business and tax consequences related to my participation in the Program (including, without limitation, my donation of cash pledged to a registered Canadian Amateur Athletic Association, foundation, charity or other qualified donee under the *Income Tax Act* (Canada) (the "**Charity**") and my application to become a beneficiary of the Donations Canada Financial Trust (the "**Master Trust**"), the assignment of my beneficial interest in a sub-trust of the Master Trust to the Charity and all my costs as well as charity fundraising fees up to eight percent (8%) of the aggregate donation amount associated with the Program. I am prepared to accept any and all tax risks whatsoever related thereto, including the risk that the charitable donation, or a portion of it, may be reassessed and even denied.

3. I understand that to facilitate various transactions in connection with the Program, monies have been or will be deposited to and/or transferred from accounts with one or two chartered bank(s) (collectively, the "**Bank**"). I further acknowledge that ParkLane is acting, in addition to its role in marketing and facilitating the Program, as escrow agent in connection with the Program, and in such specific capacity as escrow agent, is authorized to receive funds and to disburse them in accordance with written directions. Aylesworth LLP ("**Aylesworth**") is also acting as escrow agent in respect of the Program. I hereby unconditionally release the Bank, ParkLane and Aylesworth and their respective partners, officers, authorized agents and employees, from any and all claims or liabilities of any kind whatsoever that I or my executors and assigns, now has or in the future may have with respect to matters occurring on, prior to or after the date hereof, arising out of, based upon, resulting from or in connection with the Declarant participating in the Program.

4. I further acknowledge and agree that: (a) the Bank has not in any manner participated (except as described above), endorsed or passed on the merits of the Program; and (b) each of ParkLane, the Bank and Aylesworth may rely on representations set out in Paragraphs 2 and 3 above and on the provisions of this Declaration, notwithstanding the fact that neither is a signatory to this Declaration.

5. The pledge by the Declarant to make a cash gift to the Charity in respect of the Program is made under seal, is fully enforceable by the Charity and the amount payable under such pledge will be gifted to the Charity irrespective of any other charitable distributions made to the Charity pursuant to the Program.

6. The trustee of the Master Trust shall have full and complete discretion whether or not to accept the Declarant as a beneficiary of the Master Trust and whether or not, after such acceptance, to continue the Declarant as a beneficiary of the Master Trust. Further, I acknowledge and agree that I: (a) am under no obligation to apply to become a beneficiary of the Master Trust; (b) am paying no consideration to apply to become a beneficiary of the Master Trust should I choose to do so; and (c) have no entitlement or expectation to receive any distribution from the Master Trust. My interest in becoming a beneficiary of the Master Trust is to support the work of the Charity and to see it benefit from further gifts.

7. In the event the Declarant is accepted as a beneficiary of the Master Trust, any trust documents which the Declarant, as such beneficiary, is entitled to review shall remain confidential and the Declarant hereby agrees and covenants that he/she shall not provide, distribute or disseminate any such trust documents to any third party.

8. Any loan agreement executed by the undersigned in favour of any lender of loan proceeds (the "**Loan Proceeds**") in order to finance, if applicable, a portion of the cash proceeds contributed by the Declarant in respect of the Program constitutes a full recourse loan and such loan will be repaid only in cash in the full amount of the outstanding Loan Proceeds.

DATED this day of , 2006.

Signed in the presence of:

_____(seal)⊗

_____
Witness:

DONATIONS CANADA INVESTMENT SUB-TRUST _____ (the "Sub-Trust")
TRANSFER OF UNITS OF THE SUB-TRUST

TO: THE TRUSTEE OF THE SUB-TRUST
AND TO: PARKLANE FINANCIAL GROUP LTD. (the "Escrow Agent")

WHEREAS I, the undersigned, am the registered holder of Units (the "Units") of the Sub-Trust (hereinafter called the "Property");

AND WHEREAS I and the other registered holders of Units of the Sub-Trust have mutually agreed to donate our respective Units to

_____ (the "Charity"),

AND WHEREAS the Escrow Agent has agreed to act as our agent to hold, on our behalf in proportion to the number of Units of the Sub-Trust that each of us respectively transferred to the Escrow Agent, all Units of the Sub-Trust for purposes of donating those Units, on our behalf, to the Charity;

NOW THEREFORE, in consideration of our mutual agreement, I hereby irrevocably transfer the registration of the Property to the Escrow Agent for the purposes hereinbefore indicated and direct the Escrow Agent, on my behalf, to convey the beneficial ownership and registration of the Property to the Charity as a gift in kind, and I direct the Trustee to record the transfer of the registration of the Property to the Escrow Agent.

DATED this _____ day of _____, 2006.

Signed in the presence of:

_____ (seal)⊗

_____
Witness:

USE THIS CHECKLIST ONLY IF YOUR CLIENT HAS NOT FINANCED THE DONATION

Checklist:

Please ensure you have the following prior to submission:

	Current-dated cheque or bank draft payable to "ParkLane Financial Group Ltd., In Trust" in the amount of $ in payment of the cash donation
	Signed Pledge Form
	Signed Pledge Form with regard to "Enduring Property"
	Signed Application to be Designated as a Beneficiary
	Signed Tax Risk Disclosure Statement
	Signed Donor Declaration
	Signed Unit Transfer Form

Please return signed original documents plus current-dated cheque or bank draft to the address shown below:

ParkLane Financial Group Ltd.
1455 Lakeshore Road, Suite 205 South, Burlington, ON L7S 2J1
Telephone # 1-877-776-3486 Fax # 905-639-2127

IF YOUR CLIENT IS FINANCING THE DONATION PLEASE COMPLETE THE BALANCE OF THE DOCUMENTATION ON THE NEXT PAGES.

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LOAN APPLICATION AND AGREEMENT

SUBMITTED AND AGREED TO BY: (the "Borrower")

TO AND IN FAVOUR OF: PLAZA CAPITAL FINANCE CORP. (the "Lender")

WHEREAS:

1. The Borrower wishes to borrow from the Lender $ (the "Loan Amount") and by this application hereby, promises to repay to the Lender the Loan Amount in accordance with the terms and conditions set forth herein; and

2. The Borrower acknowledges that the Lender will rely on the representations and warranties and other information made herein by the Borrower in processing this Loan Application (the "Application").

NOW THEREFORE THE BORROWER HEREBY REQUESTS THAT the Lender make a loan (the "Loan") to the Borrower of an amount equal to the Loan Amount in accordance with the terms and conditions set out in Schedule A and the Borrower hereby covenants and agrees to such terms and conditions.

Upon acceptance hereof by the Lender this Application, together with Schedule A, shall constitute a loan agreement between the Borrower and the Lender (the "Loan Agreement"), which Loan Agreement, together with a promissory note (in the form attached in Schedule B) issued in favour of the Lender in evidence of the Loan hereunder, shall constitute the entire agreement between the parties hereto in respect of the subject matter hereof and shall be subject to the terms and conditions in the attached Schedule A.

DATED this day of , 2006.

Witness:

Borrower's Address:

THE LENDER hereby accepts the above Application this _____ day of _____, 2006.

PLAZA CAPITAL FINANCE CORP.

by: _____

I have authority to bind the corporation.

2006 V2

SCHEDULE A

1. The Loan

1.1 The Loan Amount will be due and payable by the Borrower without the necessity of demand in equal installments, each in the amount of and , on each of March 15, 2006 & June 15, 2006 , September 15, 2006 and December 15, 2006 (the "Due Dates"), at the Lender's registered office at such address as may be, from time to time, indicated by the Lender to the Borrower as the address for payment of the Loan Amount. The Loan Amount shall be evidenced by a promissory note in the form attached as Schedule B hereto.

1.2 If this Application is accepted, the Lender agrees to advance on the date the Application is accepted, the Loan Amount on behalf of the Borrower to Aylesworth LLP, in trust for the Borrower, and upon such delivery the Lender will be deemed to have advanced to the Borrower the Loan Amount.

1.3 The Lender may, at its option exercisable by notice in writing, require the acceleration of the Due Date and the immediate repayment of the whole of the Loan Amount then outstanding at any time after any failure of the Borrower to pay when due any amount owing hereunder.

1.4 The Loan Amount shall bear interest, compounded annually, from and after the date hereof, at the rate of six percent (6%) per annum, calculated and payable to the Lender in advance (payable no later than at the time the Loan Amount is advanced to the Borrower), with interest on overdue interest at the rate fifteen percent (15%) per annum.

1.5 Subject to the pre-payment by the Borrower of the interest on the Loan Amount, as per Section 1.4, the Borrower may, at any time, pre-pay all or, from time to time, any part of the outstanding Loan Amount without notice or bonus.

2. Event of Default and Acknowledgement

2.1 Subject to the provisions of applicable law, in the event that the Borrower defaults in the payment of all or any portion of the Loan Amount when due, or the Borrower fails upon request to perform any act or execute any document requested by the Lender pursuant to the Loan or the Borrower is in default of any of his other obligations hereunder and has not cured such default within fifteen (15) days after notice from the Lender, or the Borrower commits an act of bankruptcy, or any proceeding in bankruptcy is commenced against the Borrower and which is not dismissed within thirty (30) days, then the entire unpaid amount of the Loan shall immediately become due and payable, together with interest thereon from the date on which the applicable event occurs at a rate of fifteen percent (15%) per annum calculated and payable monthly in arrears, with interest on overdue interest at the same rate.

2.2 The Borrower acknowledges and confirms that: (a) the Lender does not, by reviewing this Application, make any commitment to the Borrower to make the Loan; (b) the Lender has no responsibility for, is not and has not been associated with, and does not express any opinion with respect to, any representations, warranties, declarations or undertakings made by any other party in connection with the Loan or any other transaction; (c) Notwithstanding any other transaction involving the Borrower, the Borrower shall be irrevocably obligated to the Lender for payment of the Loan Amount without regard to any issues which may arise between the Borrower and any other person or persons; (d) the Lender shall not be obligated to exhaust all and any recourse available to it, if applicable, before looking to the Borrower for payment; and (e) nothing contained herein or in any other instrument will be interpreted so as to oblige the Lender to extend any time for payment of the Loan Amount under any circumstances.

2.3 The Borrower covenants and agrees to pay, as liquidated damages, all and any reasonable costs and fees for expenses incurred and for services rendered (expressly including, without limitation, any and all actual collections and enforcement fees and costs legal advice and legal fees and services on a solicitor and its own client basis) in respect of the breach of this Application and Loan Agreement or in connection with collecting and/or obtaining payment of the Loan Amount or any part thereof.

3. General

3.1 All dollar amounts referred to herein, including the symbol "$", are expressed and shall be payable in the lawful money of Canada.

3.2 This Application and Loan Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein (without regard to principles of conflicts of laws). Each of the Lender and Borrower hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

3.3 Upon acceptance by the Lender, this Application and Loan Agreement shall become binding upon the Borrower and his/her heirs, executors, administrators and assigns. The Lender may assign all or any of his/her rights and interest hereunder (including the promissory note in the form attached in Schedule B) without the consent of the Borrower. The Borrower shall not be entitled to assign his/her rights hereunder without the prior written consent of the Lender, which consent may be arbitrarily withheld.

3.4 Any notice or other communication to be given hereunder shall be in writing and shall be sufficiently given if delivered in person or sent by prepaid ordinary or registered mail, in the case of the Borrower, to the address set out herein, or in the case of the Lender, to its then registered office address in Ontario or to such other address as may be from time to time indicated by the Lender to the Borrower as the address for payment of the Loan Amount. Communications shall be deemed to be received on the date of actual delivery. Either party hereto may change its address by giving notice in writing to the other.

3.5 The Borrower hereby acknowledges that he/she has read, understands and agrees with all of the provisions of this Application and Loan Agreement and further acknowledges that he/she has had the opportunity to obtain independent legal advice with respect to the Application and Loan Agreement.

The remainder of this page has intentionally been left blank.

SCHEDULE B

SPECIMEN ONLY

DO NOT SIGN

FORM OF PROMISSORY NOTE

THIS PROMISSORY NOTE (the "Note") is issued in furtherance of, and subject to, the terms and conditions of a loan agreement, a copy of which is attached to the Note (the "Agreement") resulting from the acceptance by Plaza Capital Finance Corp. (the "Lender") of the undersigned's loan application of even date herewith and is not a negotiable instrument.

FOR VALUE RECEIVED the undersigned hereby promises to pay to, or to the order of, the Lender at the registered office of the Lender as the Lender may, from time to time, designate by notice in writing to the undersigned, the principal sum of $XXXX at the time and in the manner set forth in the Agreement, together with pre-paid interest thereon at the rate and in the manner set forth in the Agreement.

THE WHOLE OF the principal sum hereunder shall, at the Lender's option, become immediately payable and be paid upon written demand made by the Lender at any time after any failure to pay when due hereunder any amount owing by the undersigned to the Lender under the Agreement. The undersigned acknowledges and agrees that any failure to make any such payments when due pursuant to the Agreement shall constitute a material default hereunder and the Lender shall be immediately entitled without further act or formality to proceed to enforce its rights to recover the whole of the principal sum hereunder together with interest thereon and any and all actual costs incurred in so doing, including actual legal costs determined on a solicitor and client basis.

THE UNDERSIGNED HEREBY waives diligence, demand and presentment for payment, notice of non-payment, protest and notice of protest of the Note.

THE NOTE SHALL be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

DATED this XX day of XXXXXXXXXX, 2006.

XXXXXXX
Witness' Signature

XXXXXXX
Borrower's Signature
Borrower's Address:
XXXXXX
XXXXXX

PROMISSORY NOTE

THIS PROMISSORY NOTE (the "Note") is issued in furtherance of, and subject to, the terms and conditions of a loan agreement (the "Agreement"), a copy of which is attached to the Note and initialed by the undersigned, resulting from the acceptance by Plaza Capital Finance Corp. (the "Lender") of the undersigned's loan application of even date herewith and is not a negotiable instrument.

FOR VALUE RECEIVED the undersigned hereby promises to pay to, or to the order of, the Lender at the registered office of the Lender as the Lender may, from time to time, designate by notice in writing to the undersigned, the principal sum of $ at the time and in the manner set forth in the Agreement, together with pre-paid interest thereon at the rate and in the manner set forth in the Agreement.

THE WHOLE OF the principal sum hereunder shall, at the Lender's option, become immediately payable and be paid upon written demand made by the Lender at any time after any failure to pay when due hereunder any amount owing by the undersigned to the Lender under the Agreement. The undersigned acknowledges and agrees that any failure to make any such payment when due pursuant to the Agreement shall constitute a material default hereunder and the Lender shall be immediately entitled without further act or formality to proceed to enforce its rights to recover the whole of the principal sum hereunder together with interest thereon and any and all actual costs incurred in so doing, including actual legal costs determined on a solicitor and client basis.

THE UNDERSIGNED HEREBY waives diligence, demand and presentment for payment, notice of non-payment, protest and notice of protest of the Note.

THE NOTE SHALL be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

DATED this day of , 2006.

Witness:

DIRECTION & POWER OF ATTORNEY

TO: PARKLANE FINANCIAL GROUP LTD. ("ParkLane")

RE: Payment of pre-paid interest and principal to Plaza Capital Finance Corp. (the "Lender") and payment of financing fee to ParkLane

---

WHEREAS the undersigned has executed a loan application and agreement (the "Agreement") in favour of the Lender, in the amount of $ (the "Loan Amount") in order to finance a portion of a cash donation contributed by the undersigned to a charity in respect of ParkLane Donations for Canada Program (the "Program"); and

WHEREAS the Loan Amount is to be repaid in equal installments of principal by no later than December 15, 2006, as specified in the Agreement and the Loan Amount bears pre-paid interest ("Interest") at a rate of six percent (6%) per annum, which Interest is payable no later than at the time the Loan Amount is advanced to the undersigned by the Lender pursuant to the Agreement; and

WHEREAS the undersigned has placed certain monies in trust with ParkLane, in its capacity as escrow agent and such monies are to be paid, at the direction of the undersigned, as Interest to the Lender and a financing fee (the "Financing Fee") to ParkLane;

NOW THEREFORE the undersigned hereby authorizes and directs as follows:

1. At such time as the Loan Amount is advanced to the undersigned, ParkLane is hereby directed to send: (i) the amount of Interest due pursuant to the Agreement to the Lender; and (ii) the Financing Fee to ParkLane.

And in consideration for acting as an escrow agent for the benefit of the undersigned in respect of the Program, the undersigned hereby irrevocably constitutes and appoints ParkLane, with full power of substitution, as the true and lawful attorney-in-fact and agent of the undersigned, with full power and authority in the undersigned's name, in the place and stead of the undersigned and for the undersigned's benefit, for the limited and specific purpose of calculating and paying: (A) the Interest due to the Lender pursuant to the Agreement; and (B) the Financing Fee payable to ParkLane and to send forthwith after the two payments have been made a written receipt to the undersigned specifying the precise amount of Interest and the Financing Fee paid on behalf of the undersigned.

2. On the dates specified below, ParkLane is directed to pay the following amounts to the Lender, which amounts constitute the repayment of principal of the Loan Amount pursuant to the Agreement:

March 15, 2006
June 15, 2006
September 15, 2006
December 15, 2006

And this shall be your good, sufficient and irrevocable authority for acting as the lawful attorney-in-fact and agent for the limited and specific purpose and duration provided hereunder and to carry out the directions herein.

DATED this day of , 2006.

---

(307)

USE THIS CHECKLIST ONLY IF YOUR CLIENT HAS FINANCED THE DONATION

OTHERWISE, USE THE CHECKLIST APPEARING BEFORE THE LOAN APPLICATION

Checklist:

Please ensure you have the following prior to submission:

ALL CHEQUES ARE PAYABLE TO "PARKLANE FINANCIAL GROUP LTD., IN TRUST"

	Cheque or bank draft in the amount of $ dated , 2006
	Cheque dated March 15, 2006 in the amount of
	Cheque dated June 15, 2006 in the amount of
	Cheque dated September 15, 2006 in the amount of
	Cheque dated December 15, 2006 in the amount of

	Signed Pledge Form
	Signed Pledge Form with regard to "Enduring Property"
	Signed Application to be Designated as a Beneficiary
	Signed Tax Risk Disclosure Statement
	Signed Donor Declaration
	Signed Unit Transfer Form
	Signed Loan Application and Agreement and Promissory Note
	Signed Direction and Power of Attorney to ParkLane Financial Group Ltd.

Please return signed original documents plus current-dated cheque or bank draft and required post-dated cheques to the address shown below:

ParkLane Financial Group Ltd.
1455 Lakeshore Road, Suite 205 South, Burlington, ON L7S 2J1
Telephone # 1-877-776-3486 Fax # 905-639-2127

PARKLANE

DONATIONS FOR CANADA

, 2006

I, , an independent distributor of the ParkLane Donations for Canada Program, hereby acknowledge receipt of the following documents/cheque(s):

ALL CHEQUES ARE PAYABLE TO "PARKLANE FINANCIAL GROUP LTD., IN TRUST"

	Cheque or bank draft in the amount of $ dated , 2006
	Cheque dated June 15, 2006 in the amount of
	Cheque dated September 15, 2006 in the amount of
	Cheque dated December 15, 2006 in the amount of

	Signed Pledge Form
	Signed Pledge Form with regard to "Enduring Property"
	Signed Application to be Designated as a Beneficiary
	Signed Tax Risk Disclosure Statement
	Signed Donor Declaration
	Signed Unit Transfer Form
	Signed Loan Application and Agreement and Promissory Note
	Signed Direction and Power of Attorney to ParkLane Financial Group Ltd.

The above documents will be forwarded to ParkLane Financial Group Ltd. for processing.

1455 Lakeshore Road, Suite 205 South, Burlington, ON L7S 2J1
Telephone # 1-877-776-3486 Fax # 905-639-2127

DONOR RECEIPT

THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Jogel

A Commissioner, etc.

(30)

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

MICHAEL CANNON

Plaintiff

- and -

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

* * * * * * * * *

This is the Cross-Examination of RORY GORMAN on his Affidavit sworn June 3, 2010, taken at The Fairmont Hamilton Princess, 26 Pitts Bay Road Pembroke, Hamilton, Bermuda, HM08, on the 7th day of July, 2010.

* * * * * * * *

A P P E A R A N C E S:

SAMUEL S. MARR, ESQ. - for the Plaintiff

BRADLEY E. BERG, ESQ. } - for the Defendant,
CHARLES DOBSON, ESQ. } Appleby Services (Bermuda) LTD.

MR. BERG: Are we on the record?

REPORTER: You want to go on? Okay.

MR. MARR: Yes.

MR. BERG: So why don't we, just for the purposes of your transcript, Mr. Marr, shall we read out who's in the room?

MR. MARR: Sure.

MR. BERG: This may help the reporter, so speaking right now, it's Brad Berg. I'm here with Charles Dobson. We're both with Blake's, and we represent the defendant, Appleby Services (Bermuda) Limited. This is the cross-examination on an affidavit sworn by Rory Gorman who's Managing Director of Appleby Services (Bermuda) Limited and I'll now affirm Mr. Gorman.

Mr. Gorman, do you promise to tell the truth and answer all questions put to you honestly today?

THE DEPONENT: Yes.

MR. BERG: Over to you, Mr. Marr.

MR. MARR: And if at some point we want to go off the record, you'll stop recording?

REPORTER: If you wish me to.

MR. MARR: Yes, okay. Off the record.

--- DISCUSSION OFF THE RECORD

MR. BERG: And Mr. Marr, just before you begin your cross-examination, there's one correction to the affidavit that we would like to read onto the record.

MR. MARR: All right.

MR. BERG: And that is at Mr. Gorman's affidavit, paragraph 35.

MR. MARR: Yes?

MR. BERG: And in the course of preparing for this cross-examination today, Mr. Gorman has advised me that he can clarify the numbers in that paragraph with a little more precision. You'll note that the numbers in the paragraph are all preceded by the word "approximately."

MR. MARR: Yes.

MR. BERG: And the corrections are as follows. The first number is still the same approximately. To be a little clearer, it's actually 439 million, is a little more accurate than 440 million.

MR. MARR: But it's still approximately 439 million; is that what it should say?

MR. BERG: It is approximately 439 million.

MR. MARR: Okay.

MR. BERG: The second number in the paragraph, it now reads 90 million.

MR. MARR: Yes.

MR. BERG: Should read approximately 84 million.

MR. MARR: Okay.

MR. BERG: And the third number in that paragraph that now reads 350 million, should read approximately 333 million.

MR. MARR: Okay.

MR. BERG: And those are the only corrections to the affidavit.

MR. MARR: All right.

RORY GORMAN, affirmed:

CROSS-EXAMINATION BY MR. MARR:

1. Q. So, Mr. Gorman, you have your affidavit in front of you?

A. Yes.

2. Q. The affidavit was -- on the 12th page, that's your signature?

A. Yes.

3. Q. And you swore that before Ms. Burgess-Howie?

A. Correct.

4. Q. Who is Ms. Burgess-Howie, by the way?

A. She's a lawyer with Wakefield Quin.

5. Q. And the contents, other than the one change your lawyer just pointed out to me, otherwise the

contents of your affidavit remain true?

A. Correct.

6. Q. Let's start at paragraph 4 of your affidavit. Paragraph 4 says you joined Appleby's as the Managing Director in 2009. Do you see that?

A. Yes.

7. Q. What month was that?

A. In February of 2009.

8. Q. Was that the first job you held at Appleby's was as Managing Director?

A. Correct.

9. Q. And what do you do as a Managing Director? What is your job function?

A. My job function is to lead the company. That involves managing the approximately 80 staff, it involves giving advice, judgment, making judgment calls on decisions, reporting to the executive committees of the law firm, so being involved with the preparation of financial statements, budgets and so on. In general, management and administration of the entity.

10. Q. What is the connection between what you're the Managing Director of and the law firm itself?

A. Ultimately, Appleby Services (Bermuda) Limited is owned by the partners of the law firm, Appleby.

11. Q. Now, I saw from your resume, which was

Exhibit B, that I guess you are a chartered accountant; is that right?

A. Correct.

12. Q. And I take it, I'm looking at page 73 of the record, I'm sort of going backwards. I take it you worked as in the chartered accountancy, if I can put it that way, until 1992; is that right?

A. That's correct to the extent that following on from that, I had chartered accounting or accounting issues to deal with. I remain the chartered accountant.

A. Yes.

13. Q. Therefore a portion of my job up to my appointment at Appleby would have been considered accounting-related.

14. Q. Well, if I'm looking, just to follow up on that point, maybe I can ask the question slightly better. I see you were working for this company in Ireland from '81 to '86?

A. Right.

15. Q. And then in '87, you became an account manager. Where were you an account manager?

A. If I can just take you back to the first page, 71.

16. Q. Yes.

A. You'll see there's Marsh Management Services

(Bermuda) Limited.

17. Q. Yes.

A. Was from 1987 through to '06. So these are ---

18. Q. Various jobs you did there.

A. Exactly.

19. Q. I understand that now. And what is Marsh Management? That's in the insurance industry? Do I understand that correctly?

A. That's right. It is holding on a subsidiary of March Inc. frequently referred to as Marsh & McClennan, an insurance brokerage firm largely.

20. Q. And something happened in August 2006. You left Marsh and went on to another company; is that right?

A. Yes. I joined Attorneys Liability Insurance Society (Bermuda) Limited as its Chief Operating Officer. It was, at one point, a client of Marsh with head offices very, very close; just across the street from Marsh.

21. Q. And that's a company that's -- that's a lawyer's insurance company for want of a better phrase; is that right?

A. It provides professional insurance, professional insurance coverage to large law firms in the U.S.

22. Q. Now that's -- so your first experience working

for a professional trustee is in your current job; is that right?

A. Yes.

23. Q. So when you joined in February 2009, Appleby's, I take it before February 2009, you had never heard of the Bermuda Long Tail Trust. Am I right in that?

A. That's right.

24. Q. So, when was the first time that you became aware there was a client, the Bermuda Long Tail Trust of Appleby's?

A. I believe it was in the first week of January 2010.

25. Q. And is that when the claim was served?

A. That would have been when I returned from vacation and learned of the submission of the claim.

26. Q. Okay. The claim was served. I guess you were away, but it was the serving of the claim that made you aware that the client even existed at Appleby's ---

A. Right.

27. Q. --- is that right? Yes?

A. Yes.

28. Q. It will help and I know it's hard sometimes; if you let me finish the question before you give the answer, then the information will be clearer. Thank you.

Now, have you ever met Ed Furtak?

A. No.

29. Q. Ever spoke to him on the phone?

A. No.

30. Q. What about Ron Olsthoorn, O-L-S-T-H-O-O-R-N? Have you ever met him or spoke to him on the phone?

A. No.

31. Q. Actually, let me do that a little bit better. Have you ever had communication? These days there's a lot of ways to communicate; there's e-mails, there's faxes. Your answer is the same for Mr. Furtak? You've never had direct communication, you to him?

A. I have sent one e-mail to him, I believe.

32. Q. And what would that have been?

MR. BERG: I'm not sure the relevance of it. I'm not sure I terribly care, but why don't -- can you let me know how ---

MR. MARR: Well, it depends. I can't ---

MR. BERG: He may not remember as well. I don't know.

MR. MARR: I can't know the relevance frankly until I know what it was. It may be that they were talking about issues that are relevant; it may not be. I don't know how we're going to deal with that, but I mean, it seems he's relevant to the motion.

BY MR. MARR:

33. Q. Let me ask you this. Have you ever spoke to Mr. Furtak about this motion?

A. No.

34. Q. Have you ever spoke to him at all in this -- did this e-mail have anything to do with the allegations that are made in the lawsuit that you've seen?

A. No.

35. Q. Okay. Have you had any communication with Mr. Alstar (ph) of any kind?

A. No.

36. Q. What about Mr. Robertson, Wayne Robertson?

A. Yes.

37. Q. When would you have started communicating with him?

A. It would have been in the early part of this year when I became aware of the Bermuda Long Tail Trust and the lawsuit.

38. Q. I may come back to that. I take it that the Bermuda Long Tail Trust has a manager of the trust; is that right?

A. You mean in the sense of an administrator?

39. Q. Well, I pulled something off of your website and I see here that there's a woman named Glenda Jack and

her title says "Manager Trust." Do you know Ms. Jack?

A. Yes.

40. Q. And what does a manager of trust do?

A. She reports to me. She is the next person in the chain of command in Appleby Services (Bermuda) Limited.

41. Q. But what does a manger of trust do? What is their job function?

A. She assists me in running the trust unit of ASBL. ASBL is a company that provides services, not just to trusts, but also to corporate entities. And she is in charge of the unit that provides services to trusts.

42. Q. And is she the one who has more regular contact with the Bermuda Long Tail Trust than you?

A. Yes.

43. Q. And when did she start working at Appleby's?

A. I'm not certain, but I believe it would have been in 2008 or early 2008.

MR. BERG: Mr. Marr, I notice that some of your questions talk about Appleby's versus Appleby Services (Bermuda) Limited. To the extent that you want answers from Mr. Gorman about his company, you may want to use ASBL or Appleby Services as opposed to the parent law firm, Appleby.

MR. MARR: I'll try to remember to call them

Appleby Services. That's what I meant. That's where he works. That's what I meant, but I'll try to do that.

BY MR. MARR:

44. Q. Appleby Services; my understanding about Ms. Jack's role is if you -- and your lawyer can put this in front of you if he wants. I'm looking at Volume 3 of the certification motion record.

MR. BERG: Okay, one moment. What page?

MR. MARR: I'm at tab V, page 703.

BY MR. MARR:

45. Q. So, this is an examination that I did of Mr. Robertson and if you -- and it really starts on the previous page, but he's talking there about Appleby Services. And you'll see near the bottom of the page it says, speaking about Appleby Services, I ask, "And they operate the Bermuda Long Tail Trust?"

And Mr. Robertson said, "That's my understanding."

Question, "Okay, and who specifically would you have been speaking to at Appleby Services?"

"There have been numerous people over the years that would have been managing the Bermuda Long Tail Trust. The person I'm dealing with would be Glenda Jack."

So my question to you is, was Mr. Robertson right in saying that she was one who was managing the Bermuda Long Tail Trust?

A. Yes.

46. Q. And it wasn't you, because you weren't even working there?

A. Correct.

47. Q. So was she doing that from 2008?

A. I'm not certain of her exact date of hire.

48. Q. Well, the dates that matter in this lawsuit seem to be from 2004 to 2009. Is it possible for you to find out the people who were managing the trust in that time period? Obviously, Ms. Jack is one of them, but we don't know what dates. Can we find out who had the responsibility in which years?

MR. BERG: We'll check. We'll check and let you know.

MR. MARR: All right.

UNDERTAKING NO. 1: To advise who was managing the Bermuda Long Tail Trust from 2004 to 2009.

BY MR. MARR:

49. Q. And I take it, Ms. Jack still works at Appleby's?

A. Yes.

50. Q. Now, if you turn to your affidavit and you turn to tab W, and I'll have some more questions about this letter later. But the point I just want to ask you about now is, this is a letter of December 19, 2008; Mr. Robertson is writing to Appleby Services. Who is Randall Krebs?

A. Randall Krebs is a lawyer in the private trust section of the law firm, Appleby.

51. Q. So he doesn't actually work for Appleby Services?

A. No.

52. Q. Have you spoken to Mr. Krebs at all about this letter?

A. No.

53. Q. And is Mr. Krebs still working at the law firm?

A. Yes.

54. Q. All right. Let's turn to your affidavit. Let's take a look at paragraph 2.

Now, in paragraph 2 you said, "As such, I have personal knowledge of the facts set out in this affidavit, except where otherwise indicated to be on the basis of my information and belief. Where I've indicated my knowledge is based on information and belief, I

believe the information to be true." Do you recall signing that part of your affidavit?

A. Yes.

55. Q. Now, let's take a look at paragraph 27 of your affidavit. At paragraph 27 you said, "Well, the amended claim alleges that TGIFP..." -- remind me what TGIFP stands for again? There's so many acronyms in this affidavit, I've lost track.

A. It's the Trafalgar Global Index Futures Program.

MR. BERG: It's defined at paragraph 20, Mr. Marr.

MR. MARR: Thank you.

BY MR. MARR:

56. Q. "...was used in relation to the gift program," at paragraph 45, "ASBL," which is Appleby's, "has no knowledge of this. ASBL did not have any involvement in designing, developing, operating, marketing or promoting the TGIFP, nor did ASBL monitor the ways in which the licenses of TGIFP may have been used in the software. More specifically, ASBL expected TTL to comply with subsection 2.1 of the TTL MLA and to refrain from using or operating the software in Canada."

So, you've said in this affidavit that Appleby Services did not have any involvement in designing,

325

developing, operating, marketing, promoting the program. How can you know that when you weren't there at the time?

MR. BERG: Well, Mr. Marr, why don't you also ask -- you may get better evidence this way -- what Mr. Gorman ---

MR. MARR: With respect, this is cross-examination. You can't tell me how I should get better evidence. Either the question is proper or it's improper. You can't do that.

MR. BERG: Fair enough, but you may want ---

MR. MARR: I don't want anything else right now. Why don't we let him answer ---

MR. BERG: Okay.

BY MR. MARR:

57. Q. How is it that you could know that in your own personal -- remember you said in paragraph 2, it was based on your personal knowledge. How can you have personal knowledge about what went on at Appleby's in the time period where you weren't there?

A. In making that statement, I relied on the investigation that I had made of the files, in discussions with staff, and anything else that was relevant, and came to the conclusion based on that investigation that we did not have any involvement in

designing, developing, operating, marketing or promoting the TGIFP.

58. Q. Well, you said at paragraph 2 that if you didn't have personal knowledge, you indicated on what basis was your information and belief.

I don't see anything in this paragraph about discussions with staff, for example. You haven't told me in the affidavit what the staff told you that led to that conclusion. Why didn't you do that?

MR. BERG: To be fair, Mr. Marr, you've misstated what paragraph 2 says. Paragraph 2 says, "I have personal knowledge of the facts set out except where otherwise stated to be on the basis of my information and belief and where I've indicated that my knowledge is based on information and belief, I believe that information to be true."

There's no secret that Mr. Gorman is here as a corporate witness. And like every corporate witness, he has informed himself. My interjection before was simply to say you may want to ask Mr. Gorman who he spoke with and how he prepared himself to be the corporate witness.

MR. MARR: No. I would have thought that that would already be in the affidavit.

BY MR. MARR:

59. Q. You haven't told me in the affidavit. For instance, you're telling me now that you had some conversations with people that led you to this conclusion, correct?

A. Correct.

60. Q. Are those conversations recorded in the affidavit?

A. No.

61. Q. Have those people sworn affidavits?

A. No.

62. Q. Are one of those people who you had conversations that led to that conclusion, was one of those people Ms. Jack?

A. Yes.

63. Q. And she hasn't sworn an affidavit?

A. No.

64. Q. And you haven't told me anything in the affidavit about what Ms. Jack told you, correct?

A. Not directly.

MR. BERG: You're free to ask him though, Mr. Marr, who he spoke with. He's a corporate witness. There's no secret in that.

MR. MARR: There's no secret in it, but this isn't a discovery; this is a cross-examination. I'm not

here candidly to help you get into the record evidence that isn't in the affidavit already, which is what you're trying to do now, and that's not appropriate or fair. That's not how it works. You don't get to lead your evidence that way. You were supposed to have led it already and you didn't do that. We'll go on to something else.

BY MR. MARR:

65. Q. But just to be clear, because I want to be clear, although I think it is. You have no firsthand knowledge, personal firsthand knowledge involving yourself about any of the events related to this lawsuit that took place between 2004 and the time you joined the company; is that correct?

A. Correct.

66. Q. Let's take a look at paragraph 30. There's a series of agreements or documents -- let's call them documents -- that are referred to at paragraph 30. Do you see those? They're exhibits ---

A. M'hmm.

67. Q. Yes, so there's Exhibit T, there's Exhibit U, there's Exhibit V; do you see the reference to those?

A. Yes.

68. Q. So those are in -- you found those where; in a

filing cabinet? Where were they actually located?

A. They were in a filing cabinet.

69. Q. And you found them yourself? How did they come to your attention?

A. I asked for all of the files in relation to the Long Tail Trust to be brought to me for my examination and I went through them and they were there. Whether -- I -- I...

70. Q. So my question to you is -- in the court, I'll give you a chance to fill in the blanks on this one. In the course of your investigation did you figure out how they arrived in your offices?

A. No.

71. Q. They didn't have anything, there was no e-mail or fax coversheet or anything that would indicate that they arrived in that way?

A. No. I think there were some scribbled notes that are not particularly illuminating with one of the documents, I don't recall which one.

72. Q. I'm going to ask you a question about some of that in a second. So, through asking Ms. Jack and other people in the office, you were never able to determine why they were in the file or how they got in the file?

A. Correct.

73. Q. Did you ask Ms. Jack if she had ever seen them

before?

A. I don't recall asking that question.

74. Q. Did you ask anybody if they had ever seen them before?

A. I don't recall asking the question.

75. Q. Well, what did you do to try to figure how they got there?

A. I had quite a few discussions with members of staff and counsel and that is, Appleby, the law firm who are counsel to us on this matter. And in the course of those discussions, the existence of those documents was referenced without any explanation as to how they came to be in the particular files.

76. Q. Well, did anybody that you spoke to know of their existence before you asked them about them?

A. I don't know. I don't believe so.

77. Q. Did you ask Mr. Robertson about those documents, what they were doing there?

A. No.

78. Q. Did you ask Mr. Furtak what they were doing there?

A. I have had no communications with Mr. Furtak other than the one e-mail.

79. Q. How come you didn't ask Mr. Furtak why they were there? He clearly had something to do with it,

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didn't he?

A. I don't know if he did.

80. Q. Did Mr. Robertson have something to do with it?

A. Mr. Robertson is our principal contact at the Trafalgar Group.

81. Q. Right, so...

A. My discussions with him included asking him to describe the gift program as it's referred to and to give me further details about that, but not specifically about the documents that were on our files.

82. Q. When did you have those discussions with Mr. Robertson?

A. One would have been in April if an actual meeting, another actual meeting on ---

83. Q. April when?

A. I don't recall the exact date.

84. Q. Do you remember the year though?

A. Of this year.

85. Q. Oh, this year, okay. So April 2010, there was a meeting between you and Mr. Robertson alone or was there anybody else present?

MR. BERG: And I'll just stop you there, Mr. Marr. Obviously by that point the motion record has been served. We claim litigation privilege over those

conversations. Mr. Gorman has already told you his first contact with regard to the Long Tail Trust was in January 2010, so everything you're talking about now is post January 2010. The content of those discussions will almost entirely be litigation privileged.

BY MR. MARR:

86. Q. Just to fill in the blank, there was a second meeting. Can you tell me when that was, at least?

MR. BERG: You can tell him the month, I guess. Was it after January 2010?

THE DEPONENT: Yes.

MR. BERG: That's fine.

BY MR. MARR:

87. Q. And the e-mail that you had with Mr. Furtak, when was that from? What was the date of that?

A. I don't recall exactly; probably in February or March, but I'm not certain.

88. Q. Of 2010?

A. Of 2010.

89. Q. So you say in your affidavit at paragraph 30, you talk about how Appleby Services conducted a review of its files pertaining to trust to identify documents that

might be related to the gift program alleged in the Statement of Claim. Do you see that?

A. Yes.

90. Q. "We have some of the material that may be relevant." Do you see that sentence?

A. Yes.

91. Q. Does that mean that -- I mean, the way I read that sentence was, there's other relevant material that you haven't disclosed. Am I reading that wrong?

A. Yes. It's just simply saying there is a quantity of information that may be relevant.

92. Q. Well, I guess the question, what didn't you produce? What documents -- have you shown those, for example, to Blake's? Have they seen the whole file that he's talking about?

MR. BERG: I think we can advise, which is exactly why paragraph 30 is set out the way it is, is that documents that contain jurisdictional facts are disclosed, and a sampling of them are set out. As Mr. Gorman says, there's a ---

MR. MARR: First of all, that didn't quite answer -- my first question to you, Counsel, was have you seen the whole file that he found, your firm?

MR. BERG: That's privileged, Mr. Marr, obviously.

MR. MARR: Well, I don't think if you saw the file

would be privileged, but okay. What was in the file might be privileged. I don't know that seeing it is privileged, but we can disagree about that.

BY MR. MARR:

93. Q. But what I'm trying to get at is, for example, you mentioned a few minutes ago that there were some notes scribbled somewhere relating to one of these exhibits. And I take it you didn't produce those notes?

A. I don't think they're relevant.

94. Q. Well, were they explaining about the document itself? Were they contemporaneous to the receipt of the document?

A. I couldn't tell.

95. Q. Were they dated?

A. No, I don't believe so.

96. Q. Do you know whose handwriting they were?

A. No.

MR. MARR: So I take it, for the purpose of this motion, if I ask to see all the documents in that file or any more than have been given, the answer to that would be no, Counsel?

MR. BERG: The answer will be no, on the basis of relevance. Jurisdictional facts have been disclosed, but it's not discovery.

MR. MARR: Well, who's made that decision that jurisdictional facts were disclosed, by the way? Who made that determination, counsel or the witness?

MR. BERG: Well, that's privileged, but what I can tell you is Mr. Gorman has said he asked for all files dealing with the Bermuda Long Tail Trust to be brought to him. And he reviewed them and he has identified categories and documents that appear that they may be connected to allegations in the claim. You can ask him about what he did to give you this sampling.

BY MR. MARR:

97. Q. Okay. What did you do to give me this sampling?

A. I looked at the documentation and with counsel determined what would be appropriate and relevant.

98. Q. Let's turn to another paragraph in the affidavit. Paragraph 10, last sentence; you say the trust has no assets in Canada?

A. Yes.

99. Q. What did you look at to determine that?

A. Again, I investigated the files to determine what evidence there was of assets, inquired as to bank accounts. There had been a number of companies formed;

determined whether those were located in Canada or incorporated in Bermuda. And came to the conclusion that there were no assets that I could discern or those I talked to could discern to exist in Canada.

100. Q. Well, does the trust have financial statements?

A. No.

101. Q. Does the trust file tax returns?

A. No.

102. Q. Well, does the trust or does Appleby Services have a -- doesn't it have, like, a list? You're managing the trust. Are you managing all of the assets of the trust? Let me ask you that question first.

MR. BERG: Well, I'm not sure that's relevant.

MR. MARR: It's directly relevant on the paragraph. He says that they don't have assets in Canada. If there's assets that he's not managing, it's right on point.

MR. BERG: Well, that's a different question from the one you asked. He has said he's looked at the records and he's talked to people who know. And in the course of that, has determined no assets are in Canada. But the details of management of the trust, aside from jurisdictional facts that may connect it to Canada or Ontario are not relevant.

MR. MARR: Okay. Big disagreement on it, but I'll try to ask the question a different way.

BY MR. MARR:

103. Q. In making this statement in the last sentence that it has no assets in Canada, did you speak to people who don't work at Appleby Services?

A. That's a lot of people.

104. Q. No. Did you speak to people who do not, or all of the people you spoke to work for Appleby Services?

A. In developing my awareness of the trust and its assets, I spoke to, not just Appleby Services, but also to Appleby the law firm and to Wayne Robertson.

I was guided in my determination as to whether the trust had assets in Canada by an appreciation of how assets arise in a trust to begin with; they arise through being settled into the trust initially or subsequently, by deeds of addition, and if their money, that money gets disbursed in certain ways, gets located in certain ways.

So, as I followed the chain of events, I could discern no assets being held in Canada.

105. Q. Well, does Appleby Services have a listing of the assets of the Bermuda Long Tail Trust? Does such a document, one document exist?

A. No. Excuse me, if I can rephrase that. Other

than subsequently to my investigation, in which I have been establishing what assets it has. But prior to that, to be able to reach out and find such a document, no.

MR. BERG: And obviously that list that's been compiled for Mr. Gorman to prepare himself in the litigation is subject to litigation privilege.

BY MR. MARR:

106. Q. Well, is that the purpose of preparing that list? Is it for the litigation or is it so that Appleby Services knows the assets that the trust have, so you can properly fulfill your duties to the trust?

A. I compiled that list because of this litigation.

107. Q. And that list has no assets in Canada?

A. Correct.

108. Q. Does that list have assets outside of Bermuda?

MR. BERG: Irrelevant.

MR. MARR: Well, I would have thought it would assist the court to figure out what the proper jurisdiction for the motion of the case is.

REFUSAL NO. 1: To advise if the list shows assets outside of Bermuda.

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BY MR. MARR:

109. Q. Well, what sort of things were you doing to determine that there weren't assets in Canada? When you say you were compiling this list, what were the primary source documents that you were looking at?

A. The records of the trust's activities and deliberations, trust resolutions, bank statements, disbursement records.

110. Q. And are those all now in one spot, sort of aside the list in your office or somewhere at Appleby Services?

MR. BERG: I'm not sure that's relevant either, how Mr. Gorman keeps his files.

MR. MARR: Well, the reason why it's relevant is that I think that those primary source documents, those already existed. He didn't create those for the litigation.

BY MR. MARR:

111. Q. Am I right about that?

A. Correct.

112. Q. So why aren't those producible?

MR. BERG: Those aren't producible because they don't relate to any property or assets in Canada.

MR. MARR: So he says. I'm entitled to cross-

examine him on the truthfulness of his answer to determine if it's true. It's squarely on all four corners of the affidavit. He looked at something and said that this is the basis upon which he made this statement.

I'm entitled to see what he was looking at. It's not litigation privilege. It wasn't created for litigation and it should be producible.

MR. BERG: It's not relevant.

MR. MARR: Because?

MR. BERG: It's not relevant, because there's no connection to Canada.

MR. MARR: There's a connection to this statement in the affidavit.

MR. BERG: Well, there's no connection to Canada. Mr. Marr, let me be very clear on this point. You don't get production of a corporate trustee's records and documents from a foreign jurisdiction simply by naming it in your Statement of Claim. There has to be some connection to the jurisdiction.

And the head of Appleby Services is here and he swears that there are no assets in Canada. And that makes the rest of your fishing expedition irrelevant.

MR. MARR: Okay. I'm going to stand up at the

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motion -- and we're going to take a short break -- and I'm going to put to the court the same case that I'm going to put in front of you right now. This is the recent case of Master Brott and I'd ask you, Counsel, to take a look at paragraph 8 of the decision and tell me if you've changed your position. And if you don't, when we come back, we'll carry on, because I think you're wrong on the law.

MR. BERG: I will look at that case in due course.

MR. MARR: Let's go off the record.

--- BRIEF RECESS

MR. BERG: I just note for the record while we're on that Mr. Marr has handed me a case, which I've said I'll review, but I do note it's a case that doesn't involve a foreign affiant. And undoubtedly there are other reasons to distinguish it, but that one is key. You simply don't get production of everything in a foreign corporation's files by naming it in a pleading.

MR. MARR: That's not quite what I've asked. I'm cross-examining, to be clear, it's relevant to his statement in his affidavit. That's what makes it

relevant, first of all. And I think that's good enough. There's probably some other basis in the case, too, but I think that's good enough. But we'll disagree for the moment and carry on.

BY MR. MARR:

113. Q. Now, you were telling me you looked at -- when you were looking at the assets, is Appleby Services managing the money in the trust? Is that part of the service you're providing?

A. Yes.

114. Q. And are you taking directions on those investments from somebody, or is that something you're doing on your own, independent of counsel?

A. The funds are held in very plain vanilla instruments such as time deposits and we roll those over at our discretion.

115. Q. And is that power found within the settlement documentation at tab H?

A. I believe there's a general power of discretion under 10.1.1, "power to manage as absolute owners."

116. Q. Okay. In paragraph 12 of your affidavit, you talk about the amendment of the deed, so that the Salvation Army became the sole ultimate beneficiary and I

guess McMaster University was cut out? That's what happened?

A. Yes.

117. Q. Do you know why that happened?

A. Because McMaster University is a Canadian institution, it was felt that it was inappropriate to have a connection to Canada.

118. Q. Who made that decision? Was that the settlor's decision or Appleby Services' decision?

A. Certainly the settlor was involved in the decision, but the ultimate resolution would have been, I believe us, Appleby Services as trustee.

119. Q. If you turn to paragraph 13 of your affidavit? Now, in administering the trust, is Appleby Services -- I take it that in managing the trust, the ultimate goal is the benefit of the beneficiaries. Is that a fair way of putting it?

A. I think that's reasonable.

120. Q. And can the trustee, Appleby Services, give a charitable donation from the trust funds?

A. I don't know the answer to that.

121. Q. Isn't that inconsistent with the benefit of the beneficiaries if you're giving away money to a charity?

A. Stated that way, one could argue. However,

the contribution that we would make would be considered, in our minds, investments.

122. Q. For example, I don't know if there's such a thing as a Bermudan Cancer Society or something like that. Are you going to give donations to something like that with the funds of the Bermuda Long Tail Trust?

A. I don't believe we did.

123. Q. Well, would you be authorized to do that?

MR. BERG: Well, authorized is a -- I think it's a question of law, but...

BY MR. MARR:

124. Q. Well, in your view of your powers, you're running the company, your own understanding, not in the functioning of your job, would that be permitted, to your understanding? As a function of your job, were you allowed to do that?

MR. BERG: Now, do you mean -- just so I understand the question, do you mean with this trust in particular or generally?

MR. MARR: No, with this trust in particular.

MR. BERG: Well, I'm not sure how we get away from the question of law. He's already answered that he doesn't know, frankly, whether they have the power to give donations to charities.

MR. MARR: But he started telling me about how that would somehow benefit and I didn't quite understand, I guess, so I was trying to follow up on that.

MR. BERG: Okay. You're entitled to ask him about that.

BY MR. MARR:

125. Q. So, how would you see that as being a benefit to the beneficiaries?

A. If there were a benefit to the beneficiaries in some way through contributing to a charitable organization, I think we would, as trustees, say that's okay.

126. Q. At the beneficiaries' request? How would you decide that?

A. Not necessarily at the beneficiaries' request. But if we, as trustees, felt that a particular charitable donation would result in benefit to the beneficiaries, I think we would feel it was appropriate to make that charitable distribution or donation.

127. Q. And when you said you weren't sure if you had that power or not, have you specifically, yourself, examined the trustee to better inform yourself about that issue?

MR. BERG: Now, he's already said, Mr. Marr, that he's not sure that that ever happened here, so I guess this is something out of what has happened as a matter of fact. I don't know, Mr. Gorman; have you ever looked at this as an intellectual exercise to see if you could donate to a charity?

THE DEPONENT: No. I can't specifically say that I have.

BY MR. MARR:

128. Q. Well, let me just follow up on your answer. I'm still unclear how you would think it could be a benefit to the beneficiaries to donate to a charity.

Can you give me a specific example of something you have in mind? I'm not sure I understand the answer. I don't know how the beneficiaries benefit if you give $10,000 to the Bermudan Cancer Society. How would that be consistent with your obligations as a trustee? How would that benefit the beneficiaries? I don't understand that.

MR. BERG: I think we're well into speculation here, Mr. Marr. You've asked ---

MR. MARR: I'm going to come to it in a moment. It's not speculation, so ---

MR. BERG: Well then, maybe you should put the

facts first. It's just ---

MR. MARR: I want to understand his -- he's given an answer. Let him just try to explain to me what he means by benefit of the beneficiaries. I won't ask him anything else more than that. He said that. I just don't understand what he means by that.

THE DEPONENT: I didn't say that I could construct any situation or a case in which a donation to a charitable entity, such as you describe, would be to the benefit.

What I said was, if making that donation would result in a benefit, it would be one that I would consider as a trustee. I would still have to consider the overall circumstances of the trust as to whether that was appropriate.

BY MR. MARR:

129. Q. Okay. Appleby Services manages, I guess, a number of trusts. Am I right in that?

A. Hundreds.

130. Q. Hundreds. Is that something that you come across where you've given money to charities for any of the other trusts, without getting into specifics, but just in general?

A. Many charity are set up for ---

131. Q. That's ---

A. --- trusts are set up for charitable purposes.

132. Q. Right. And that's set out in the originating documentation. That's different. I'm not talking about that. I'm talking about just -- you know, we all get solicited for charities from time to time.

Has it ever happened that for any of the other trusts that you've given a donation, other than if it's referred to, obviously, in the settlement documentation. That's different. I'm not talking about that.

A. I'm not personally aware of any like that, but then I would mention that I'm not involved for most of the trusts -- and we have hundreds -- in the day to day operations and payments of those trusts.

133. Q. All right. I'd like you to turn to the plaintiff's jurisdiction motion. And I'm at tab B, page 76.

MR. BERG: Tab B as in boy?

MR. MARR: Yes.

MR. BERG: We have it.

BY MR. MARR:

134. Q. The evidence is that this chart was given to a fellow named Mr. Freedman who was in charge of selling the program in Canada, one of the people that was selling

it in Canada. That's by background; it's not really relevant to the question.

On the chart itself, you'll see there's an arrow, it says Long Tail Trust at the bottom, and it says 200, and I'm going to suggest to you that's million, going up to Donations Canada Financial Trust.

First of all, have you ever seen anything like this before? Is this anywhere in your files?

A. I don't believe this is anywhere in our files.

135. Q. Did the Bermuda Long Tail Trust give $200 million to the Donations Canada Financial Trust?

A. Yes.

136. Q. Is that the amount they gave, do you know?

A. They gave more than that.

137. Q. More than that. It's more like $300 million?

A. It's, I believe, approximately $417 million.

MR. BERG: And those numbers, Mr. Marr, again are at paragraph 35 of Mr. Gorman's affidavit if you want to connect it.

BY MR. MARR:

138. Q. Over what period of time did they do that?

A. I believe from October 2005 through January 2009.

139. Q. Now, when you say it's approximately

$417 million, and now you're referring back to the part of your affidavit that we were talking about that your counsel was talking about at the beginning. I'm not sure what ---

A. Paragraph 35.

140. Q. Paragraph 35. Now, you just told me the figure $417 million. Right? Is that what you said?

A. Yes.

141. Q. Sorry, where is that in paragraph 35?

A. It would be the sum of the -- approximately 19 million, which has now, I believe, been amended to 84 million and the 300 -- originally 350 million, which has been amended to 333 million.

142. Q. But I don't see the words, "Donations Canada Financial Trust" in paragraph 35. Did I miss that somehow? I thought you just told me a moment ago that's where the money went to.

A. Yes, that is correct. The money went to Donations Canada Financial Trust.

143. Q. Well, how did it go? What was the manner that it was paid? Were they cheques, were they bank drafts, were they wire transfers? What were they?

A. I believe all of the funds were transferred by wire transfer.

144. Q. To where?

(35)

A. To Aylesworth LLP for a period, and subsequently through Continental Trust Company Limited.

145. Q. But were those account -- like, let's talk about Continental Trust Company Limited. What is Continental Trust Company Limited, first of all?

A. I believe it to be a trust company licensed in Bermuda.

146. Q. So, do they do essentially the same job as Appleby Services?

A. I believe so.

147. Q. So, they're a competitor, or at least in the same business?

A. In the same business.

148. Q. Okay. So when you transferred it to Continental Trust Company Limited, that was for an account belonging to Donations Canada?

A. It was in trust for it. It was to be held in trust for Donations Canada Financial Trust.

149. Q. And did Appleby Services know that, at the time of the transfer, that that's who it was in trust for?

A. Yes.

150. Q. How come you didn't mention that in paragraph 35, by the way?

A. I was referencing where the money was

transferred to, who was holding it initially.

151. Q. But you didn't think fit to reference that it was for Donations Canada, in trust for them?

A. No.

MR. BERG: He's told you now and there's no secret, Mr. Marr.

MR. MARR: It sounds like a pretty big secret unless I've made it all the way to Bermuda to cross-examine him, but -- at a considerable cost, I might add, but let's keep going.

BY MR. MARR:

152. Q. And I take it the transfer to Aylesworth was again into their -- that's a law firm in Toronto -- and that was to their trust account, again in trust for Donations Canada?

A. Yes, I believe so.

153. Q. And that was a wire transfer as well?

A. Yes.

154. Q. So, did these go up in one wire transfer, or was it every few days there were more transfers? How many transactions are we talking about, roughly?

A. It would be difficult for me to give an exact number. We were talking about probably one or two a month.

155. Q. Over a four-year period?

A. Correct.

156. Q. And Aylesworth, I guess, was in the beginning of that period?

A. Comparatively -- yes, for comparatively short period.

157. Q. Just in 2004 or into -- do you remember the dates?

A. I don't know exactly, but I would guess it would be for less than a year.

158. Q. Starting when?

A. In October 2005, I believe.

159. Q. So why did that happen?

A. And the "it" is?

160. Q. Why did the money get transferred to these two entities for Donations Canada?

A. It was to be used in the charitable endeavour that Donations Canada Financial Trust was part of.

161. Q. And who gave Appleby Services -- who told them to do that? There's millions of charities in the world. How did this one particular one get chosen?

MR. BERG: Mr. Marr, that is set out at paragraph 35, that it was at the request of Mr. Robertson. I don't know if that's what you're getting at, but...

BY MR. MARR:

162. Q. And how did Mr. Robertson make that request? Did he make it in writing?

A. Usually Mr. Robertson would make the request in writing by e-mail.

163. Q. And before the first one, was there any more detailed discussion -- I take it the request would be for a specific amount on a specific date when the e-mails were coming in. And that became, I guess, a pattern after a while. Is that correct?

A. Exactly.

164. Q. And who was he dealing with at that time when he was making those requests; do you remember?

A. In 2005, it would probably have been the head of the trust unit, Pearline Trott.

165. Q. How do you spell her name?

A. P-E-A-R-L-I-N-E, T-R-O-T-T.

166. Q. Head of the trust unit; where does that fit in the hierarchy? You're the manager.

A. I'm the managing director of ASBL, and so the manager of that unit currently reports to me.

167. Q. And who is it currently?

A. Glenda Jack.

168. Q. So she's Ms. Jack's predecessor?

A. To a certain extent. The titles were different. At the time Pearline Trott was in place, there were actually two companies; one was the trust company, one was the corporate services company and those were merged together in, I think, 2007.

169. Q. Where is Ms. Trott these days?

A. She is with the Bank of Butterfield's trust operations.

170. Q. Here in Bermuda?

A. In Bermuda.

171. Q. Have you spoken to her at all about these matters?

A. No.

MR. MARR: Counsel, has anybody from your office or anybody on behalf of your client spoken to Ms. Trott?

MR. BERG: Not to our knowledge.

BY MR. MARR:

172. Q. So, as I started to say, I assume that what happened is after awhile Mr. Robertson would send an e-mail and say, you know, on date "X," please wire this amount, and that was sort of the pattern as time went on, correct, roughly?

A. Yes.

173. Q. Okay. I assume at the beginning or maybe I'm wrong; was there something more detailed saying, you know, we're going to be asking for a number of distributions in the next while and here -- was there something more detailed from Mr. Robertson in the file as to why all this was happening?

A. No.

174. Q. Were there notes from anybody as to why this was happening?

A. No.

175. Q. So these were -- well, when you say Mr. Robertson was -- Mr. Robertson is the one who made the request for this, correct?

A. Yes.

176. Q. And only Mr. Robertson?

A. Yes.

177. Q. Did Mr. Furtak have anything to do with this?

A. I don't believe so. In terms of a direct request to transfer funds, no, or even indirectly, I'm not aware of any.

178. Q. Any of the other beneficiaries have a role in that? One of them I understand is a minor, so I'd assume no.

A. No.

179. Q. What about Mrs. Furtak?

A. No.

180. Q. Now, you say Mr. Robertson -- you say at paragraph 34, that Mr. Robertson was authorized with the settlor to be his agent. Now, did he do that in writing, the settlor?

A. No, but it was quite clear to me from reviewing the documents that Wayne very much, a) reports to Ed, he is the CFO of the Trafalgar Group. He, in writing, at times, said to us that he would have to get permission from Ed, he would have to wait for Ed to approve certain actions.

Ed was the settlor and the beneficiary and had hired Wayne, so it was quite clear to me that he was authorized to take these actions by the settlor.

181. Q. So, let's follow up on that. We're talking about 439 -- what was that number again?

A. 417.

182. Q. 417 million. Actually, on that point, I'm slightly confused. Looking at paragraph 35, I thought -- and maybe I wrote it down wrong, but at the beginning of the examination, your lawyer told me that the number in brackets that used to say 440 should be 439; isn't that right?

MR. BERG: Correct.

BY MR. MARR:

183. Q. But that's a different number than the 417?

A. Yes.

184. Q. I'm not completely following the difference. Maybe you can explain that to me. How much of the 417 went to Aylesworth Thompson?

A. Of the 417, 84 million went to Aylesworth.

185. Q. And the rest was 333,000 went to this Bermudan company, Continental Trust?

A. 333 million, yes.

186. Q. So that leaves -- so if we have 439 less 417, that leaves $22 million. Am I doing that math right?

A. Yes.

187. Q. You're the accountant. So where did that $22 million of distributions go?

A. Some of that resides, to this day, in the trust, directly in the form of bank accounts, time deposits, savings accounts. And some was used as distributions to -- in one instance, an underlying company to purchase a property.

188. Q. So between 2005 and 2009, the trust got in $439,000, of which ---

MR. BERG: Million.

BY MR. MARR:

189. Q. --- $439,000 million -- thank you -- of which 417 went on to Donations Canada and $22 million remains to the benefit of the beneficiaries. Is that a fair way to put it?

A. Some was used already to the benefit of the beneficiaries and some remains.

190. Q. How much was used already?

MR. BERG: I think that the details of distributions out of the trust is not relevant, except to the extent that it contains jurisdiction facts. So, you can ask Mr. Gorman, if you wish, whether any of that $22 million went to Canada or bought property in Canada or did anything else in Canada, but aside from that, I think the rest is irrelevant.

BY MR. MARR:

191. Q. You were talking before I got caught up in the numbers that Mr. Robertson was the agent, and you said there was nothing in writing. Am I clear about that from Mr. Furtak?

A. Yes.

192. Q. Is there any communication at all from Mr. Furtak, written or otherwise, that Mr. Robertson is

his agent?

A. I don't recall anything specifically saying Mr. Robertson is my agent.

193. Q. But I take it that Appleby Services was confident that Mr. Furtak understood and approved of these instructions from his agent, Mr. Robertson?

A. Yes.

194. Q. And Mr. Robertson, I think you told me earlier, would check things out with Mr. Furtak before he would give the instructions. Is that your understanding?

A. Certainly on certain of them.

195. Q. So, again to come back to where we were a little earlier, so there's $417 million going to Donations Canada Financial Trust over that five-year period. Is there anything in your files telling you why that happened?

A. No.

196. Q. And no one has told you why it happened?

A. Subsequent to the January 4th or January 5th or whatever it was ---

MR. BERG: And in that, we don't need to know. If Mr. Gorman is talking about what Mr. Robertson has told him since this litigation has been asserted against the trustee, I think that's litigation privilege.

But if your question, Mr. Marr, is what did the trustee before it was sued, I mean, you can ask him that if you want. What did the corporate trustee know about the purposes and the program and all of that before it was sued, feel free to ask him that.

BY MR. MARR:

197. Q. Sure. Before the lawsuit started, did Appleby Services have any information or knowledge as to why $417 million was being sent to a Canadian charity?

A. Well, the $417 million did not go out as one payment of $417 million. There was a whole foundation of transactions when we started with one transaction and over time that became many transactions. So, in answer to your question, did we have an understanding of that? No. A complete understanding ---

198. Q. Did you have any understanding before you became aware of the lawsuit before January of this year, as to why a Canadian charity, Donations Canada Financial Trust, received millions of dollars over a four-year period?

A. No.

199. Q. Did you make any inquiries, Appleby Services, as to why that was happening?

A. I believe we did on a number of occasions.

200. Q. Who made those inquiries?

A. I believe that Pearline Trott...

201. Q. Okay, made inquiries of who?

A. Made inquiries of Mr. Robertson for further details as to how this program worked. I'm not sure that she got -- of what the answers were.

202. Q. There's nothing in the file indicating what she was told.

A. I don't believe so.

203. Q. She didn't have any notes to the file, memorandum, anything like that?

A. No.

204. Q. Did she seek any legal advice about this program?

A. No. Not that I'm aware of, no.

205. Q. I understand there's anti-money laundering legislation in Bermuda. Are you familiar with that?

A. Reasonably familiar, yes.

206. Q. Is that part of one of your job functions, I assume, is to deal with that for Appleby Services?

A. Correct.

207. Q. And is there a compliance officer relating to that legislation at Appleby Services?

MR. BERG: I'm not sure how this is relevant to the jurisdiction motion or frankly to your action,

but if you can let me know, I'll consider the question.

BY MR. MARR:

208. Q. Well, when all these transactions were going on for Donations Canada Financial Trust, was there anybody at Appleby looking into the issue of whether or not there was money laundering going on, with respect to a Canadian entity in which Appleby Services was in the centre of that money laundering? Did anybody make any inquiries about that?

MR. BERG: Irrelevant.

MR. MARR: Why is that irrelevant? That's got to do with the core of the action in Canada.

MR. BERG: It's not pleaded. I don't see how it has any relevance to the motion, let alone the action.

REFUSAL NO. 2: To advise if anyone at Appleby Services was inquiring about the possibility of money laundering going on during the relevant time period.

BY MR. MARR:

209. Q. I take it Appleby's knew at the time that they

were giving these payments to Donations Canada that Donations Canada was a charitable charity in Canada?

A. I don't know.

210. Q. You don't know. So they may have or they may not have?

A. Yes.

MR. BERG: Mr. Marr, I see we've been going on for an hour-and-a-half. Is there a convenient time for a break or...

MR. MARR: There is. Maybe a couple more minutes, then we'll take a break.

MR. BERG: Okay.

BY MR. MARR:

211. Q. Just to follow up on that one point, the letter at tab U from the lawyer. This was in your file. And this was a letter from a lawyer in Canada and it's a copy for your company. You don't know if anybody read this though, I take it?

A. No.

212. Q. It's just in the file and you don't know how it got there?

A. Yes.

213. Q. Okay. And you see at tab V, this is, says "Donations for Canada?"

A. Yes.

214. Q. And if you turn to page 260, it says that -- it talks about the trustee of the Donations Canada Financial Trust?

A. Yes.

215. Q. These again were in your files?

A. Yes.

216. Q. And when the money was being sent out, it was being sent to the Donations Canada Financial Trust?

A. Yes.

217. Q. One would think from the name that there might have at least been a suspicion that the charity was in Canada. Would you agree with me there?

A. Yes.

218. Q. So if Appleby's didn't know, it's because they didn't look into it. Would you agree with that?

MR. BERG: Well, didn't know what? Sorry.

MR. MARR: That it was a charity based in Canada.

MR. BERG: Well, that's sort of circular, right? They didn't know because they didn't know.

BY MR. MARR:

219. Q. Well, the name; for instance, if it was called Donations England Financial Trust, one might suspect it was based in England. Since it's called Donations Canada

Financial Trust, one would at least suspect it was based in Canada, right?

A. One could have that suspicion, yes.

220. Q. Right. And if you wanted to confirm it, you'd agree with me, you could make some inquiries and try to find out. You just don't know if Appleby ever did that?

A. Correct.

MR. MARR: Okay. We'll take a break.

--- BRIEF RECESS

BY MR. MARR:

221. Q. We were looking a while ago at this chart at page 76 of my jurisdiction motion.

MR. BERG: Yes, we have it.

BY MR. MARR:

222. Q. So, you told me a little bit earlier when you found out about the lawsuit, you started sort of investigating the role of Appleby Services.

And I take it at some point you became -- well, you didn't see this chart and I appreciate that. You began to understand that there was a program being marketed to Canadians to save on their taxes. Is that fair to say?

MR. BERG: Well, just hold on.

MR. MARR: He was nodding, by the way, but okay.

MR. BERG: Fair enough. And I'll let you go a little way down the road. You can ask him whether he understands this from reading your pleading, and I guess when he understood it. But I'll be somewhat restrictive on this, because obviously he's already told you that his conversations and knowledge of the gift program all come after the trustee has been sued.

MR. MARR: I understand that and I'm trying to find out what in the course -- I cut you off a little before and I'm going to backtrack slightly and let him tell me a little bit about, in this narrow area, what he's learned in the course of his investigation.

BY MR. MARR:

223. Q. You remember we were having that discussion before. I appreciate that when all this is going on, you never heard of it and didn't know anything about it.

At some point you read the allegations in the Statement of Claim and that's when you first become aware of it, correct?

A. Correct.

224. Q. And then you get all the files. I think

you've told me that, correct?

A. Yes.

225. Q. And you start talking to people about it within wherever; I don't know who you're going to talk about, we'll come to that in a second.

I take it though that sometime between January and the time you swore your affidavit, you did become aware that there was a program being marketed by the Trafalgar, let's call them that, to Canadians. Is that true? You became aware of it after the lawsuit started, you personally?

A. Yes.

226. Q. And during the course of you becoming aware of that, did you learn when Appleby Services had become aware of that?

A. No.

227. Q. So, are you saying to me that you're not sure if they knew about it before the lawsuit, or they didn't know about it before the lawsuit, or what are you telling me about that?

A. I think there would have been some vague knowledge of the program. But I think if you had investigated -- now, this is speculation.

228. Q. Well, I don't really want you to speculate. I want you to tell me what you learned, because you did an

investigation. I understood from your evidence that you looked in the files and you spoke to a bunch of people and you learned things. And I'm trying to find out what did you learn about when Appleby's first became aware that there was a program like this being marketed to people like Mr. Cannon.

A. Well, I'm not sure my investigations were actually aimed at trying to determine when we found out, or the extent of what we found out. I was concerned with what was actually in place, learning what was in place, not -- well, did we know this to any extent beforehand. And I was concerned that I would have a reasonable understanding of the facts that were being claimed.

And again, I would simply say that there was probably some understanding of the program, but a very general and not very precise understanding.

229. Q. And that understanding to the extent it would have existed, would have come from Mr. Robertson or from some other source?

A. It would have come from a variety of sources. You, yourself mentioned and I agreed, there were payments to Donations Canada Financial Trust that we were making. And I think there was a general understanding that partially would have come from Wayne at one time or another in discussions. But it would be really

speculation on my part, because I don't really see the evidence of that.

230. Q. Okay. So you don't know what conversations Mr. Robertson had with people at Appleby's in 2005 to 2009 about this gift program being marketed to people and Mr. Cannon. You don't know that, do you?

Mr. Cannon was being sold something and Mr. Robertson may or may not have told someone at Appleby's about it. Do you know what he may or may not have told them?

A. I don't believe there were any detailed discussions about the program.

231. Q. But how do you know that?

A. I see no evidence of it.

232. Q. There's no documentary evidence.

A. Correct. Nor, when I was discussing it with the individuals did they give me any sense that they understood or had been spoken to about the program.

233. Q. Well, did you ask Ms. Jack specifically what she had been told about the program?

A. When I asked her for details about the program, her understanding was very limited.

234. Q. And did you ask her why she didn't have a better understanding?

A. No.

235. Q. Did you ask her why she didn't make any further inquiries?

A. No.

236. Q. Is there any indication in your review of the files that Appleby's ever wrote a letter saying, you know, we're giving out millions of dollars here. Why are we doing that? Can you tell us more about the program?

MR. BERG: And just on that, Mr. Marr, you're saying Appleby's or ---

MR. MARR: Appleby Services.

MR. BERG: --- Appleby Services, sorry. Okay.

THE DEPONENT: Now, I've reviewed many documents when I was trying to come to an appreciation and I'm not certain that my recollection of every single document -- in fact, I know my recollection is not going to be perfect. But I believe at some point Pearline Trott may have requested an update, but as to whether that update, I don't believe that update took place.

BY MR. MARR:

237. Q. Was that in a letter or an e-mail or what?

A. I think there may have been an e-mail or an internal memo.

238. Q. Of who was she asking that, do you recall

that?

A. I don't.

239. Q. But someone outside of Appleby Services?

A. I believe so.

MR. MARR: Can we get production of that?

MR. BERG: No.

REFUSAL NO. 3: To produce the e-mail or internal memo written by Pearline Trott regarding the gift program.

MR. MARR: Because it's not relevant to the jurisdictional issue.

MR. BERG: It's not relevant to the jurisdictional issue. Discovery is for another day, but all jurisdictional facts that Mr. Gorman and the corporate trustee have uncovered have been disclosed. You can ask him, obviously, about any of those.

MR. MARR: Well, let's take a look and see if I can help to convince you that that's a relevant request.

BY MR. MARR:

240. Q. Let's take a look at paragraph 14 of your

affidavit. And you're talking there about the anti-Bartlett clause. Do you see that?

A. Yes.

241. Q. And it says in the middle of the paragraph, "Pursuant to this clause, ASBL is not required to interfere in the management or conduct of any company owned by the trust." Do you see that?

A. Yes.

242. Q. But let's actually take a look for a moment, if you don't mind, at the actual clause. And if we turn to page 115, clause 14 is at the top of the page. And it does say the part in the first part of the sentence about being not required to interfere. Do you see that?

A. Yes.

243. Q. But then it goes on at the fourth line; "The trustee shall nevertheless from time to time use reasonable endeavours to obtain such information from the company as would be available to a non-executive director in order to satisfy themselves as far as may be possible from such information that the affairs of the company are being properly managed." Do you see that?

A. Yes.

244. Q. If we turn now back to paragraph 14 of your affidavit, it's true that you don't have to interfere, but you are allowed to make some inquiries, reasonable

inquiries. And I'm suggesting to your counsel, first of all, that this e-mail sounds like a reasonable inquiry perhaps, but we need to know what was said or not, so that's why I think it's relevant.

MR. MARR: I'm not persuading you, I take it?

MR. BERG: You're not; you're not persuading me, because whether the corporate trustee, Appleby Services, has fulfilled its requirements under this clause as a matter of Bermuda law and trust practice or not, is not relevant to the motion, nor to the action.

MR. MARR: So then why is paragraph 14 in the affidavit at all if it's not relevant to the motion?

MR. BERG: Well...

MR. MARR: It's either relevant or it's not. You obviously have deemed it relevant, because it's in the affidavit.

MR. BERG: Yes. I mean the paragraphs 13, 14 and on, describe the deed of settlement and the trustee's powers.

MR. MARR: And I'm trying to suggest that -- all right.

MR. BERG: You can ask Mr. Gorman about his understanding of the anti-Bartlett clause, for example. Not as a matter of law, but as a matter of

his corporate practice.

MR. MARR: No. That's not what I want to ask him. What I want to ask him is what steps did Appleby Services take under this section 14. Did they make any inquiries as to what's happening with respect to several hundred million dollars of monies being given to Donations Canada?

MR. BERG: And Mr. Gorman has already answered that he's reviewed the files and he's given you his answer on that question.

MR. MARR: No. I still don't think I have the answer.

BY MR. MARR:

245. Q. What steps did Appleby Services take with respect to finding out why several hundred million dollars were being given to Donations Canada? What's the answer to that question?

MR. BERG: No. That question has been asked and answered.

MR. MARR: I don't think it has been. He skirted around it a bit. It's a straight question. Just tell me what's the answer to that question.

MR. BERG: It's asked and answered.

REFUSAL NO. 4: To answer what steps Appleby Services took with respect to finding out why several hundred million dollars were being given to Donations Canada.

BY MR. MARR:

246. Q. When the documents that we've looked at in the file came in, the one, the opinion letter for the lawyer, for example, did Appleby Services make any inquiries of the law firm or of anyone at Trafalgar as to why -- anything about that opinion letter?

A. I don't know.

247. Q. You told me a few moments ago that Ms. Jack sent some e-mail, which I haven't yet been able to see, about these donations, asking more about it. And I think your answer is, that she never got a satisfactory response to her inquiries; is that right?

A. I believe the communication that I was referring to was from Ms. Pearline Trott.

248. Q. Sorry, you're right. I said that wrong. I apologize. Ms. Trott sent an e-mail. And did she ever get a satisfactory response, whatever she asked about?

A. I ---

MR. BERG: He's already answered that to say ---

MR. MARR: No, he didn't. What ---

MR. BERG: He said he didn't see evidence of a response.

BY MR. MARR:

249. Q. Okay. And that lack of a response didn't stop Appleby Services from continuing to make the charitable distributions as requested?

A. No.

250. Q. And these distributions, just to be clear, to Donations Canada, those were distributions -- were those distributions to the beneficiaries? Who are those distributions to? Are they distributions of the charitable monies that are -- I'm not quite sure what they are. Are they treated in the same way as a distribution to Mrs. Furtak of a cheque payable to her?

A. I think it's fair to say that in the mind of ASBL, Appleby Services, these were more in the nature of an investment.

251. Q. So they weren't a charitable donation in Appleby Services' mind?

A. No.

252. Q. So, when Appleby Services was making these distributions to Donations Canada, was Appleby Services of a view that those were in the best interests of the beneficiaries?

A. Yes.

253. Q. Yes, they thought that?

A. Yes, they thought that.

254. Q. Including the minor?

A. Yes. I'm sorry. Could you repeat the question?

255. Q. I think you told me way back at the beginning that in general, as a general proposition, you're managing the trust. And as a general proposition, you're supposed to be managing for the benefit of the beneficiaries. You agree with that, correct?

A. Yes.

256. Q. Okay. Now, we know that you gave over a four-year period, there were distributions or what you call distributions to Donations Canada of -- what was that number again -- $417 million.

Were those $417 million of distributions, they were in the nature of investment you're saying now, more than a charitable donation; is that correct?

A. Yes.

257. Q. And those $417 million of monies sent to Donations Canada, that was for the benefit of the beneficiaries?

A. Ultimately, yes.

258. Q. Including the minor? That was my other

(379)

question.

A. Yes.

259. Q. All right. And when you say "ultimately," what does that mean? By ultimately, what do you mean by that?

A. Through the fact that the payments that were received from Trafalgar Trading Limited exceeded the amounts that had been directed to Donations Canada Financial Trust.

260. Q. And those were tied together, in that the more you gave to Donations Canada, the more the payments would be coming from Trafalgar Trading; is that correct?

A. Yes.

261. Q. I've estimated, based on the evidence and I can take you to it, but my estimate is that it was approximately $20 million to the better in favour of the trust from these series of transactions. Is that consistent with your understanding, having reviewed the financial records?

A. Yes.

262. Q. Is that a fairly precise number or do you have a better number than me?

A. At the moment, my own number is an approximation, which is the same approximation as yours.

263. Q. At the end of, when all the smoke settles and

the money goes out to Donations Canada and then eventually it ends up in Trafalgar Trading and money comes back to the Bermuda Long Tail Trust, from what you're telling me, they would have received back, I guess, around $437 million?

A. Well...

264. Q. The 417 went out, $20 million more makes $437 million coming back, approximately?

A. Approximately. I think currently the approximate number is $439 million.

265. Q. That's $22 million, okay.

MR. BERG: And Mr. Marr, those are not coincidentally, I think the same numbers that you had cross-examined Mr. Gorman on about an hour-and-a-half ago and they match the numbers in his paragraph 35.

MR. MARR: No, I wasn't suggesting anything other than that. I think we're all on the same page in that. I just wanted to make it clear.

BY MR. MARR:

266. Q. So that at the end of the process, the Bermuda Long Tail Trust, as a result of this investment as you've called it, was richer by $22 million approximately?

A. Approximately, yes.

267. Q. And that would be to the benefit of Mr. Furtak and his family, the beneficiaries of the trust?

A. Yes.

268. Q. And at the time that these transactions were going on, these $417 million of transactions, was Appleby Services aware that there were people like Mr. Cannon, my client, back in Canada, also giving money under this plan to the Donations Canada Financial Trust?

A. I don't know.

269. Q. Did you see any indication in your file that they knew that? Anybody at Appleby's?

A. Certainly in the file there are documents as disclosed in my affidavit concerning Parklane, tax opinion. The extent to which those were read and understood and comprehended, I can't state.

270. Q. And is there anybody in the world who could state it better than you, as to whether or not that was understood at the time?

MR. BERG: I'm not sure I understand that question, but ---

MR. MARR: Well, he's told me that he doesn't know.

BY MR. MARR:

271. Q. Well, you said you can't state that. Is there

somebody else at Appleby's who would know if Appleby's understood this?

A. It's a very complicated program and certainly the ASBL staff that I've spoken to don't understand it. I find it difficult myself to understand all the ramifications.

272. Q. And you're a chartered accountant.

A. Yes.

273. Q. Well, that's one thing you have in common with Mr. Cannon.

A. He's a chartered accountant?

274. Q. No. He doesn't understand it. He's not a chartered accountant. It's the lack of understanding.

MR. BERG: That was a qualification I wasn't aware of with ---

MR. MARR: That was just an unnecessary comment I made.

BY MR. MARR:

275. Q. We looked a moment ago at that opinion letter from Mr. Harris. That's the one at page 249, tab U of your record?

MR. BERG: We have it.

BY MR. MARR:

276. Q. You see that in the first sentence, it talks about, "You asked our opinion concerning the program described in the statement of facts." Do you see that phrase?

A. Yes.

277. Q. In your productions I don't see the statement of facts. Did you see that in your review of the file?

A. I obtained a copy of the statement of facts from Mr. Robertson.

278. Q. Is that after -- I take it that's something you got after the claim was issued, obviously?

A. Yes.

279. Q. If it wasn't in the file ---

A. No, it was not in the file.

280. Q. I'm not even going to ask you that. So, in your review of the file, there's no indication that Appleby's ever asked for the statement of facts?

A. No.

281. Q. And just so that I'm clear about something, this money that was given to Donations Canada, which you've sort of called an investment, did Appleby's ever -- I think you said no, but I just want to be clear.

They never got any legal opinion on whether or not that was authorized on the terms of the trust? I'm not

asking what the opinion is; I just want to know if they got one.

A. Appleby Services.

282. Q. Yes.

A. No.

283. Q. It was just done without counsel's advice, giving them the $417 million?

A. Yes.

284. Q. Now, if we turn to tab W, if you take a look at page 2, this is the letter that Mr. Robertson wrote to Mr. Krebs. And you'll see that in the second last paragraph, the one that starts with "as you know." Do you see that paragraph?

A. Yes.

285. Q. And in the last sentence of that paragraph it says, "This future trading has, as you know, been undertaken pursuant to TTL's involvement in the trading component," and goes on. Do you see that?

A. Yes.

286. Q. Do you know yourself when he says "you," is he talking about -- do you have any information to assist me if the "you" is Mr. Krebs or the "you" is Appleby Services?

A. I don't know to whom he was referring.

287. Q. Well, did in fact, Appleby Services know that

there have been various licensed software sales transactions in Canada commencing in 1998, which is what it says?

Take your time to read it over. I haven't asked the question that well, so I don't mind if you read the whole paragraph.

A. Well, if I can answer this as follows, we knew that we had licensed software, which had been donated to the Long Tail Trust by Mr. Furtak called TGIFP.

288. Q. Okay.

A. And we knew that that was being used as per the explanation that had been given us in the deed of addition for the trading of various index -- indices.

289. Q. But did you know that it was being used in Canada, which is what the paragraph seems to say?

MR. BERG: Just so I understand the question, that paragraph, as we know, there are two separate programs with different time spans. That may be relevant to your question, Mr. Marr. I don't know. But if it is, you may want to ask Mr. Gorman -- are you asking about the Trafalgar Index Program or are you asking about the Trafalgar Global Index Futures Program? It may not make a difference to you. I don't know.

BY MR. MARR:

290. Q. Well, the letter's not very clear. So on that distinction, were you aware that any -- let me put it in a different way. Were you aware that any of the software held by the trust was being used in Canada?

A. I don't think so.

291. Q. I guess part of the problem is it's hard to even know; is this a question we should be asking Mr. Krebs perhaps? Because I don't know if the "you" in the letter, frankly, is Appleby or it's somehow Mr. Krebs was involved. I don't really know. Is this something we should ask -- can Mr. Krebs tell us if he knew that?

MR. BERG: Well, we already know that Mr. Krebs is actually not, as Mr. Robertson's letter suggests, at Appleby Services. He's a lawyer at Appleby's.

MR. MARR: Well, maybe we should ask Mr. Krebs what he did with this letter. Presumably if he got it and if he got it, what did he do with it?

MR. BERG: Well, we know it was in Appleby Services files, because it's now part -- it was part of the documents Mr. Gorman had brought to him and it's now been disclosed.

MR. MARR: I mean, what seems to be is that in December 19th, a letter was sent. And it seems like Mr. Robertson was speaking to Mr. Krebs. And the

reason I say that is the first line of the letter. I'm assuming he got that much right. Maybe that's a big assumption on my part.

But so, when it says, "further to our discussions," I take it that Mr. Robertson was speaking to Mr. Krebs. It doesn't sound like he was speaking to -- I don't know what he was speaking to him about, I guess we need -- and whether it's privileged or not. It doesn't even sound like he was speaking to him as a lawyer perhaps, because he didn't even bother addressing it to the law firm. I'm not sure.

I'm just trying to find out and maybe -- well, I guess I'd like you to ask Mr. Krebs if he got this letter. And if he got it, what did he do about it and why did he get it, to his knowledge?

MR. BERG: Well, I'm not going to ask Mr. Krebs that, for a couple of reasons. We know that the letter was received by Appleby Services, because Mr. Gorman had the letter in Appleby Services files, so we know it was received.

MR. MARR: But we don't know how it was received. We don't know that Mr. Krebs, for example, if he gave it to him, but okay. I hear you.

MR. BERG: Quite right. I guess you can ask

Mr. Gorman what he knows about this letter.

MR. MARR: Maybe that's a fair question.

BY MR. MARR:

292. Q. Do you know how this letter ended up in your files?

A. I don't recall exactly where in our files this was, certainly how it ended up there. And it would seem -- well, it would be speculation on my part as to how it ended up there. I think it's appropriate since it's addressed initially to Appleby Services, although to the wrong person, that we should have seen a copy of it.

293. Q. All right. You know what? We'll leave Mr. Krebs for the moment and go on to something else that I think you might help us. And it may be that I'm not following the distinction that, one in which I think your lawyer was trying to point out to me.

But if we look at paragraph 22 of your affidavit, I'm a little confused and perhaps you can help me to understand what we're getting at here. You say near the bottom of the page where paragraph 22 is, at the bottom of page 10, and you're talking now about TTL 2003, that the program is prohibited from being used in Canada. Do you see that?

A. Yes.

294. Q. That was the point, I guess, I was trying to get at and maybe I'm not understanding either the point you or Mr. Robertson were making. But it seemed to me that your sentence and his letter were inconsistent in that I took his letter to mean that the program was being used in Canada. Am I right in suggesting the letter and your affidavit are inconsistent, or have I got something all wrong?

MR. BERG: Well, again, I'm not sure I understand that question. I guess, you know, you have already examined Wayne Robertson. I can't recall whether you asked him about what he meant in the letter.

MR. MARR: No, I don't think I had. I wouldn't have had this letter.

MR. BERG: Okay.

MR. MARR: So I couldn't have asked him that.

MR. BERG: I see.

MR. MARR: So -- to Appleby, I don't get to usually look through Appleby's documents.

MR. BERG: You can certainly ask Mr. Gorman if he knows what Mr. Robertson meant in that paragraph.

BY MR. MARR:

295. Q. Well, let's put it this way. If Mr. Robertson was suggesting that the program was used in Canada, that

is not something Appleby's would have known or would have agreed to. Is that a fair way to put it?

A. The license agreement specifically excludes its use in Canada.

296. Q. And does use in Canada mean physically being at a computer in Canada, or does it mean using it for Canadian customers? What does that mean?

MR. BERG: And here I think -- and I'm content to allow the question, but just so we know how it's -- you can ask him to read the exclusion and what's his interpretation as a business person, but I mean ---

BY MR. MARR:

297. Q. As a manager of the company and not being a lawyer, what's your understanding?

A. My understanding was that it could not be used -- it was not to be used by the licensee, TTL 2003, in Canada when we -- the license is between us and TTL 2003.

298. Q. But does that mean, as I said, you cannot be physically in Canada, or does it mean you cannot be using it for Canadian customers?

A. The agreement is actually, again, as a non-contract lawyer, reads vaguely on that point to me, exactly, precisely what it means.

299. Q. Let me ask you another question about this letter and maybe a better way to ask this one is -- I'm looking through your affidavit. At paragraph 32 of your affidavit, you talk about that ASBL had the power to demand repayment of the outstanding loan obligations. Do you see that?

A. Yes.

300. Q. Did they ultimately demand repayment?

A. No.

301. Q. Why not?

A. Partly because our understanding was that there were no funds at TTL and partly because the process of understanding the assets of the trust and the program itself was still being flushed out.

302. Q. So is it fair to say you didn't demand the money, because that's not what Mr. Furtak and Mr. Robertson wanted, didn't want you to do that?

A. No.

303. Q. It's not to do it.

A. No.

304. Q. So what do you mean by it was still flushing out? I don't really understand what you mean by that.

A. Trying to determine at the financial standing of the trust, what its assets were, how much remained of the loans, whether or not any loans had been made, and

the extent to which those balances were still outstanding.

305. Q. Well, what is the bottom line on that? What is the amount of the loans?

A. I don't know.

306. Q. You mean you don't know because you don't have the number in front of you or just you don't know, it's not known?

A. I don't have the number in front -- I don't know.

307. Q. I mean, if you were in your office, would you know?

A. No.

308. Q. That's what I'm trying to get at.

A. No.

309. Q. And why is that? Isn't there a schedule for the amounts advanced and repaid?

A. No.

310. Q. So, Appleby's was involved in TTL being lent money from the trust and they don't know how much money was lent?

A. Correct.

311. Q. Was there money advanced prior to Appleby's handling the trust, or it's all subsequent to -- well, Appleby had a predecessor; I understand that, but we'll

assume it's all Appleby ---

A. Appleby Services.

312. Q. Right; Appleby Services, sorry. There weren't any monies advanced before Appleby Services or its predecessor was handling the trust, correct?

A. I haven't investigated that aspect of the dealings before the relevant period of 2005 for the program.

MR. BERG: And I'm also not sure I understand the question, because the deed at settlement is with Harrington and Harrington -- correct me if I'm wrong, Mr. Gorman, but Harrington is the predecessor to Appleby Services, so it really has always been Appleby Services.

MR. MARR: Right. My question actually doesn't make sense; I agree.

BY MR. MARR:

313. Q. The whole time that the Bermuda Long Tail Trust has existed from the beginning to present, the trustee has been Appleby Services?

A. Yes.

314. Q. Before that it was Harrington, but Harrington is the same thing as Appleby ---

A. It was Appleby Services essentially by

different names, if you can agree to use that shorthand.

315. Q. Sure. So, by using that shorthand from the time the trust was created to date, Appleby Services has always been the trustee of the trust, correct?

A. Yes.

316. Q. But I think I'm even more confused in the sense that -- so in paragraph 35, when you say that 439 -- now it's $439 million approximately, instead of 440...

A. Yes.

317. Q. ...has been received by the trust for repayment and that's your license for loan repayments and master license fee repayments.

So, first of all, is that $439 million all from TTL or is it from other entities as well?

A. I believe it's all from TTL.

318. Q. Well, just pause on that point. I want to be clear about that, too, because at points in your affidavit, you talk about some other companies.

For example, paragraph 21, you talk about TTL 2003, so when you say TTL, do you mean just Trafalgar -- in your answer you just gave me a moment ago, are you saying Trafalgar Trading Limited or does that include TTL 2003 Limited?

A. No, it refers to Trafalgar Trading Limited

395

solely.

319. Q. Okay. So Trafalgar Trading Limited solely between 2005 and 2009 paid $439,000 to Appleby's as the trustee for the Bermuda Long Tail Trust; is that right?

A. 439 million ---

320. Q. Sorry.

A. --- to Appleby Services.

321. Q. Yes. Is that how it works, by the way? Are the cheques made payable to Appleby Services?

A. There were wire transfers. I believe everything was by wire transfer.

322. Q. And how do you do that internally? Do you have segregated trust accounts or what's the mechanics of that?

A. There's no internally, I think in the sense you mean Trafalgar Trading ---

323. Q. When Trafalgar Trading wires, whose account are they wiring it to?

A. To the account of the trust, Appleby Services (Bermuda) Limited as trustee for the Bermuda Long Tail Trust.

324. Q. And that's a separate bank account?

A. Separate bank account.

325. Q. Okay, that answers my question. Thank you. So, for the $439 million, are you able to break that down

between loan repayments and master license fee repayments?

A. No.

326. Q. And that's because there's no paperwork establishing what it was?

A. Correct.

327. Q. So, you have no way of knowing whether it's 90 percent for one or 10 percent for one or 50-50 or whatever, you don't know that?

A. No.

328. Q. And there's nothing -- if we go back now to paragraph J -- sorry , Exhibit J in paragraph 17. I'm at paragraph 17, which refers to Exhibit J.

MR. BERG: We'll start there.

MR. MARR: So keep your hand on both, I guess.

BY MR. MARR:

329. Q. What you're telling me is although there's a loan agreement, you can't, as the trustee, tell me what, if any, amount is outstanding on this loan agreement?

A. Correct.

330. Q. So when we were looking at the letter where Mr. Robertson was asking you not to call the loan, remember we were looking at that?

A. Yes.

331. Q. You couldn't call the loan; you don't know how much to ask for. Is that fair to say?

A. That's correct.

332. Q. And have you investigated internally why there's no information about that? I'm finding that a little surprising.

A. In some of the -- I have investigated internally, but the results of that are limited. Some of the receipts from the bank are noted as loan repayment, some as license fee, and sometimes simply with a nondescript ---

333. Q. But that's looking at the payment side.

A. No. That's looking at the receipt side.

334. Q. But I mean, you're the chartered accountant, not me, but I would have thought that there would be an Appleby's, there would be a loan account on some books where you'd be keeping track internally that this is the amount outstanding, these are the amount of payments that have come in. You wouldn't have to look at the bank records. You'd have ---

A. No.

335. Q. --- a ledger that would tell you that. Is there no such thing?

A. If we were keeping the financial statements of the trust, that would be a reasonable thing to expect.

However, the books and records for the trust, from a financial perspective, are kept by the Trafalgar Group.

336. Q. Oh, okay. I didn't know that. So who's doing that, the books? Who's keeping the books and records?

A. Wayne Robertson.

337. Q. Do trusts have to file tax returns here in Bermuda?

A. No.

338. Q. There's no requirement. So presumably, Mr. Robertson should have been able to tell you the amount outstanding on these loans. He should have that information, if he's keeping the books and records.

A. Yes.

339. Q. Have you asked him that question?

A. Yes.

340. Q. And is he able to give you an answer?

A. Not yet.

341. Q. Has he offered an explanation why he's not able to, yet?

A. It's -- he is preparing financial statements for all of the entities in the Trafalgar Group, including the trusts, although they're not part of the Trafalgar Group, but he's preparing the financial statements for the trust, as well as the companies of the Trafalgar Group. And he tells me that he is preparing some

reconciliations and determining those ledger amounts, as you refer to them.

342. Q. When did he start this process of trying to do that? When did you ask him to do that? When did he start?

A. I certainly asked him this year at different points and received assurances that the financial statements were being prepared.

343. Q. So you asked him when, in January or February or something like that?

A. Probably later than that, probably March or April, but yes, this year.

344. Q. So if we're looking at paragraph 22, pursuant to your affidavit, pursuant to the licensing agreement that's referred therein, you're not able to tell me if the trust received any payments under this agreement at all?

A. Correct.

345. Q. You don't know and specifically whether they got -- there's discussion about a covenant to pay 95 percent of any profits. Do you see that?

A. Yes.

346. Q. You don't know if any monies have been paid pursuant to that?

A. I don't know. I haven't investigated that.

347. Q. Have you looked into whether or not the trustee made any inquiries about whether or not any monies are due under that agreement for that percentage arrangement?

A. No.

348. Q. And what about the $50 million promissory note? Is that payable to the trust, due to the trust?

A. Yes, a promissory note was signed.

349. Q. When is it due? Take a look at "P".

MR. BERG: It's a demand note.

BY MR. MARR:

350. Q. It's a demand note, so I take it demand hasn't been made?

A. Correct.

351. Q. And do you know why that hasn't happened?

A. Because it would be useful to have the financial statements showing the net position and it forms part of the greater whole.

352. Q. And if we look at paragraph 23, I take it for these license agreements, your answers are similar. You don't know what, if any, amounts are due for the percentage that's referred to in your affidavit?

A. No, not precisely.

353. Q. You don't know precisely what's due?

A. Correct.

354. Q. Well, do you know generally what's due as opposed to precisely?

A. To the extent that we've received payments from Trafalgar Trading.

355. Q. Yes?

A. Although my answer really is no.

356. Q. Because you don't know what percentage had to do with license fees and what percentages have to do ---

A. Correct.

357. Q. --- with loan payments. So you can't really know what that is. And what about, is there -- and this promissory note of $100 million. I take it no demands have been made on that?

A. No.

358. Q. Assuming again -- well, we should maybe take a look that it's also a demand -- if we look at -- where is that one? Is that one at "Q"?

MR. BERG: No. That one's not in the record.

BY MR. MARR:

359. Q. And why is that? Does it exist?

A. It's on 221.

360. Q. The last page.

MR. BERG: Oh, I'm sorry.

BY MR. MARR:

361. Q. So again, it's demand and no demand, although this one's not signed.

A. Yes.

362. Q. Is there a signed one in the file?

A. I've not been able to locate one.

363. Q. Have you asked Mr. Robertson about that form?

A. Yes.

364. Q. What did he say?

A. He has said he will look to resolve that question.

365. Q. But in any event, no demand has been made?

A. Correct.

366. Q. If we go to tab H for a second, which is the section in this agreement that deals with your power to make distributions?

MR. BERG: I'm looking as well, Mr. Marr.

THE DEPONENT: There's a general power to manage as if absolute owners that I've referred to before as section 10.1.1.

BY MR. MARR:

367. Q. Right. There is one about payments to minors I see at section 9.

A. Yes.

MR. BERG: I'm also looking at 10.1.1, which is very broad and I guess you can ask Mr. Gorman. This may, in fact, be viewed in the industry as the general distribution power section.

BY MR. MARR:

368. Q. Although I'm looking at -- this wasn't a trick, because I was looking, too, but I'm looking at 10.1.1.4. Is that the section?

A. Well, that's the power to lend section.

369. Q. Which one is the power to lend section?

MR. BERG: I'm sorry, Mr. Marr.

MR. MARR: Let's go off the record.

--- DISCUSSION OFF THE RECORD

BY MR. MARR:

370. Q. We were looking off the record. I think there's a power to distribute under 10.1.1.4, which is page 111, but there's a power to manage, which is at page 105, 10.1.1.

And what I think we agreed off the record, and I just want you to confirm on the record, is that when Appleby's was giving the money to Donations Canada, the

$417 million, they were exercising their power to manage under 10.1.1 of the Bermuda Long Tail Trust found at tab H; is that right?

A. Yes.

MR. MARR: Now, while you've given me the totals, Counsel, are you prepared to have the witness do, by way of undertaking, to actually break them down into the amounts that were transferred to date and the amounts, the total, the $417 million, the dates and the amounts and where it went and so on?

MR. BERG: No, I'm not, for a number of reasons. He's told you that there was, by his review of the record, a transaction every month or so over the four-year period and they went to these two sources, Aylesworth and Continental In Trust for Donations Canada. But for the purposes of the motion, I don't see there's a relevance for the production of those records.

MR. MARR: And that goes including the e-mails instructing them to?

MR. BERG: That's right. And he's also -- you've also asked him, you know, do you know what they were for. And he says he can't divide them between the categories he identifies in his paragraph 35 that is ---

MR. MARR: Actually, I don't want to interrupt, but you're jumping ahead, because I was going to ask him about that. What he couldn't keep straight is the $439 million. That's the first part of the paragraph ---

MR. BERG: Right.

MR. MARR: Right now I was only asking about the money to Aylesworth and the Continental Trust.

MR. BERG: Right.

MR. MARR: So those are what he calls the distributions from the trust. So, first I was talking about the money going out and you're not prepared to give me the details of that.

And I guess your answer is the same, your refusal is the same for the monies that went in?

MR. BERG: Well, it's a little bit different. I don't think we're refusing to provide those details. You've asked Mr. Gorman about the details. We're just refusing production of all the underlying records.

MR. MARR: No, but for instance, we -- let's just follow up a bit on that.

REFUSAL NO. 5: To produce a breakdown of the amounts that were transferred to date and the amounts, the total, the $417 million, the dates and the amounts and where it went.

BY MR. MARR:

371. Q. Let me ask you a couple of questions. There's $439 million that comes in from 2005 to 2009. That's what you're saying in paragraph 35, correct?

A. 439, yes.

372. Q. And of the $439 million, does that all come from wire transfers?

A. I believe so, yes.

373. Q. And it's wire transfers from a bank here in Bermuda, TTL bank in Bermuda?

A. Most of them came from one bank account. The others, the descriptor wasn't sufficient for us to determine, but we inquired and were told it was Trafalgar Trading Limited's account.

374. Q. I'm now even slightly more confused. You're saying that by descriptor you mean, what do you mean by that?

A. We would receive notification from the bank or when we would go online to inquire, we would see funds received. There would be a descriptor sometimes on their

407

act from the bank, personal routing wire transfer to us and as to what that was.

375. Q. And this is in the Bermuda Long Tail Trust account?

A. Yes. Well, very strictly speaking, Appleby Service (Bermuda) Limited's, as trustee for, but yes, the Long Tail Trust account used that shorthand from there on. And so, the descriptors in the latter part of the program and I don't know why, it's a bank issue rather than ours, became generic; credit transfer or transfer amount or those kinds of descriptions.

Whereas in the prior, there had been somewhat more meaningful descriptions including, perhaps, the account number from which the wire had come that enabled us to determine that was Trafalgar Trading.

376. Q. Okay, but pause for a second. Don't you have, internally for the money coming in, you don't have a ledger at Bermuda to kind of even reconcile the bank statements that there's not an error or something? How do you -- you're not keep track?

A. We weren't keeping the books and records, the financial books and records for the trust. We don't have on staff accountants whose job it is to do that.

377. Q. But you're managing the bank account, right? Who has signing authority over that account, an Appleby

person?

A. Yes.

378. Q. So you're managing the account ---

A. Appleby Services.

379. Q. Appleby Services person, correct?

A. Yes. I believe so.

380. Q. So, as trustee, aren't you keeping track that the money that's supposed to be in the bank account is in the bank account? Aren't you keeping track of that at all?

A. We will have copies of bank statements to see what the balance is. We can obtain online access to bank accounts.

381. Q. But is the first time you know that money is going to be in the account when you get the statement back at the end of the month, or do you have some notification that there's money coming in?

A. Yes. We would have notification from the bank, I believe, that -- we wouldn't have to wait for a statement, but we would wait for...

382. Q. No, but you'd be notified of a deposit in the bank.

A. Yes.

383. Q. But you don't have any notification otherwise that money is coming to you? There's no paper trail?

A. I don't believe so.

384. Q. And so the money that's coming in, the $439 million, you were starting to tell me how you know that that is the amount from Trafalgar Trading. It used to be at one time that, I guess, the bank would write "Trafalgar Trading" or something as being who was the source of the money. And at some time they changed their practice, so that it just is "deposit." Is that how ---

A. Essentially, that is correct.

385. Q. Okay. So, how did you then verify that it was Trafalgar Trading if you don't have that notation anymore?

A. I verify it by asking Wayne Robertson. I presented him with a list of these receipts and asked him to verify that these were Trafalgar Trading Limited's -- that they originated with Trafalgar Trading Limited.

386. Q. Were there other sources of money other than Trafalgar Trading that were going into that bank account in this time period?

A. I don't believe so.

387. Q. And so you, Appleby itself hasn't, other than Mr. Robertson giving you this information, you haven't independently verified that Trafalgar Trading was the source of the $439 million?

A. No.

388. Q. Except to the extent at one time when there was a notation?

A. Correct.

389. Q. Do you have any idea the breakdown as to how much you could tell from the bank records and how much you'd have to ask Mr. Robertson about?

A. Yes.

390. Q. What's that?

A. $129 million approximately was not certain. The balance was...

391. Q. Noted on your bank statements?

A. ...was certain.

392. Q. From the bank statements?

A. Correct.

393. Q. And does it actually say it on the statement, or do you get something like the equivalent of a cancelled cheque back? What do you actually see?

A. We would get advices from the bank, I believe, and they would have descriptions, which were probably those input at the other end as to what this fund, this wire transfer going through, was to represent. So in other words, there would be a descriptor on the wire transfer coming in to the bank.

394. Q. And was it from a Bermuda account? The ones that you would verify?

A. I believe so, yes.

395. Q. And the $129 million, it's just Mr. Robertson telling you that it's from Trafalgar Trading?

A. Correct.

396. Q. You don't know, for example, whether it was paid from Toronto by somebody for Trafalgar Trading. You don't have any way of knowing that?

A. I don't think so.

397. Q. You don't think you have any way of knowing it, or you don't think it is?

A. I don't know. That question has never even occurred to me before. My understanding was that the money came from Trafalgar Trading Limited and I established that by asking Wayne Robertson.

398. Q. But for instance, maybe Trafalgar Trading Limited has an account in Toronto and they wire-transferred it in. That could have happened, too; you don't know.

A. I don't know.

399. Q. Or, someone could have owed money to Trafalgar Trading and Trafalgar Trading directed them to give it to the Long Tail Trust. You wouldn't know if that's what had happened?

A. No.

400. Q. So, you have this power to manage the trust's

assets. Were there -- oh, forget it.

MR. MARR: Why don't we take a short break? I'm almost done.

--- BRIEF RECESS

BY MR. MARR:

401. Q. If we can just go back to paragraph 35 again. While I have your lawyer's refusal on giving me the particulars like dates and amounts as to the payments being made in the two parts of the paragraph, I'm leaving that point aside or maybe it's related. I'm not sure which comes first in the sense that, were you -- I'm assuming that in order to -- well, I don't know.

Which came first? The money come in first or the money go out first? We have these totals of hundreds of million dollars, but did the trust have any source of monies except the money they were getting from TTL in order to pay out to the charity?

A. Yes, the trust was in operation from 1998, and so it had other ---

402. Q. So which came first? Was the first payment made to Donations Canada, or was the first payment made from TTL to the charity if we go back to 2004?

MR. BERG: Can I just -- just a clarification

point that will save me from a re-exam, because I don't think this is a distinction you mean to be making, but some of your questions, Mr. Marr, say the trustee giving money to Donations Canada. And I think what you mean to say and what Mr. Gorman means to say is, there were transfers to these two named sources, Aylesworth and Continental Trust ---

MR. MARR: Yes?

MR. BERG: --- in both cases in trust for Donations Canada.

MR. MARR: Yes?

MR. BERG: And I don't think you mean to say anything other than that.

MR. MARR: No, I'm not ---

BY MR. MARR:

403. Q. Well, first of all, while we're on that, are there any monies to Donations Canada to your knowledge given by Appleby Services other than as your lawyer just said, to those two entities?

A. I'm sorry, could you repeat that?

404. Q. We know we have in your affidavit that there were monies given to Aylesworth LLP and Continental Trust Company on behalf of Donations Canada.

A. Yes.

414

MR. BERG: Well, in trust for.

MR. MARR: In trust for Donations Canada; fair enough.

BY MR. MARR:

405. Q. So my first question is, apart from those monies, were any other monies given to, either directly to Donations Canada, or to another trustee for Donations Canada, or are those the only source of monies that you're aware of that went from Appleby Services on behalf of Bermuda Long Tail Trust, or are there other sources?

A. Those are the only ones that I'm aware of.

406. Q. Okay. So to clarify now that we've done that, so let's try this question again. We know now from what your lawyer said and you've just said that these monies referred to in paragraph 35 went through to Aylesworth LLP and to Continental Trust Company Limited as in trust for Donations Canada, correct?

A. Correct.

407. Q. And we also know that the total amounts of those amounts we'd said were $417 million?

A. Yes.

408. Q. So we've got $417 million going out and we've got $439 million coming in. Which came first? The monies going out or the monies coming in, if you go back

to 2004?

A. Well, first of all, the monies went out and came in, in -- not in one lump sum, obviously, but over many transactions.

409. Q. But first of all, just on that point, did they come in and come out within a day or two of each other? That's my understanding.

A. In general, there was -- they were approximate in time, perhaps the same day or within two or three or four days. My sense, I didn't investigate that specific ---

410. Q. Right, but if I ---

A. --- but they were close.

411. Q. So if I was looking at the money going out and the money going in, and I know your lawyer isn't letting me do this and I was looking in each individual date. He won't give me the specifics, but in general, that would be within a day or two, maybe a week apart, coming in and coming out. That's what you're saying?

A. In general, yes.

412. Q. There may have been an exception, but in general, that's the way it came in and it came out very quickly?

A. Yes.

413. Q. Okay. Now my question was, going back to

2004, did one happen first or I guess for the money to go out first, the trust would already have to have money. So, I wasn't sure whether they did or not. I think you were about to tell me that they had some money.

So, do you know which came out first, or which went in? Would it go out first or come in first to Appleby Services?

A. I just can't recollect which came first; whether we got a receipt in to begin and then paid out, whether there was money in the company, in the trust to begin with, out of which the first donation was made.

414. Q. Okay. And did it all go in and out of the same bank account? Is it that one account we were talking about, or is there a separate account for the in, and a separate account for the out?

A. I don't know. I think it was all the same account. I think the disbursements and receipts from the same, but I'm not certain.

415. Q. Which bank was the trust using at that time?

A. Bank of Butterfield, I believe.

416. Q. And that's the whole period?

A. I believe we used two banks at different times; Bank of Butterfield and Bank of Bermuda.

417. Q. And are those -- both banks here in accounts here in Hamilton?

A. Yes.

418. Q. Now, at paragraph 33, you say, "Appleby Services was not involved in planning or deciding on these transactions, but rather received requests from TTL on when to transfer money, in which amount, and to which bank and bank account."

So, are you saying that Mr. Robertson was the one who made those decisions?

A. Mr. Robertson, yes, would send us instructions about what the amounts to be transferred were on what date.

419. Q. But you're supposed to be -- there was no obligation on the trustee to advance monies. You'd agree with me there. You don't have to listen to Mr. Robertson.

A. I'd have to check the actual loan agreement to be certain of that, but whether it's a non-discretionary facility that if there's an amount that we have to pay.

420. Q. Well, do you want to do that for a second?

A. On a quick reading of section 2, which is entitled ---

421. Q. Where?

A. The loan on page 131.

422. Q. Page 131 of your motion record, yes. Yes?

A. "The lender agrees to lend to the borrower" or

"agrees to borrow from the lender the loan" and "the borrower shall be entitled to obtain each advance under the loan in compliance with the ---"

423. Q. And what's the amount of the credit facility?

A. I think it is determined by the license fee, the aggregate license fee received under 2.3 on page 132.

424. Q. Sorry, what part are you reading exactly on page 132?

A. At 2.3, sentence beginning "on each draw down date."

425. Q. So which agreement are we talking about that's referencing 2.3?

A. This is the loan agreement between trust and Trafalgar Trading Limited.

426. Q. Right, and I was asking you about the -- you said that they're entitled to the -- I think you were trying to tell me that there's -- as long as they're -- the conditions at 2.2, there's three conditions there.

I think you're trying to tell me as long as they're not in default, they're entitled to a demand advance, so there is no discretion. I think that's what you were telling me.

A. I think that's correct, yes.

427. Q. All right. And then I asked you, "How much can they get?" And your answer to me was, "Well, it's

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defined by the amount that's due under the license agreement." I think that's ---

A. It's in the second sentence of 2.3 ---

428. Q. Right, so my question ---

A. There's a limitation imposed in that sentence.

429. Q. And what is that actual amount? What agreement is going to give me the amount that I'm inserting into 2.3?

A. On the face of this agreement says, "the amount of the advance shall equal the initial trading capital for all those licensees."

430. Q. So, what is that?

A. I don't know. I can't recall offhand.

431. Q. Well, is that in the Trafalgar license agreement, which I think is in these materials?

MR. BERG: I think it's Exhibit L; is that right?

MR. MARR: Well, it ain't jumping off the page at me. Because one of the problems is, is there's a promissory note at the back of this and I noticed that, but it's just a draft. And there doesn't seem to be an amount that's put in there that I'm seeing.

The focus of my question, just so we don't lose focus is, I'm trying to figure out what the amount that they were allowed to draw upon.

MR. BERG: Mr. Gorman may not know the answer to

that question.

THE DEPONENT: I don't. I did research that.

MR. MARR: Well ---

THE DEPONENT: The definition of initial trading capital and I couldn't find that.

BY MR. MARR:

432. Q. I mean, it may be that we're taking a long way to get there, but we started this whole discussion at paragraph 33 of your affidavit. And you said that the company, your company, wasn't involved in planning or deciding on these transactions.

The transactions we're talking about, by the way, just so that I'm clear, these are the loan advances to TTL; is that right?

A. Yes.

433. Q. That's what you mean by transactions in paragraph 33.

A. Trafalgar Trading Limited.

434. Q. Right. That the trust through the trustee was not involved in planning or deciding on the loans to TTL. Is that what, in essence, you're saying in this paragraph?

A. Yes.

435. Q. And Mr. Robertson would ask for some money and

Appleby Services would give the money out of the trust funds, Long Tail Trust funds?

A. Yes.

436. Q. And my question was, okay, so you didn't have any discretion in that. And you suggested to me, yes, that may be because the agreements don't provide me with discretion, the company, correct?

A. Correct.

437. Q. And then my question was, okay, so how much did you have to advance? And is there an answer to that?

A. I think it's actually, but it would need a closer reading of the agreements. I think it is in the loan agreement.

438. Q. Well, who would have been in, at the time, at Appleby's, in charge of that loan account? Who would have been monitoring that to make sure it was in compliance with the trust and the agreements and so on? It wasn't you, obviously.

A. I don't know.

439. Q. Well, do you want to answer that by way of undertaking?

MR. BERG: Let me consider that. I'm not saying I will answer it, but let me take it under advisement.

UNDER ADVISEMENT NO. 1: To advise who at Appleby Services was in charge of monitoring the loan account during the relevant time period.

BY MR. MARR:

440. Q. I think I'm going to change my mind about something that we were discussing earlier.

When we were talking about paragraph 27, I was questioning you and although your lawyer wanted me to allow you to say what you looked at and who you spoke to in forming your opinion as set forth in paragraph 27 and I didn't let you do that. I've changed my mind.

Tell me how you know that Appleby Services was not involved in the designing, developing, operating, marketing or performing, promoting the trading program?

MR. BERG: That's the Global Trading Program; is that right?

MR. MARR: Yes.

BY MR. MARR:

441. Q. How do you know that?

A. From my review of the documents, from discussions with Appleby Services staff and ---

442. Q. Well, can you give me any specifics about those discussions, what people told you?

A. Please tell me what you know about these at this TGIFP program, can you sit down with me? I would say to a) Glenda and ask her for that, and would get very little knowledge coming back to me.

And also, it just simply isn't something that we have the expertise to do, even if we wanted to do it. You know, designing or developing or operating or marketing or promoting these things just is not something that's in our arena or our expertise.

443. Q. But my question to you is, okay, but did you know that -- did Appleby Services know between 2005 and 2009 that the Trafalgar people were doing that?

A. As I think I've said before, there were some documents on our files. When they got there, how they got there, how much they were reviewed, I don't know, but there were certainly some documents that were found at, I think tabs U and V, the Parklane material and the tax opinion.

444. Q. Right. And Appleby Services knew between 2005 and 2009, that millions of dollars were being distributed to the Donations Canada Financial Trust?

A. Yes.

445. Q. And they knew between 2005 and 2009 that that was part of a campaign to sell tax advantages to people like Mr. Cannon. Did they know that?

A. I don't think people really understood it at Appleby Services.

446. Q. Okay. They didn't really understand it, but they knew that Mr. Furtak and Mr. Robertson were involved in that sort of thing between 2005 and 2009?

A. I think that -- yes, there may have been a general understanding that there was some sort of gift program in place, but the mechanics of that...

447. Q. But okay, and there was a general understanding that the flow of money to Donations Canada to Trafalgar Trading and back to the Long Tail Trust was part of that gift program, in a general understanding?

A. Perhaps.

448. Q. Thank you. I just have a couple more things. Actually, this one is for your lawyer.

MR. MARR: So, we have the motion pending on July 16th and Justice Strathy is going to make a decision and someone's going to presumably win and someone's going to lose and there may be a cost order flowing out of that.

I'd like to know if your client is undertaking to the court that they're going to satisfy any cost order that is made as a result of that motion.

MR. BERG: I refuse that. That's not a proper question on this cross-examination on an affidavit.

MR. MARR: So they're not even conceding that the court, in the motion that they're bringing, has the jurisdiction to make an order that they will abide by, in terms of costs?

MR. BERG: Appleby Services relies on its rights under the rule to bring a jurisdiction motion without acceding to the jurisdiction of the court for any other purpose other than challenging jurisdiction.

MR. MARR: Including paying the cost order from the very motion they're bringing?

MR. BERG: We rely on the rules.

MR. MARR: Go off the record for one second.

--- OFF THE RECORD

BY MR. MARR:

449. Q. Looking at paragraph 28, I don't think I really -- we've been skirting around a different point, but I think we need to maybe square this one head-on.

You've said -- you're looking at the allegations in the claim and you're specifically denying them all.

And you say in paragraph 29, Appleby would not have engaged in these type of activities, and it may be that you're just going to repeat what you told me earlier.

But I think in fairness to you, I don't think I ever asked you about this paragraph. I was focusing on a different one.

How do you know that Appleby did not engage in these activities as set forth in paragraph 28?

A. You're -- sorry, I'm a little confused. I thought you directed me to 29 and ---

450. Q. Well, 29 is -- you see at the very first sentence of 29, you say Appleby would not have engaged in these activities. I assume you meant the activities in paragraph 28?

A. Yes, correct.

451. Q. So my question to you is, and it may be that you're just going to tell me what you've told me before that by reviewing the file and speaking to people that's how you know that. But in fairness, I want to just make sure that I've asked you about this particular paragraph. I don't think I ever did.

So how do you know that Appleby did not engage in these type of activities, which are set forth in paragraph 28?

A. As you said, through my review of the files, through discussions with those involved, and also through knowledge of the capabilities of Appleby Services, these are certainly not the types of activities that we, from

the evidence, engage in or would have engaged in.

452. Q. But as you said a moment ago and I just want to make it clear, the reference to these paragraphs. In a general way, you understood that Mr. Robertson and the Trafalgar Group was engaging in promoting this gift program in Canada. In general, Appleby's knew that, correct?

A. In a general way, yes.

453. Q. And in general, they knew that the flow of funds ---

A. Appleby Services.

454. Q. Appleby Services. Sorry, I apologize; I keep doing that. Appleby Services, in a general way, knew that those individuals, Furtak and Trafalgar Group and Robertson were doing that in Canada, correct? In a general way, they were aware of that?

A. Again, in a very general way.

455. Q. And in a general way, they understood that the flow of monies from Bermuda Long Tail Trust to Donations Canada back to Trafalgar Trading, back to Bermuda Long Tail Trust, that was part of that transaction. In a general way, they understood that?

A. Yes.

MR. MARR: Okay. Thank you very much. Those are my questions. Thank you very much.

MR. BERG: Thank you.

THE DEPONENT: Thank you.

* * * * * * * * *

I hereby certify the foregoing to be the Examination of RORY GORMAN, taken on the 7th day of July, 2010.

CERTIFIED CORRECT:

Jo Lynn Dickinson, CCR
Certified Court Reporter

INDEX OF UNDERTAKINGS

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INDEX OF REFUSALS

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INDEX OF UNDER ADVISEMENTS

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NOTE: The above-recorded indices are provided for ease of reference only and are not to be relied upon in any manner whatsoever by the parties hereto or any third party.

THIS IS EXHIBIT "H" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Jogel

A Commissioner, etc.

(432)

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

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	
MR. JUSTICE G. R. STRATHY	)	**Friday, the 16th day of July, 2010**
	)	

BETWEEN:

MICHAEL CANNON

Plaintiff

- and -

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

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Defendants (except for Martin P. Gleeson and Gleeson Management Associates Inc.) for an order extending the time to issue Third Party Claims and extending the time for service of any such Third Party Claim was heard this day at the Courthouse, at 130, Queen St. West, Osgoode Hall, in Toronto, Ontario.

ON READING the draft order proposed by the parties and on being advised that ~~the~~ the plaintiff does not oppose the said order and all the parties consent to the said order (except Martin P. Gleeson and Gleeson Management Associates Inc. who did not attend the motion),

1. **THIS COURT ORDERS** that any Defendant who files a statement of defence be and is hereby given leave to issue a Third Party Claim at any time up to thirty (30) days following the court's decision in this action on the summary judgment and certification motions or following any appeals therefrom, whichever is later.

2. **THIS COURT ORDERS** that the time for serving any such Third Party Claims be and is hereby extended to sixty (60) days following the court's decision in this action on the summary judgment and certification motions or following any appeals therefrom, whichever is later.

3. **THIS COURT ORDERS** that nothing in this Order is intended to or does affect the rights of any parties under Rules 29.08 and 29.09 of the *Rules of Civil Procedure*.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 2 0 2010

AS DOCUMENT NO.
À TITRE DE DOCUMENT NO.:
PER / PAR:

(F 34)

MICHAEL CANNON Plaintiff	and	PARKLANE FINANCIAL ET AL. Defendants	Court File No: CV-08-362807-00 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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Lawyers for the Defendants,
Parklane Financial Group Limited, Trafalgar Associates Limited and Trafalgar Trading Limited

THIS IS EXHIBIT "I" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

David Foger

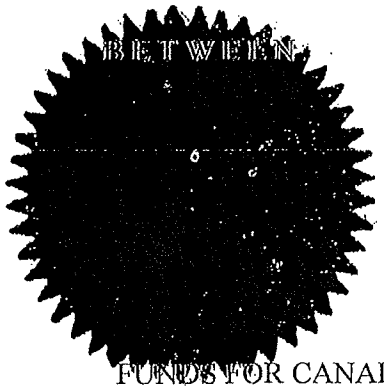
A Commissioner, etc.

436

Court File No. CV-08-362807-00 CPA3

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. JUSTICE P. PERELL	)))	**Monday, the 29th day of April 2013**



MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, MATT GLEASON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the 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

-and-

PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED and , TRAFALGAR TRADING LIMITED

Defendants Issuing Third Party Claim

-and-

GACICH FINANCIAL ENTERPRISES INC. et al

Third Parties

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Defendants, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED and TRAFALGAR TRADING LIMITED for an order extending the time for service of this Third Party Claim in this proceeding was heard this day at the Courthouse, at 361 University Avenue in Toronto, Ontario.

ON READING the draft order proposed by these parties and on being advised that all the defendants consent to the said order, and the plaintiff opposes the said order, and on hearing submissions from the solicitors for ParkLane Financial Group Limited, Trafalgar Associates Limited and Trafalgar Trading Limited, and from the solicitors for the Plaintiff;

1. **THIS COURT ORDERS** that the time for serving the Third Party Claim is hereby extended to 30 June 2013.

2. **THIS COURT ORDERS** that nothing in this Order is intended to or does affect the rights of any parties to bring motions under Rules 29.08, 29.09 and 29.10 of the *Rules of Civil Procedure* or sections 12 and 13 of the *Class Proceedings Act, 1992*.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
APR 30 2013
AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO:
PER / PAR:

Perell J.

428

Court File No: CV-08-362807-00 CPA3

MICHAEL CANNON and PARKLANE FINANCIAL ET AL and GACICH FINANCIAL ENTERPRISES INC. et al
Plaintiff Defendants Third Parties

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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Parklane Financial Group Limited, Trafalgar Associates Limited and Trafalgar Trading Limited

THIS IS EXHIBIT "J" REFERRED TO IN THE
AFFIDAVIT OF KEITH M. LANDY, SWORN
BEFORE ME THIS 13TH DAY OF SEPTEMBER, 2013

A Commissioner, etc.

(440)

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL CANNON

Plaintiff

-and-

FUNDS FOR CANADA FOUNDATION, MATT GLEESON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the BERMUDA LONGTAIL 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

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992

FURTHER FRESH FURTHER AMENDED STATEMENT OF DEFENCE, COUNTERCLAIM AND CROSSCLAIM OF THE DEFENDANTS PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED AND TRAFALGAR TRADING LIMITED

1. The Defendants, Parklane Financial Group Limited ("Parklane"), Trafalgar Associates Limited ("TAL") and Trafalgar Trading Limited ("TTL") do not admit any of the allegations in the Further Fresh As Amended Statement of Claim (the "Statement of Claim").

2. ParkLane, TAL and TTL have no knowledge of the allegations in paragraphs 4, 6, 11, 14, 15, 16, 17, 20, 26, 47, 48, 88, 135, 139 and 140 of the Statement of Claim.

3. Except as expressly hereinafter admitted, ParkLane, TAL and TTL deny each and every other allegation in the Statement of Claim and put the Plaintiff to the strict proof thereof.

A. THE PARTIES

4. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to the Parties set out in Section A of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

5. The Defendant, Parklane, is a corporation incorporated pursuant to the laws of the Province of Ontario. In 2005 ParkLane offered the "Donations for Canada" charitable donation program (the "Gift Program"). ParkLane created certain materials and documents relating to the Gift Program.

6. The Defendant, TAL, is a corporation incorporated pursuant to the laws of the Province of Ontario. TAL:

(a) did not enter into any contracts of any kind with any of the participants in the Gift Program (the "Donors"), including the Plaintiff ("Cannon");

(b) did not design, plan or create the Gift Program;

(c) did not create, draft, supervise, approve, or authorize the preparation or distribution of promotional materials, opinion letters, or client confirmation letters relating to the Gift Program;

(d) did not distribute or provide promotional materials, opinion letters, or client confirmation letters to Cannon or other Donors relating to the Gift Program;

(e) did not authorize the distribution of promotional materials, opinion letters, or client confirmation letters to Donors or anyone else relating to the Gift Program;

(f) did not have the authority to affect the distribution of promotional materials, opinion letters, or client confirmation letters relating to the Gift Program;

(g) did not request, commission or obtain and did not have the authority, capacity or means to deal with or control the use made of any client confirmation letters or opinion letters relating to the Gift Program;

(h) did not promote, market or sell the Gift Program to Cannon or other Donors.

7. The Defendant, TTL, is a Bermudian company. It does not and has never carried on business in Canada. It is a securities trading manager that markets and implements computerized trading programs in global securities markets on behalf of third parties for a fee. TTL:

(a) did not enter into any contracts of any kind with any Donor, including Cannon;

(b) did not design, plan or create the Gift Program;

(c) did not create, draft, supervise, approve, or authorize the preparation or distribution of promotional materials, opinion letters, or client confirmation letters relating to the Gift Program;

(d) did not distribute or provide promotional materials, opinion letters, or client confirmation letters to Cannon or other Donors relating to the Gift Program;

(e) did not authorize the distribution of promotional materials, opinion letters, or client confirmation letters to Donors or anyone else relating to the Gift Program;

(f) did not have the authority to affect the distribution of promotional materials, opinion letters, or client confirmation letters relating to the Gift Program;

(g) did not request, commission or obtain and did not have the authority, capacity or means to deal with or control the use made of any client confirmation letters or opinion letters relating to the Gift Program;

(h) did not promote, market or sell the Gift Program to Cannon or other Donors.

8. The Plaintiff ("Cannon") resides in the Province of Ontario. Cannon participated in the Gift Program in 2005 and 2006.

9. The Defendants Sam Albanese, Ken Ford, Riyad Mohammed, David Raby and Greg Wade are Ontario residents. They are the trustees of the Funds for Canada Foundation, a registered Canadian charity with Registration No: 82160-0475-RR0001 (the "FCF Charity"). They are not related to, associated with or affiliated with ParkLane, TAL or TTL.

10. The Defendants Matt Gleeson and Mary-Lou Gleeson are Ontario residents. They are affiliated with the FCF Charity. They are not related to, associated with or affiliated with ParkLane, TAL or TTL

11. The Defendant Gleeson Management Association Inc. ("GMA") is a corporation incorporated pursuant to the Laws of Ontario. It is owned and/or operated by Matt Gleeson and/or Mary-Lou Gleeson. It is not related to, associated with or affiliated with ParkLane, TAL or TTL.

12. The Defendant, Appleby Services (Bermuda) Ltd ("Appleby Services") carries on business in Bermuda. It is the trustee of the Bermuda Longtail Trust (the "Longtail Trust"), a

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Bermudian trust. Appleby Services is not related to, associated with or affiliated with ParkLane, TAL or TTL.

13. The Defendant Edwin C. Harris, Q. C ("Harris") is a lawyer in the Province of Nova Scotia. Harris is not and has never been a partner in Patterson Palmer also known as Patterson Palmer Law ("Patterson Palmer"), Patterson Kitz (Halifax), Patterson Kitz (Truro) or McInnes Cooper as alleged at paragraph 9 of the Statement of Claim. Harris was counsel to Patterson Kitz (Halifax) beginning in 2001 and remained there until he became counsel to McInnes Cooper in January 2006.

14. Harris received his LL.B. from Dalhousie University in 1958 and his LL.M. from Harvard University in 1959. Harris practices tax law and his expertise has been recognized by *Best Lawyers in Canada* and *Lexpert*. Harris is a former professor at Dalhousie Law School and a member of the Judicial Appointments Advisory Committee to the Tax Court of Canada.

15. The Defendant Patterson Palmer is not a legal entity. Patterson Palmer was a business style used by five law firms situated in the maritime provinces. Each of the five law firms was autonomous in its operations and finances and shared the business style Patterson Palmer for marketing purposes only.

16. The Defendant Patterson Kitz (Halifax) was a law firm that operated in Nova Scotia up to January 2006. Between 1995 and 2006, Patterson Kitz (Halifax) used the business style Patterson Palmer and Patterson Palmer Law. In or about January 2006, Patterson Kitz (Halifax) ceased to operate and all or substantially all of the partners and employees of Patterson Kitz (Halifax) joined McInnes Cooper.

17. The Defendant Patterson Kitz (Truro) was a law firm that operated in Nova Scotia up to January 2006. Between 1995 and 2006 Patterson Kitz (Truro) used the business styles Patterson Palmer and Patterson Palmer Law. In or about September 2006, Patterson Kitz (Truro) changed its name to Patterson Smith and shortly thereafter began to operate under the newly created style Patterson Law.

18. The Defendant McInnes Cooper is a law firm operating in Nova Scotia. Harris became counsel to McInnes Cooper in or about January 2006.

19. The Defendants, Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro) and McInnes Cooper are collectively referred to hereafter as the "Law Firms".

B. NO SEPARATE TORTIOUS CONDUCT

20. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to Separate Tortious Conduct set out in Section B of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

21. ParkLane, TAL and TTL deny that the individuals referred to therein "created, controlled, promoted, marketed, administered, operated or sold to [Cannon or Donors] the Gift Program".

22. ParkLane, TAL and TTL deny that they conspired with those individuals in the manner alleged, or at all.

C. THE GIFT PROGRAM

23. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to the Gift Program set out in Sections C , F and J of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

24. The Gift Program has and has always had a genuine charitable purpose and intent.

25. The Gift Program was designed to assist registered Canadian charities such as amateur athletic associations, foundations and other qualified donees in raising investment capital in furtherance of the long-term objectives of each participating charity (the "Charity" or the "Charities").

26. ParkLane, TAL and TTL expressly deny that the Gift Program constitutes a fraud or was the result of a conspiracy of any kind.

(a) All Claims Against ParkLane, TAL and TTL Regarding the Gift Program Are Based on Alleged Misrepresentations

27. The Donors assert causes of action against ParkLane, TAL and TTL for fraud and fraudulent misrepresentation, negligence and negligent misrepresentation, conspiracy, unjust enrichment and breach of consumer legislation.

28. The basis of each of these causes of action is the allegation that ParkLane, TAL and TTL made misrepresentations regarding the Gift Program that they knew Donors would rely on, and Donors did so to their detriment. In particular the Donors allege that ParkLane, TAL and TTL:

(a) made express misrepresentations that Donors would receive charitable tax receipts that would be accepted by the Canadian Revenue Agency (the "CRA")

when ParkLane, TAL and TTL knew or ought to have known that the charitable tax receipts would not be acceptable and;

(b) made misrepresentations by omission because they did not advise the Donors of material facts regarding the Gift Program, including, for example, that the Gift Program allegedly involved a "circular flow of funds".

The Donors allege that when ParkLane, TAL and TTL made these misrepresentations (i) they were negligent, (ii) they committed a fraud, (iii) they "conspired" with each, and (iv) they engaged in "unconscionable" conduct and "unfair practices" under the applicable consumer legislation, and that ParkLane breached its contracts with them.

29. ParkLane, TAL and TTL deny all the allegations by the Donors and in particular say that:

(a) they did not make any misrepresentations to Cannon or any Donor;

(b) they did not engage in any conduct that they knew or ought to have known constituted a misrepresentation; and

(c) neither Cannon nor any Donor relied on any misrepresentation alleged against ParkLane, TAL or TTL, or if they did, any such misrepresentation was not material, and in any event any alleged reliance was unreasonable in all the circumstances.

30. For the reasons that follow, ParkLane, TAL and TTL say that if any of the alleged misrepresentations were made (which is not admitted) they were made to the Donors by their independent financial advisors (the "Distributors") and were not a result of any acts or omissions of ParkLane, TAL or TTL.

(b) Distributors Promoted The Gift Program To Donors; ParkLane Did Not

31. ParkLane did not market the Gift Program to Donors directly. ParkLane marketed the Gift Program solely to Distributors. A Donor could only participate in the Gift Program through his/her own personal Distributor.

32. The Distributors are professional financial, tax and/or legal advisors. They are independent of and arm's length to ParkLane, TAL and TTL. They are not officers, employees, partners or agents of ParkLane, TAL or TTL. The Distributors marketed and promoted the Gift Program to their clients, the Donors.

33. The Distributors included sub-distributors, that is, distributors who worked in association with or for Distributors.

34. Life Planning Ltd. ("Life Planning") is a Distributor. Life Planning is a corporation incorporated pursuant to the laws of the Province of Ontario. At all material times, Life Planning was engaged in the business of marketing and promoting various investment and life insurance products. Life Planning marketed and promoted the Gift Program to, *inter alia*, Cannon.

35. Tad Gacich ("Gacich") is a Distributor. He is a Certified Financial Planner with Chartered Life Underwriter and Chartered Financial Consultant designations. He is the President and sole shareholder of Gacich Financial Enterprises Inc. ("GFE") which is engaged in the business of marketing and promoting various investment and life insurance products. In 2005 and 2006 Gacich was a sub-distributor of Life Planning. Gacich and GFE marketed and promoted the Gift Program to Cannon.

(c) ParkLane Advised Distributors of the Structure, Mechanics and Risks of the Gift Program

36. ParkLane took appropriate steps to ensure that Donors, through their Distributors, would be fully and properly informed about the structure and mechanics of the Gift Program and any and all potential tax and business/commercial risks associated with entering into the Gift Program.

37. ParkLane provided Distributors with written materials explaining how donations could be made through the Gift Program (the "Promotional Materials"). ParkLane also provided Distributors with program documents such as the Donor Declaration and Tax Risk Disclosure (the "Program Documents") which Donors were required to complete to participate in the Gift Program. (Collectively the Promotional Materials and the Program Documents will be referred to as the "Gift Program Materials").

38. In conjunction with providing Distributors with the Gift Program Materials, ParkLane advised Distributors of all aspects of the structure and mechanics of the Gift Program (the "Gift Program Structure") including but not limited to the following:

(a) a Donor donates cash to a charity (the "Charity"), e.g. $2,500.00;

(b) a Donor applies to become a beneficiary of the Donations for Canada Financial Trust (the " Master Trust");

(c) if the Donor is accepted as a beneficiary of the Master Trust, the Donor will be issued a beneficial interest in the Master Trust;

(d) the Master Trust, in satisfaction of the beneficial interest, will distribute to the Donor units in a sub-trust of the Master Trust, e.g. with a value of $7,500.00 for every $2,500.00 cash donation;

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(e) the Donor will donate these sub-trust units to the Charity;

(f) the Charity will redeem the sub-trust units for cash, e. g. for $7,500.00;

(g) the Charity will issue to the Donor two tax receipts for the total amount of the cash and sub-trust units donations, one a cash receipt (e. g. in the amount of $2,500.00) and the other a donation-in-kind receipt (e. g. in the amount of $7,500.00);

(h) an offshore trust, the Bermuda LongTail Trust (the "LongTail Trust") provides money to the Master Trust so that the Master Trust can redeem for cash the sub-trust units donated by Donors to the Charity;

(i) the Charity that receives the donations of cash and the sub-trust units pays commissions to the Distributors and ParkLane amounting to 8% of the donations received;

(j) the Charity keeps 1% of the donations received for its immediate operating expenses;

(k) the Charity uses the balance of the donations received to purchase royalty agreements from TTL, a Bermuda company, pursuant to which the Charity is entitled to receive a contingent and variable income stream for twenty years based on the profits generated by computerized futures trading that TTL conducts using the monies it receives from the Charity; and

(l) TTL pays licensing fees to the LongTail Trust to use the proprietary software owned by the LongTail Trust to conduct the computerized trading.

39. ParkLane also advised Distributors of the potential tax, business and commercial risks associated with entering into the Gift Program including the nature and scope of the risks of reassessment by the CRA or other tax authorities (the "Risks").

40. ParkLane provided Distributors access to the legal opinions regarding the Gift Program that were written by the defendant Mr. Harris in which he addresses the Gift Program Structure and the Risks.

41. Each Distributor conducted his/her own due diligence regarding the Gift Program.

42. Each Distributor assessed whether the Gift Program was suitable for his/her own clients. The Distributors were uniquely positioned to make this assessment; they understood the individual financial circumstances and risk tolerances of their clients. Where they thought it was appropriate to do so, the Distributors introduced the Gift Program to their clients.

43. Nearly 500 different Distributors recommended the Gift Program to a total of 9,926 Donors who participated in the Program. The 9,926 Donors differed significantly in their professions (e.g. teacher, business owner, manager, lawyer, president, administrator, nurse), ages (from age 19 to age 78) and donation amounts (from $10,000.00 to $4,000,000.00). Over 1,700 Donors donated between $50,000.00 and $100,000.00 each and over 700 Donors donated over $100,000.00 each.

44. ParkLane required all Distributors who wished to offer the Gift Program to their clients to enter into a written agreement obligating them to explain the Gift Program Structure and the Risks to their clients (the "Distributor Agreements"). The obligations of the Distributors under the Distributor Agreements included, *inter alia*, the following:

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4.4 The Distributor shall not, without the consent of ParkLane, make any representations, tax or otherwise, in the course of marketing the Donation Program and he or it will not distribute any written material with respect to the marketing of the Donation Program which representations and material have not been provided or approved in advance by ParkLane.

4.5 Neither the Distributor or any other person is authorized to give any information or to make any representations, tax or otherwise, in connection with the Donation Program other than as contained in the Donation Program materials, as approved by ParkLane, or in any amendments or supplements thereto, or in any other marketing materials provided by ParkLane ....to the Distributor.

4.6 ***The Distributor shall***, in furtherance of his or its obligations hereunder, and at his or its own cost and expense:

(a) ***take all diligent and reasonable steps to ensure that every potential or actual donor is fully informed as to the structure and mechanics of,*** and any and all amounts and fees payable or to be contributed pursuant to, ***the Donation Program and has been advised by a professional advisor of the nature of any and all potential tax and business/commercial risks associated with entering into the Donation Program*** and to take reasonable efforts to ensure that each such participant is a suitable candidate for the Donation Program and that funds contributed to the Donation Program by each such participant is from a legitimate source;

45. Cannon participated in the Gift Program in 2005 and 2006 through Life Planning and/or GFE acting as Distributor and Gacich acting as a sub-distributor. Life Planning, GFE and Gacich were parties to and/or were subject to the terms and conditions of Distributor Agreements. As Cannon's Distributors who marketed and promoted the Gift Program to him, Life Planning GFE and Gacich were each paid fees from Cannon's donations to the Gift Program for the services they provided to him.

46. Similarly, all Donors who participated in the Gift Program did so through their own individual Distributors (or sub-distributors). All such Distributors (or sub-distributors) were

parties to and/or were subject to the terms and conditions of Distributor Agreements and were paid fees by the Donors for the services they provided to them.

47. Each Distributor discussed the Gift Program Structure and the Risks with his or her own clients, the Donors. No two presentations were identical. Each Distributor provided individualized presentations regarding the Gift Program based on the client's individual risk tolerance, the client's sophistication, the questions asked by the client and the nature and scope of the professional relationship that existed between each of the Distributors and each of their clients.

48. Each Donor relied on the information, advice and recommendations he or she received from his or her Distributor in deciding whether to participate in the Gift Program. The Donor's decision to participate in the Gift Program was based on the Donor's personal confidence in the skill, ability and recommendation of his or her Distributor.

49. Any documents the Donors received regarding the Gift Program were given to them by their own Distributors, not by ParkLane, TAL or TTL. The Promotional Materials that Distributors provided to Donors, including Cannon, explained, *inter alia,* that:

(a) a Donor donates cash to a Charity (e.g. $2,500.00);

(b) a Donor applies to become a beneficiary of the Master Trust;

(c) if the Donor is accepted as a beneficiary of the Master Trust, the Donor will be issued a beneficial interest in the Master Trust;

(d) the Master Trust, in satisfaction of the beneficial interest, will distribute to the Donor units in a sub-trust of the Master Trust (with a value of approximately $7,500.00 for every $2,500.00 cash donation);

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(e) the Donor may donate these sub-trust units to the Charity;

(f) the Charity will issue to the Donor two tax receipts for the total amount of the cash and sub-trust units donations (i.e. $10,000.00), a cash receipt in the amount of $2,500.00 and a donation-in-kind receipt in the amount of $7,500.00.

In conjunction with the Promotional Materials, Distributors were required to review with, and explain to their clients the Gift Program Structure and the Risks associated with participating in the Program.

50. Donors could not participate in the Gift Program unless they executed a Donor Declaration and a Tax Risk Disclosure Statement. Distributors were required to review the Donor Declarations and Tax Risk Disclosure Statements with their clients before the Donor Declarations and Tax Risk Disclosure Statements were signed

51. For the years 2005 to 2007 inclusive, Cannon and the other Donors acknowledge and agree in the Donor Declarations they signed that:

(a) they have read and fully understand all and any written materials and documents in the Gift Program Materials, including the Tax Risk Disclosure Statement, in respect of their participation in, and donations to the Gift Program;

(b) except for what is contained in the Gift Program Materials no other promise, representation or warranty has been made by ParkLane to, or relied upon, by them;

(c) they have received independent professional advice in respect of the Gift Program from their own personal advisor/lawyer/accountant;

(d) they fully understand the advice and information provided to them by their own personal advisor/lawyer/accountant in respect of all and any legal, commercial/business and tax consequences related to their participation in the Gift Program including the fact that up to 8% of their aggregate donation amounts would be used to pay charity fundraising fees;

(e) ***they are prepared to accept any and all tax risks whatsoever*** related to their participation in the Gift Program ***including the risk that the charitable donations, or a portion of them, may be re-assessed and even denied***; and

(f) they unconditionally release ParkLane and its officers and employees from any and all claims or liabilities of any kind whatsoever that they now have, or in the future may have with respect to matters occurring on, prior to or after the date of the Declaration, arising out of, based upon, resulting from or in connection with their participation in the Gift Program.

52. ParkLane pleads and relies on the above provisions, including the unconditional release provided to it by Cannon and other Donors. The claims made in this Action were expressly contemplated by the release and are subject to it. Accordingly, ParkLane requests that this action be dismissed as against it.

53. Beginning in 2006, in their Tax Risk Disclosure Statements, Cannon and the other Donors acknowledged that they had read and fully understood the contents of the Statements which included the following:

(456)

(a) ParkLane recommends that Donors interested in participating in the Gift Program review the tax consequences of making a donation with his or her professional legal, accounting and tax advisor (the "Professional Advisors");

(b) the issuance of a tax shelter identification number by CRA and RQA is for administrative purposes only and does not in any way confirm the entitlement of a Donor to claim any tax benefits associated with the Gift Program;

(c) the Canadian Revenue Agency (the "CRA") or Revenue Quebec ("RQA") may review or audit the Gift Program and their donations in respect of the Gift Program;

(d) ***CRA or RQA may re-assess them*** in respect of the income tax consequences arising from their donations under the Gift Program;

(e) ParkLane has in the past assisted Donors with litigation, including appeals opposing re-assessments by the CRA or the RQA;

(f) ***ParkLane cannot guarantee*** that each donor will receive the income tax consequences contemplated under the Gift Program ***and makes no representation in respect of a Donor's entitlement to claim the tax credits*** in respect of any donations made pursuant to the Gift Program; and

(g) ParkLane cautions each Donor that ***he or she may not ultimately obtain the income tax results designed to be achieved under the Gift Program*** and may, in fact, incur certain costs and interest payments associated with any re-assessments by the CRA or RQA.

54. In late 2008 ParkLane amended the Donor Declaration and the Tax Risk Disclosure Statement. As a result of these amendments, the Donors, in addition to the other matters that they acknowledged and agreed to as described above;

(a) acknowledged they were advised that 2005 and 2006 Donors had been re-assessed by the CRA;

(b) acknowledged they were advised of this Action;

(c) agreed they would not participate in this Action; and

(d) agreed to indemnify ParkLane and its officers and employees in respect of any and all claims or liabilities of any kind whatsoever that they now have, or in the future may have with respect to matters occurring on, prior to or after the date of the Declaration, arising out of, based upon, resulting from or in connection with their participation in the Gift Program.

55. ParkLane pleads and relies on this indemnity provided to it by Donors. The claims made in this Action were expressly contemplated by the indemnity and are subject to it.

56. Accordingly, if ParkLane has any liability to any Donor in this action who signed such an indemnity , which liability is not admitted but expressly denied:

(a) ParkLane is entitled to and will seek to set off against the claim of each such Donor all amounts owing to it by the Donor as are sufficient to extinguish the Donor's claim; and

(b) ParkLane is entitled to judgment for any balance owing by the Donor under the indemnity.

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(d) No Negligent Misrepresentations by ParkLane, TAL or TTL

57. Cannon alleges generally that he and other Donors were told that they would receive specific tax benefits if they participated in the Gift Program and that they were not warned of any risks relating to their participation in the Gift Program. If Cannon or other Donors have this belief and/or understanding (which is not admitted) it is not based on materials, documents, information or representations from ParkLane, TAL or TTL, but is based on materials, documents, information or representations from their personal Distributors who marketed and promoted the Gift Program to them.

58. In these circumstances, the Distributors, and not ParkLane, TAL and TTL, are liable for any alleged losses or damages suffered by Cannon or other Donors relating directly or indirectly to any of the alleged misrepresentations.

59. Moreover, ParkLane, TAL and TTL say that:

(a) they did not make any misrepresentations to Cannon or any Donor;

(b) they did not engage in any conduct that they knew or ought to have known constituted a misrepresentation;

(c) they did not misrepresent to Cannon or other Donors that they would receive from the Gift Program the specified tax benefits;

(d) neither Cannon nor any Donor relied on any misrepresentation alleged against ParkLane, TAL or TTL in the Statement of Claim, or if they did, any such misrepresentation was not material, and in any event any alleged reliance was unreasonable in all the circumstances;

(e) the misrepresentations alleged against ParkLane, TAL and TTL were not the proximate cause of the alleged losses of Cannon or Donors; and

(f) Cannon and the other Donors would have participated in the Gift program regardless of the existence or content of the Promotional Materials.

60. ParkLane, TAL and TTL therefore say that the claims for negligent misrepresentation against them should be dismissed.

(e) The Indemnities from the Distributors

61. The Distributors (and sub-distributors) marketed and explained the Gift Program to each Donor directly using individual presentations and representations. The Distributors were required to explain the Gift Program Structure and the Risks to each Donor.

62. In the event that the individual presentations and/or representations made by a Distributor to a Donor did not comply with the terms of the Distributor Agreement, or in the event that a Distributor otherwise breached the Distributor Agreement with ParkLane in marketing and promoting the Gift Program to a Donor, ParkLane is entitled to complete indemnity from the Distributor for any amounts ParkLane is found liable to pay to the Donor.

63. Under the Distributor Agreement each Distributor provided the following indemnity for the benefit of ParkLane:

> **7. Indemnification by The Distributor**
>
> 7.1 The Distributor hereby agrees to indemnify ParkLane ....and hold [it] harmless against any loss, claim, damage or liability to which [it] may become subject as a direct or indirect result of (a) the Distributor's failure to comply with the provisions of this Agreement, (b) the breach of any law, rule or regulation (including, without limitation, the Investment Funds Institute of Canada Code of Conduct) by the Distributor in Canada, (c) any untrue or misleading statement or statements made by the

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> Distributor or its directors, officers, or employees (if applicable) in the course of marketing the Donation Program, and (d) any wilful, fraudulent or negligent act or omission of the Distributor.
>
> 7.2 The Distributor hereby agrees to reimburse ParkLane...for any and all legal and other expenses incurred by [it] in connection with investigating or defending any act, action or claim as described in Sub-section 7.1 hereof.
>
> 7.3 The obligations of the Distributor pursuant to Section 7 hereof shall be in addition to any liability, which the Distributor may otherwise have and shall extend, upon the same terms and conditions, to each officer, director and employee of ParkLane
>
> The provisions of Section 7 hereof shall remain in full force and effect for six (6) years after the termination of this agreement or other termination of or by the Distributor.

64. Some of the Donors are also Distributors (a "Donor/Distributor") . If ParkLane has any liability to any Donor/Distributor, or has any liability to any Donor who participated in the Gift Program through a Donor/Distributor, which liability is not admitted but expressly denied, then pursuant to the above indemnity:

(a) ParkLane is entitled to and will seek to set off against the claim of each such Donor/Distributor all amounts owing to it by the Donor/Distributor as are sufficient to extinguish the Donor/Distributor's claim; and

(b) ParkLane is entitled to judgment for any balance owing by the Donor/Distributor under the indemnity in the Distributorship Agreement.

65. Each Distributor also expressly agrees in the Distributor Agreement as follows:

> This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein. Each [Distributor] irrevocably attorns and submits to the jurisdiction of the Courts of Ontario.

66. ParkLane pleads and relies upon the provisions of the Distributor Agreements and upon the indemnity provisions contained therein.

D. PARKLANE, TAL AND TTL DID NOT CREATE THE CHARITIES

67. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to the creation of the FCF Charity or any of the Charities set out in Section D of the Statement of Claim, ParkLane, TAL and TTL plead the facts set out below.

(a) The Charities Are Independent of ParkLane, TAL and TTL

68. Each Charity that is participating in the Gift Program is an independent entity controlled and operated by independent trustees.

69. The independent trustees are charged with the exclusive responsibility to operate the Charity in accordance with its mandate.

70. Each Charity had the opportunity and ability to conduct its own due diligence as to the merits and risks of a Royalty Agreement, to obtain independent legal and tax advice, and to seek board approval before entering into a Royalty Agreement and each Charity did take these steps.

71. None of the Charities is related to or affiliated with ParkLane, TAL or TTL.

72. ParkLane, TAL and TTL deny that they retained GMA or any other person or entity to establish any of the Charities and or conspired with each other or with any of the Charities or other defendants to create, promote, market, administer or operate the Gift Program.

(b) All Donations Were Paid to the Charities

73. All donations from Canon and other Donors were paid to the Charities. These donations included the cash donations, any donations made based on loans by Donors, any donations of shares or securities by Donors and donations of sub-trust units of the Master Trust by Donors.

74. The Charities sold any donated shares or securities it received in the open market for cash.

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75. The Charities were entitled to call for, and did call for a cash distribution from the Master Trust of an amount in cash equal to the value of the sub-trust units it received from each Donor. The Master Trust paid the cash to the Charity.

76. The Charities used 1% of each donation they received under the Gift Program for their own immediate operating expenses.

77. The Charities paid between 6% and 8% of each donation they received as fundraising fees, depending on the year of the Gift Program. A portion of the fundraising fees was paid to the Distributors who solicited the donations from the Donors. A portion of the fundraising fees was paid to ParkLane for assisting with the implementation of the Gift Program. These fundraising fees were paid with the knowledge and approval of the Donors.

78. The Charities used the balance of the donations they received under the Gift Program to purchase individually negotiated royalty agreements from TTL (the "Royalty Agreements"). Pursuant to the Royalty Agreements the Charities are entitled to a contingent and variable stream of profits generated by the trading of futures contracts as described below.

(a) A trading facility for an amount equal to the full Purchase Price paid by each Charity for a Royalty Agreement was established at MF Global Ltd at the time the Charity purchased the Royalty Agreement.

(b) Trading was conducted through MF Global Ltd. until October 2011 when MF Global Ltd. declared bankruptcy.

(c) Trading was conducted using trading software, including the Trafalgar Global Index Futures Program (the "Global Index Program"), a sophisticated

computerized securities trading program that enabled trading of the facility multiple times during any given day, sometimes as many as six times a day.

(d) The Longtail Trust, which is operated by Appleby Services, owns the Global Index Program.

(e) TTL obtained individual non-exclusive, limited-use licenses to use the Global Index Program from Appleby Services in respect of each Royalty Agreement it entered into with a Charity.

(f) In consideration for each license, TTL agreed to pay Appleby Services a license fee equal to approximately eighty percent of the Purchase Price it received for each Royalty Agreement.

(g) Trading was conducted on a leveraged basis using cash and trading margin at Trafalgar's discretion and therefore large sums could be traded in the global market while depositing only a small portion of the invested funds for that purpose.

(h) Trading resumed in October 2012 with ED&F Man Capital Markets Limited ("ED&F Man"), a commodities broker in London U. K.

(i) TTL has extended the term of each Royalty Agreement by 12 months to compensate for the 12 month trading interruption which occurred as a result of the bankruptcy of MF Global Ltd.

79. The Royalty Agreements have real economic value for the Charities. The Royalty Agreements set out the profits the Charities are entitled to receive from the trading. The profits are allocated on a monthly basis for the term of the agreement (20 years) as follows: the Charity 60%, TTL 20% with the remaining 20% reinvested to generate further profits.

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80. The Charities have received substantial distributions of profits without the Charities bearing any risk of loss. These profits will continue to be distributed to the Charities for the life of the Royalty Agreements.

81. The Charity and the other charities are using the monies they are receiving under the Royalty Agreements for appropriate charitable purposes.

82. Accordingly, ParkLane, TAL and TTL deny that "the transactions related to the Gift Program were tax-avoidance transactions without legitimate purpose", and deny that "the primary purpose of the Gift Program was to financially benefit" them and not the Charity or other charities.

E. THE OPINION LETTERS AND CLIENT CONFIRMATION LETTERS

83. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to the Opinion Letters set out in Section E of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

84. ParkLane exercised appropriate due diligence and took all reasonable and proper care in offering and implementing the Gift Program.

85. In early 2005 ParkLane began reviewing a number of the available tax structures with a view to creating its own charitable donation tax structure. ParkLane's intention was to offer participating charities substantial economic benefits and the opportunity to access the significant trading advantages provided by the Global Index Program.

86. It was important to ParkLane that any charitable trust structure it offered be compliant with the *Income Tax Act of Canada* (the "*ITA*") and all applicable trust and securities laws.

87. In developing the Gift Program ParkLane researched the viability and tax effectiveness of charitable trust structures and sought out and obtained comprehensive written opinions regarding the Gift Program from highly reputable professional advisory firms, Patterson Palmer, McInnes Cooper and BDO Dunwoody LLP. These firms provided comprehensive written opinions to ParkLane that the Gift Program was in compliance with the *ITA*.

88. Harris provided written opinions to ParkLane on behalf of Patterson Palmer and McInnes Cooper in respect of the Gift Program. ParkLane obtained written opinions from the Law Firms dated 26 August 2005, 14 May 2006 and 2 March 2007 (the "Law Firms Opinions"). ParkLane reasonably relied on the Law Firms Opinions in offering the Gift Program and had no reason to believe that the Law Firms Opinion were not correct

89. The Law Firms Opinions were not intended to be distributed to nor were they distributed to Donors. In particular, none of the Law Firms Opinions was distributed to or reviewed by Cannon. Therefore, ParkLane, TAL and TTL deny that any Donors, including Cannon could have or did rely on any of the Law Firms Opinions.

90. ParkLane obtained letters from Harris dated 26 August 2005, 20 March 2006 and 2 March 2007 confirming that he had provided the Law Firms Opinions described above (the "Client Confirmation Letters").

91. No Client Confirmation Letters were ever obtained or distributed by ParkLane that contained any opinions regarding the Gift Program. Therefore, ParkLane denies that any Donors,

including Cannon could have or did rely on any Client Confirmation Letters. If they did rely on any Client Confirmation Letters such reliance was unreasonable.

92. Contrary to the allegations in paragraph 50 of the Statement of Claim:

(a) Mr. Harris' letter dated of 23 February 2004 is unrelated to the Gift Program;

(b) Mr Harris' letter dated 8 May 2005 is unrelated to the Gift Program which is the subject of this Action. The donations program structure described in the 18 May 2005 letter is different than the structure used under the Gift Program.

93. Harris was also involved in editing the Gift Program Materials, including, in particular, the Donor Declarations and Tax Risk Disclosure Statements.

94. Harris' involvement with the Gift Program was exclusively in his capacity as counsel to ParkLane. Harris and the Law Firms are subject to a solicitor-client relationship with ParkLane in relation to any and all involvement with the Gift Program.

95. Nothing herein is or is intended to be a waiver of the solicitor-client privilege that exists between ParkLane and Harris and the Law Firms.

96. Mr. Ralph Neville provided the written opinion on behalf of BDO Dunwoody LLP.

97. ParkLane obtained a written opinion from Mr. Ralph Neville of BDO Dunwoody LLP dated 1 September 2005 in respect of the Gift Program (the BDO Opinion"). ParkLane reasonably relied on the BDO Opinion in offering the Gift Program and had no reason to believe that the BDO Opinion was not correct.

98. Mr. Neville is, *inter alia*, a lawyer. Nothing herein is or is intended to be a waiver of the solicitor-client privilege that exists between ParkLane and Mr. Neville.

99. There was no material aspect of the Gift Program that was not appreciated or understood by Mr. Harris and Mr. Neville when they gave their Opinions.

100. A Statement of Facts dated 26 August 2005 (the "Statement of Facts") is appended to each of the Law Firms Opinions and the BDO Opinion.

101. The Statement of Facts reflects the facts that Mr. Harris and Mr. Neville determined were appropriate, material and necessary to include in forming the basis of their opinions.

102. In short, the Gift Program was developed only after all aspects of it were subject to scrutiny, vetting and approval from highly reputable professionals. ParkLane sought this expert advice that the Gift Program was in compliance with the *ITA* before the Gift Program was made available to Distributors.

103. There was never any intention to deceive or injure Cannon or any Donor regarding the Gift Program Structure or to misrepresent any Risks involved in participating in the Gift Program.

104. All material facts regarding the Gift Program, including the written opinions of Mr. Harris and the Statement of Facts appended to it were made available to Distributors and made available to any Professional Advisors of a Donor who requested them.

F. THE MONIES IN THE GIFT PROGRAM

105. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to the Gift Program set out in Section F of the Statement of Claim ParkLane, TAL and TTL plead the facts set out in Section C above.

G. THE CRA REASSESSMENTS

106. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to the CRA Reassessments set out in Section G of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

107. ParkLane, TAL and TTL expressly deny that:

(a) the Gift Program is not a *bona fide* charitable gift program;

(b) the transactions related to the Gift Program involved a circular flow of funds that did not constitute a legitimate charitable donation program;

(c) the cash portion of the donations made by Donors does not qualify as a gift under the *ITA;*

(d) the series of transactions involved in the Gift program were tax avoidance transactions without any *bona fide* purpose;

(e) the purpose of the Gift Program was to enrich them fraudulently or unjustly at the expense of the Donors.

ParkLane, TAL and TTL deny the CRA has determined that any of the above allegations are true or correct.

108. The Donors were expressly warned in the Gift Program Materials and by their individual Distributors of the risk that the CRA and the RQA may re-assess Donors who participated in the Gift Program. This was a risk the Donors expressly acknowledged and accepted in their Donor Declarations and Tax Risk Disclosure Statements.

109. Donors have filed Notices of Objection in respect of their re-assessments in which they deny that the re-assessments are proper. Donors are therefore estopped from asserting the contrary in this Action.

110. Cannon failed or refused to proceed with a Notice of Objection. As a result:

(a) he has failed or refused to take any, or any reasonable steps to mitigate any alleged damages or losses;

(b) any alleged damages were caused solely and exclusively by his own acts and omissions and not by any act or omission on the part of ParkLane, TAL or TTL;

(c) alternatively, any alleged damages were contributed to by his own acts and omissions.

111. Accordingly, Cannon is not entitled to recover any alleged damages in this action.

H. BREACH OF CONTRACT

112. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to Breach of Contract set out in Section H of the Statement of Claim ParkLane pleads the facts set out below.

113. ParkLane expressly denies it has breached any contract with Cannon or any Donors.

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114. In their Donor Declarations, Cannon and the other Donors declare and agree that:

(a) they have read and fully understand all and any written materials and documents in the Gift Program Materials, including the Tax Risk Disclosure Statement, in respect of their participation in, and donations to the Gift Program;

(b) except for what is contained in the Gift Program Materials ***no other promise, representation or warranty has been made by ParkLane to, or relied upon, by them;***

(c) they have received independent professional advice in respect of the Gift Program from their own Professional Advisors;

(d) they fully understand the advice and information provided to them by their own Professional Advisors in respect of all and any legal, commercial/business and tax consequences related to their participation in the Gift Program including the fact that up to 8% of their aggregate donation amounts would be used to pay charity fundraising fees;

(e) ***they are prepared to accept any and all tax risks whatsoever*** related to their participation in the Gift Program including the risk that the charitable donations, or a portion of them, may be re-assessed and even denied; and

(f) ***they unconditionally release ParkLane*** and its officers and employees from any and all claims or liabilities of any kind whatsoever that they now have, or in the future may have with respect to matters occurring on, prior to or after the date of the Declaration, arising out of, based upon, resulting from or in connection with their participation in the Gift Program.

115. The above described representations, agreements, indemnities and releases provided by Cannon and the other Donors were important to ParkLane. ParkLane relied on them when it agreed to let Donors participate in the Gift Program.

116. The claims made in this Action were expressly contemplated by the release set out in the Donor Declarations and are subject to it.

117. Accordingly, ParkLane requests that this action be dismissed as against it.

118. In specific response to the allegations in paragraph 92 of the Statement of Claim, ParkLane says that in light of the above representations, agreements, indemnities and releases, Cannon and the other Donors cannot claim and are estopped from claiming that it was an express or implied term of any agreement with ParkLane that there were no tax or other risks involved in participating in the Gift Program.

119. If Cannon or other Donors had "a direct and specific understanding" to that effect (which is not admitted but expressly denied) such an understanding was not a result of any act or breach by ParkLane, but arose exclusively as a result of information, documents and/or representations they received from their own individuals Distributors pursuant to their contracts with those parties. Accordingly, if any claims for breach of contract exist (which is not admitted but expressly denied) any such claim should be by Cannon and the other Donors against their own individuals Distributors and not against ParkLane.

120. In further response to the allegations in paragraph 92 of the Statement of Claim, ParkLane denies that the Gift Program was a fraud and says that all of the amounts donated by Cannon and the other Donors went to the Charities.

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I. THERE WAS NO CONSPIRACY

121. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to Conspiracy set out in Section I of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

(a) No Cause of Action

122. The Statement of Claim fails to disclose a cause of action against ParkLane, TAL or TTL in conspiracy. The allegations of conspiracy are deficient.

123. Cannon does not plead, nor is he able to plead, that he suffered damages arising from the alleged conspiracy that are distinct and separate from the damages he alleges he suffered as a result of the numerous other claims he has pleaded such as negligence, restitution, waiver of tort, unjust enrichment, fraud and fraudulent misrepresentation.

124. Moreover, in their Donor Declarations Cannon and the other Donors have expressly released ParkLane from any liability regarding such a claim.

125. Accordingly, ParkLane, TAL and TTL request that the claim in conspiracy as against them be dismissed.

(b) No Conspiracy

126. In any event, ParkLane, TAL and TTL specifically deny that at any time:

(a) they entered into any agreement or arrangement with each other or with any person to engage in the conduct complained of in the Statement of Claim;

(b) they engaged in any such conduct individually;

(c) they conspired with each other or with any person in the manner alleged in the Statement of Claim or in any manner whatsoever; and

(d) they engaged in any activity the object or purpose of which was to cause injury to any Donor, including Cannon (any alleged injury is not admitted but specifically denied), and to financially benefit themselves.

127. If ParkLane, TAL or TTL engaged in any of the activities alleged in the Statement of Claim, which is not admitted but specifically denied, ParkLane, TAL and TTL specifically deny that Cannon or any Donor has suffered any injury or damage as a result.

128. If Cannon or any Donor has suffered any actionable injury or damage (which is not admitted but specifically denied), ParkLane, TAL and TTL specifically deny that:

(a) they engaged in any conduct with any defendant that was unlawful, and that was directed at Cannon or any Donor in circumstances where ParkLane, TAL or TTL ought to have known at the material time that injury to Cannon or a Donor was likely;

(b) any injury to Cannon or a Donor was likely;

(c) they ought to have known at any material time that any injury was likely; and

(d) they intended that Cannon or a Donor suffer any such injury or damage.

129. ParkLane, TAL and TTL deny any injury or damage alleged by Cannon was caused by or the result of either any wrongful act on the part of ParkLane, TAL or TTL or any alleged conspiracy involving these defendants. Rather such injury or damage was caused by and was the result of the personal choices and voluntary acts of Cannon or the Donor after they were fully advised of, and expressly accepted any and all risks associated with participating in the Gift

Program. ParkLane, TAL and TTL do not have any liability arising from personal choices made by, and voluntary acts of, Cannon or a Donor.

130. If Cannon or other Donors have been re-assessed relating to their participation in the Gift Program, ParkLane, TAL and TTL deny that such re-assessment was caused by or the result of either any wrongful act on the part of ParkLane, TAL or TTL or any alleged conspiracy involving these defendants. Rather the re-assessment was caused exclusively by and was the result of an absence of a genuine donative intent on the part of Cannon and other Donors, a fact not disclosed by them to ParkLane, TAL or TTL at the time they applied to participate in the Gift Program.

131. Cannon and other Donor have failed to take appropriate steps to mitigate any alleged injury or damage, including in particular taking steps to object to any re-assessments relating to their donations.

J. THERE WAS NO FRAUD OR FRAUDULENT MISREPRESENTATION

132. In addition to the matters set out in paragraphs 1 to 3 and Section C above, in further answer to the allegations relating to Fraud and Fraudulent Misrepresentation set out in Section J of the Statement of Claim ParkLane, TAL and TTL plead the facts set out in the paragraphs below.

(a) No Cause of Action

133. The Statement of Claim fails to disclose a cause of action against ParkLane, TAL or TTL for fraud or fraudulent misrepresentation.

134. The allegations relating to these causes of action are deficient. Cannon does not plead material facts demonstrating that each of ParkLane, TAL or TTL engaged in specific acts or made

specific misrepresentations with the intent to deceive him (or other Donors) or that each defendant intended that its acts or misrepresentations be relied on by Cannon (or other Donors).

135. Cannon has not pleaded nor can he plead any material facts demonstrating that he (or any other Donor) was deceived by and actually relied on a specific act or misrepresentation made by each of ParkLane, TAL or TTL, a requirement that is critical in the circumstances of this action because all Donors, including Cannon expressly acknowledged and represented in their Donor Declarations and Tax Risk Disclosure Statements that:

(a) they received independent professional advice in respect of the Gift Program from their own Professional Advisors'

(b) they fully understood such advice and information provided to them by their Professional Advisors in respect of all and any legal, commercial/business and tax consequences related to their participation in the Gift Program;

(c) they were prepared to accept any and all tax risks whatsoever related to the Gift Program, including the risk that the charitable donation, or a portion of it, may be reassessed and even denied;

(d) the CRA or RQA may review or audit the Gift Program and their donations in respect of the Gift Program;

(e) CRA or RQA may re-assess them in respect of the income tax consequences arising from their donations under the Gift Program;

(f) ParkLane had in the past assisted Donors with litigation, including appeals opposing re-assessments by the CRA or the RQA;

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(g) ParkLane could not and did not guarantee that each donor would receive the income tax consequences contemplated under the Gift Program and made no representation in respect of a Donor's entitlement to claim the tax credits in respect of any donations made pursuant to the Gift Program; and

(h) ParkLane cautioned each Donor that he or she may not ultimately obtain the income tax results designed to be achieved under the Gift Program and may, in fact, incur certain costs and interest payments associated with any re-assessments by the CRA or RQA.

136. Moreover, in their Donor Declarations, Cannon and the other Donors expressly released ParkLane from any liability regarding such a claim.

137. Accordingly, ParkLane, TAL and TTL request that these claims as against them be dismissed.

(b) No Fraud or Fraudulent Misrepresentation by ParkLane, TAL or TTL

138. ParkLane, TAL and TTL deny that:

(a) they committed a fraud;

(b) they made any fraudulent misrepresentations to Cannon or any Donor or engaged in any conduct that they knew or ought to have known was fraudulent;

(c) Cannon or any Donor relied on any misrepresentation alleged against ParkLane, TAL or TTL;

(d) any alleged misrepresentations were material;

(e) any alleged reliance on any alleged misrepresentation was reasonable;

(f) they knew or ought to have known at the material time that any injury to Cannon or a Donor was likely;

(g) they intended that Cannon or a Donor suffer any such injury or damage; and

(h) any such injury or damage was caused by or the result of either any wrongful act on their part.

139. ParkLane, TAL and TTL did not meet with or market or promote the Gift Program to Cannon or other Donors.

140. The Distributors were responsible for and directly involved in introducing and explaining the Gift Program Structure and the Risks to each Donor and advising each Donor regarding whether to participate in the Gift Program.

141. Each Donor relied on the information, advice and recommendations he or she received from his or her Distributor in deciding whether to participate in the Gift Program. The Donor's decision to participate in the Gift Program was based on the Donor's personal confidence in the skill, ability and recommendation of his or her Distributor.

142. Accordingly, the conduct complained of relating to alleged fraud or fraudulent misrepresentations (which is not admitted but expressly denied) did not result from any acts or omissions of ParkLane, TAL or TTL but resulted from acts or omissions of the Distributors. Therefore, the Distributors, and not ParkLane, TAL and TTL, are liable for any alleged losses or damages suffered by Cannon or other Donors relating to these alleged acts or omissions.

143. ParkLane, TAL and TTL therefore say that the claims of fraud and fraudulent misrepresentation against them should be dismissed.

K. NO NEGLIGENCE BY PARKLANE, TAL OR TTL

144. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the allegations relating to negligence set out in Section K of the Statement of Claim ParkLane, TAL and TTL plead the facts set out in the paragraphs below.

145. ParkLane, TAL and TTL have no knowledge of the allegations of negligence made against the other defendants, including, in particular, the allegations of negligence against Harris and the Law Firms.

146. In response to the specific allegations of negligence in the Statement of Claim against them, TAL and TTL say the following:

(a) no relationship exists between them and Cannon or other Donors, and in particular no special relationship could or did exist at any time;

(b) no facts or circumstances are pleaded or could be pleaded to establish that any relationship or special relationship exists between them and Cannon or other Donors;

(c) they did not owe Cannon or any Donor any duty nor did they breach any duty to them;

(d) they did not design, plan or create the Gift Program;

(e) they did not create, draft, supervise, approve, or authorize the preparation and distribution of the Gift Program Materials, the Law Firms and BDO Opinions, or the client confirmation letters;

(f) they did not distribute or provide the Gift Program Materials, the Law Firms and BDO Opinions, or the client confirmation letters to Cannon or other Donors;

(g) they did not authorize the distribution of the Gift Program Materials, the Law Firms and BDO Opinions, or the client confirmation letters to Donors or anyone else;

(h) they did not have the authority to affect the distribution of the Gift Program Materials, the Law Firms and BDO Opinions, or the client confirmation letters;

(i) they did not request, commission or obtain and did not have the authority, capacity or means to deal with or control the use made of any client confirmation letters or opinion letters relating to the Gift Program;

(j) they did not provide to the lawyers any factual information or assumptions about the Gift Program;

(k) they did not separately, or in concert, create, authorize, approve, promote, market, administer, operate, participate in or sell to Cannon or other Donors the Gift Program;

(l) they did not participate in a scheme at all and in particular did not participate in any scheme that they knew would deceive Cannon or other Donors into believing that the tax benefits of the Gift Program would ultimately be received by them, when they knew or ought to have known it was unlikely such benefits would ultimately be received;

(m) they did not prefer their own interests or those of the co-defendants to those of Cannon or other Donors;

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(n) they did not owe any duties to Cannon or other Donors pursuant to the provisions of the Ontario *Consumer Protection Act* (for Ontario residents) and other similar legislation in other provinces and in any event no such legislation applies to them;

(o) they had no obligations and did not owe any duty to Cannon or other Donors in respect of the sales persons selling the Gift Program.

147. In response to the specific allegations of negligence against it in the Statement of Claim ParkLane says as follows:

(a) in their Donor Declarations Cannon and the other Donors have expressly released ParkLane from any liability regarding such a claim;

(b) no special relationship could or did exist between ParkLane and Cannon or other Donors at any time;

(c) no facts or circumstances are pleaded or could be pleaded to establish the existence of any relationship or special relationship between ParkLane and Cannon or other Donors;

(d) ParkLane did not breach any duty to Cannon or any Donor;

(e) it was not negligent in the manner in which it offered and implemented the Gift Program;

(f) the Gift Program Materials, the Law Firms and BDO Opinions, and the client confirmation letters were not negligently created, review, drafted, approved, or authorized;

(g) the information contained in the Gift Program Materials, the Law Firms and BDO Opinions, and the client confirmation letters was not inaccurate, false, deceptive or misleading;

(h) any opinions it obtained were for its benefit alone and were not intended to be distributed to and were not distributed to Cannon or Donors who were expected to and had an obligation to obtain their own legal/financial/tax advise regarding the Gift Program;

(i) it did not owe a duty to Cannon or other Donors regarding the legal/tax/financial advice they received and relied upon generally from their own Professional Advisors, including their own Distributors, in deciding whether to participate in the Gift Program, and specifically did and could not owe any such duty to Cannon and other Donors in light of the acknowledgements and representations made by Cannon and other Donors in their Donor Declarations and Tax Risk Disclosure Statements;

(j) neither Cannon nor other Donors relied on the client confirmation letters in deciding whether to participate in the Gift Program, or if they did, it was unreasonable for them to do so and not foreseeable that they would do so in light of the acknowledgements and representations made by Cannon and other Donors in their Donor Declarations and Tax Risk Disclosure Statements;

(k) the Gift Program was marketed and promoted to Cannon and other Donors by their own personal Distributors who were not officers, employees or agents of ParkLane;

(l) Cannon and other Donors relied on their own Distributors and Professional Advisors in respect of their participation in the Gift Program and looked to them to advise them fully regarding any material information and risks;

(m) ParkLane expressly warned Cannon and other Donors that the CRA and/or RQA might not recognize the charitable donation receipts issued and tax credits claimed by them, and Cannon and the Donors expressly acknowledged this advice and accepted this as a risk of participating in the Gift Program;

(n) ParkLane did not separately, or in concert, create, authorize, approve, promote, market, administer, operate, participate in or sell to Cannon or other Donors the Gift Program when they knew or ought to have known that the investment in the Gift Program would likely result in Cannon or other Donors not receiving tax benefits;

(o) ParkLane did not know, nor ought to have known that the Gift Program would not qualify as a charitable gift under the *Income Tax Act* or that the *CRA* would conclude that the donations were not gifts as defined in the *Income Tax Act;*

(p) the transactions related to the Gift Program were not tax avoidance transactions without legitimate purpose;

(q) ParkLane did not participate in a scheme at all and in particular did not participate in any scheme that it knew would deceive Cannon or other Donors into believing that the tax benefits of the Gift Program would ultimately be received by them, when it knew or ought to have known it was unlikely such benefits would ultimately be received;

(r) ParkLane did not prefer its own interests or those of the co-defendants to those of Cannon or other Donors; and

(s) ParkLane did not owe any duties to Cannon or other Donors pursuant to the provisions of the Ontario *Consumer Protection Act* (for Ontario residents) and other similar legislation in other provinces and in any event no such legislation applies to them.

148. In light of the Donor Declarations and Tax Risk Disclosure Statements executed by Cannon and other Donors and provided to ParkLane, the conduct complained of relating to alleged negligence in respect of materials, documents, information or representations provided to Cannon or other Donors (which is not admitted but expressly denied) did not result from any acts or omissions of ParkLane, TAL or TTL but from acts or omissions of the Distributors.

149. The Distributors had a duty to protect the interests of their respective clients, the Donors, including Cannon, and an obligation to know, understand and communicate to their respective clients any and all risks associated with participating in the Gift Program.

150. The Distributors interacted directly with Cannon and other Donors and marketed and promoted the Gift Program to them.

151. The Distributors, and not ParkLane, TAL or TTL provided materials, documents and information to Cannon and other Donors regarding the Gift Program. Any other or different materials, documents, information or representations that the Distributors provided to Donors were created by and were the responsibility of the Distributors, and not the responsibility of ParkLane, TAL or TTL. The Distributors were paid a fee from Donors, their clients, for providing these services.

152. If any special relationship with Cannon or other Donors arose based on the alleged reliance they placed on materials, documents, information or representations provided to them

(which is not admitted but expressly denied), such a relationship arose between each Donor and his/her individual Distributor who provided any such materials, documents, information and representations that were allegedly relied on by Donors, including Cannon.

153. Accordingly, the Distributors, and not ParkLane, TAL and TTL, are liable for any alleged losses or damages suffered by Cannon or other Donors relating to any of the above described alleged acts or omissions.

L. NO DAMAGES HAVE BEEN SUFFERED BY CANNON OR OTHER DONORS

154. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the claim for damages set out in Section L of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

155. Cannon has not pleaded that he (or any other Donor) has suffered damages arising from the alleged conspiracy that are distinct and separate from the damages he alleges he suffered as a result of the other claims he has pleaded in the Statement of Claim. Accordingly, there is no reasonable cause of action pleaded in conspiracy and that claim should be dismissed.

156. Moreover, in their Donor Declarations Cannon and the other Donors have expressly released ParkLane from any claims for damages or losses arising from or related to their participation in the Gift Program. Accordingly, no claim for damages as against ParkLane is possible and this action should be dismissed as against it.

157. ParkLane, TAL and TTL deny that Cannon (or any other Donor) has suffered any damages or losses as a result of any act or omission on their part.

158. No damages or losses have been suffered or can be suffered by any Donor who has challenged any re-assessment by the CRA and/or the RQA unless or until the proceedings related to such a challenge have been finally determined and in a manner that disallows the tax credits to the Donor. No liability can or does arise based merely on CRA's assessing position.

159. The Tax Court of Canada (the "TCC") has exclusive original jurisdiction in matters relating to ITA tax liability pursuant to section 12 of the *Tax Court of Canada Act* (Canada). In order to make a determination of liability in this action, Cannon is asking the Ontario Superior Court of Justice (the "Superior Court") to decide whether the tax result, as posited by CRA in the reassessments, is correct. This tax issue is the foundation of the claims in this Action. Cannon has declined to have this issue judicially determined by the TCC, the court with the exclusive original jurisdiction to pass on the issue. Accordingly, this Court should decline to decide the tax issue and this Action should be dismissed.

160. Even if any losses or damages are suffered this would result from a re-assessment by the CRA and/or the RQA, a risk that Cannon (and any other Donor) acknowledged and accepted before participating in the Gift Program. Therefore, any such losses or damages are unreasonable and too remote to be recoverable.

161. If any damages or losses have been suffered relating to charitable donation tax credits disallowed by the CRA or the RQA (which is not admitted but expressly denied), such losses or damages are the result of the conduct of the CRA and/or RQA in that they have improperly disallowed such credits, and/or the conduct of Cannon (and any other Donor) who failed or refused to challenge the disallowance of such credits in circumstances where such a challenge was reasonably required in order to mitigate any such losses or damages.

162. The losses and damages being claimed, including the alleged loss of monies paid for the Gift Program, any interest or penalties that may be owing by Cannon or other Donors to the CRA and/or the RQA, the alleged loss of opportunity of return on investment of the monies paid and any special damages, including professional accounting and legal fees and consulting fees, incurred due to any reassessments are not matters that can be determined on a common basis but can only be determined by individual inquiries into the different circumstances of each Donor, including Cannon.

163. Accordingly, ParkLane TAL and TTL deny that any damages sustained by the members of the Class, which damages are not admitted, can be assessed or determined in the aggregate pursuant to s. 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, or otherwise. Proof of damages on an individual basis by each of the members of the Class is required.

M. NO BASIS FOR THE RETURN OF ANY MONIES OR RESCISSION

164. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the claim for the Return of Monies and Rescission set out in Section M of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

165. TAL and TTL say that no contracts exist or have ever existed between them and Cannon or any Donor and so there is no basis for this claim against them.

166. Similarly, with respect to the claim for rescission on the basis of a breach of the *Consumer Protection Act,* TAL and TTL say that there is no basis on which the *Act* (or similar provincial legislation) can apply to them in the circumstances pleaded (for the reasons set out in Section O below), particularly where no contract exists to which the remedy of rescission can be applied.

167. In answer to the claim for return of monies and rescission ParkLane says that:

(a) Cannon and the other Donors have expressly released it from any liability regarding such a claim; and

(b) there is no basis on which the *Consumer Protection Act* (or similar provincial legislation) can apply to it in the circumstances pleaded (for the reasons set out in Section O below).

168. Cannon acknowledges in the Statement of Claim, and the fact is, that a significant portion of each cash donation by each Donor was paid to the individual Distributor who promoted the Gift Program to the Donor.

169. Accordingly, if any order requiring a return of any such monies is made, including monies received by Distributors, it should be made against the Distributors and not against ParkLane, TAL or TTL.

N. NO BASIS FOR RESTITUTION, UNJUST ENRICHMENT WAVER OF TORT OR CONSTRUCTIVE TRUST

170. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the claim for restitution, unjust enrichment, waiver of tort and constructive trust set out in Section N of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

(a) No Unjust Enrichment

171. By participating in the Gift Program Cannon had an express intention to make a "gift" under the *Income Tax Act* (the "ITA"). Pursuant to the ITA a "gift" is unilateral and gratuitous made without the expectation of benefit or material advantage.

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172. Accordingly, there is no basis for Cannon (or other Donors) for claiming any deprivation. Cannon (and other Donors) intended to give away that which they gave away without the expectation of benefit or material advantage in return.

173. In any event, ParkLane, TAL and TTL say:

(a) none of them have received any amounts from Cannon or other Donors and therefore they could not have been and have not been enriched, unjustly or otherwise;

(b) all amounts received by ParkLane, TAL and TTL relating to the Gift Program were paid to them by other parties, not Cannon or Donors, pursuant to contracts and/or other recognized legal obligations that constitute juristic reasons for the payments they received;

(c) Cannon and other Donors have not suffered a deprivation as a result of any amounts that they have paid relating to the Gift Program;

(d) all the arrangements surrounding the donations by Cannon and other Donors constitute juristic reasons for any alleged enrichment and corresponding deprivation; and

(e) Cannon and the other Donors have expressly released ParkLane from any liability regarding such a claim.

174. Therefore, ParkLane, TAL and TTL deny any unjust enrichment, as alleged, and specifically deny that Cannon or any Donor has at any material time paid any sum to them to which they were not lawfully entitled.

175. If Cannon or any Donor has suffered a deprivation as alleged (which is not admitted but expressly denied), ParkLane, TAL and TTL specifically deny that they at any material time have been enriched unjustly at such Donor's expense. Accordingly there is no basis on which a claim for unjust enrichment can be made against them.

176. Moreover, Cannon acknowledges in the Statement of Claim, and the fact is, that a significant portion of each cash donation made by Donors was paid to the individual Distributors who promoted the Gift Program to Donors.

177. Accordingly, ParkLane, TAL and TTL could not be and were not enriched by any such payments. If any order requiring a return of the monies that were received by the Distributors is made it must be made against the Distributors and not against ParkLane, TAL or TTL.

(b) Restitution, Waiver of Tort and Constructive Trust Are Not Available

178. In response to the claims for restitution, waiver of tort and constructive trust against them in the Statement of Claim TAL and TTL say:

(a) they did not design, plan or create the Gift Program;

(b) they did not create, draft, supervise, approve, or authorize the preparation and distribution of the Gift Program Materials, the Written Opinion, or the client confirmation letters; and

(c) they did not distribute or provide the Gift Program Materials, the Written Opinion, or the client confirmation letters to Cannon or other Donors.

179. In response to the claims for restitution, waiver of tort and constructive trust against it in the Statement of Claim ParkLane says:

(a) Cannon and the other Donors have expressly released ParkLane from any liability regarding such a claim;

(b) it was not negligent in the manner in which it offered and implemented the Gift Program;

(c) the Gift Program Materials, the Law Firms Opinions, and the client confirmation letters were not negligently created, review, drafted, approved, or authorized;

(d) the information contained in the Gift Program Materials, the Law Firms Opinions, and the client confirmation letters was not inaccurate, false, deceptive or misleading.

180. Accordingly, there is no basis on which ParkLane, TAL or TTL should be or can be compelled to disgorge any funds which they received, directly or indirectly, from the Gift Program.

181. In further answer to the claim for a constructive trust and/or a tracing order ParkLane, TAL and TTL say that:

(a) the facts alleged do not establish any link to property over which a trust can be claimed by Cannon or a Donor, and in particular do not establish any link to property in the hands of ParkLane, TAL or TTL;

(b) alternatively, no specific property belonging to Cannon or a Donor has been identified, and as the facts alleged do not identify any specific property which Cannon or a Donor can claim is trust property, the Statement of Claim fails to plead a reasonable claim against them;

(c) neither Cannon nor any Donor has or can have any direct interest in any specific property that could be the subject of a trust or a tracing order, and no such direct interest is alleged by Cannon or a Donor;

(d) a monetary award is sufficient compensation for any alleged loss or damage Cannon or any Donor claims to have suffered;

(e) there can be no tracing of funds into the hands of a *bona fide* third party;

(f) any amounts paid to ParkLane, TAL or TTL in their corporate capacities (and not as escrow agent, in the case of ParkLane) relating to the Gift Program are not segregated based on their original source and are not identified as coming from any particular source and are deposited by them into their respective general corporate accounts (the "Corporate Accounts");

(g) the Corporate Accounts also receive funds unrelated to the Gift Program and all funds are commingled in the Accounts;

(h) ParkLane, TAL and TTL pay their own financial obligations from their respective Corporate Accounts, and the balances in the accounts fluctuate significantly, including from a positive balance to a negative balance;

(i) since 2005, the Corporate Accounts have been overdrawn from time to time and, as a result, any funds that may have been received by ParkLane, TAL or TTL relating to the Gift Program are no longer in their possession; and

(j) the balances in their respective Corporate Accounts have fluctuated and in the event that it is found that Cannon or any Donor is entitled to recover any amount on the basis of unjust enrichment (which is not admitted but specifically denied)

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any such recovery cannot exceed the lowest intermediate balance in the relevant Corporate Account.

182. The Distributors received monies paid by Donors for the Gift Program.

183. The Distributors are professional financial, tax and/or legal advisors who personally marketed and promoted the Gift Program to Donors, including to Cannon.

184. They had a duty to protect the interests of their respective clients and an obligation to know, understand and communicate to their respective clients any and all risks associated with participating in the Gift Program.

185. Accordingly, the Distributors, and not ParkLane, TAL and TTL, are liable for any alleged losses or damages suffered by Cannon or other Donors relating to any such monies claimed in the Action.

O. CONSUMER PROTECTION LEGISLATION DOES NOT APPLY

186. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the claims under the various provincial consumer protection statutes, including the *Consumer Protection Act* (Ontario) set out in Section O of the Statement of Claim ParkLane, TAL and TTL plead the facts set out below.

187. Cannon's allegation relating to breaches of consumer legislation in Ontario and other provinces are not properly pleaded and fail to disclose a cause of action against ParkLane, TAL or TTL.

188. ParkLane, TAL and TTL say that neither the *CPA* nor any other provincial consumer legislation applies for the following reasons:

(a) a "consumer agreement" as that term is defined in the *CPA* and any similar legislation in other provinces involves an agreement requiring a payment for the supply of goods or services;

(b) in contrast, pursuant to the *ITA* a "gift" is unilateral and gratuitous made without the expectation of receiving any benefit or material advantage: i. e. it does not involve "an agreement requiring a payment for the supply of goods or services";

(c) by participating in the Gift Program Cannon (and other Donors) had an express intention to make a "gift" under the *ITA*;

(d) that is, Cannon (and other Donors) intended to give away that which they gave away without the expectation of receiving a benefit or material advantage in return;

(e) therefore, Cannon's agreement (and the agreements made by other Donors) with ParkLane to make donations under the Gift Program cannot be and are not "consumer agreements" as that term is defined in the *CPA* or any similar legislation in other provinces;

(f) accordingly, neither the *CPA* nor consumer legislation from other provinces can or does apply to the Gift Program.

189. Any claims under the *CPA* are statute barred. Under the *CPA* claims must be made within one year of the date of the contract or agreement that is the subject of the claim. This action was commenced more than one year after the agreements or contracts that are the subject of the claims in this action.

190. ParkLane, TAL and TTL plead and rely on s. 18 of the *CPA*.

191. Similar limitation periods are set out in the other provincial consumer protection legislation. These limitation periods also bar the claims in this action.

192. If Cannon asserts that the *CPA* applies, he cannot adequately represent Donors who have objected to the CRA's assessment. By asserting that the *CPA* applies Cannon is admitting that he did not intend on making a gift by participating in the Gift Program, a position that is in direct conflict with the position of all Donors who are challenging the CRA's position on the basis that by participating in the Gift program they have made a proper gift by way of donation.

193. ParkLane, TAL and TTL say that the *CPA* and similar legislation from other provinces do not and can not give rise to a separate duty of care. The *CPA* is a comprehensive scheme of rights, obligations and remedies. No separate duty of care is created or exists in these circumstances.

194. In any event, ParkLane, TAL and TTL did not owe any duties to Cannon or other Donors pursuant to the provisions of the *CPA* or other consumer protection statutes in other provinces.

195. Therefore, the claims under the *CPA* and other consumer protection statutes should be dismissed as against ParkLane, TAL and TTL.

P. NO BASIS FOR AN AWARD OF PUNITIVE OR EXEMPLARY DAMAGES

196. In addition to the matters set out in paragraphs 1 to 3 above, in further answer to the claim punitive or exemplary damages set out in Section P of the Statement of Claim ParkLane, TAL and TTL specifically deny, for all the reasons expressed above, that Cannon or any Donor has any entitlement to punitive or exemplary damages.

Q. PARKLANE, TAL AND TTL HAVE NO LIABILITY TO CANNON OR OTHER DONORS

197. In further answer to the whole of the Statement of Claim Parklane, TAL and TTL:

(a) deny that they have any liability either to Cannon or any Donor;

(b) say, alternatively, if they engaged in any wrongful conduct as alleged (which is not admitted but denied) and have any liability to Cannon or any Donor as a result (which is also not admitted but denied) the claims of Cannon and the Donors are statute-barred;

(c) plead and rely on the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B;

(d) plead and rely on the *Consumer Protection Act, 2002*, S.O. 2002, c. 20;

(e) plead and rely upon the *Negligence Act,* R.S.O. 1990, c. N. 1, as amended.

198. If Cannon or any Donor has sustained the damages alleged in the Statement of Claim, which is expressly denied:

(a) any alleged damages were caused solely and exclusively by their own acts and omissions or by the acts and omissions of others, including their Distributors, and their Professional Advisors and not by any acts or omissions of ParkLane, TAL or TTL;

(b) Cannon and the other Donors have failed or refused to take any, or any reasonable steps to mitigate such damages; and

(c) such damages are excessive and too remote to be recoverable.

199. Further and in the alternative, ParkLane, TAL and TTL plead that the negligence of the Donors, including Cannon, was the cause of any loss suffered. That negligence includes, but is not limited to the following:

(a) they failed to, as specifically directed in the Donor Declarations they signed, properly review the tax consequences of participating in the Gift Program with independent Professional Advisors prior to their participation in the Gift Program;

(b) they participated in the Gift Program having willingly accepted all tax risks whatsoever related to participating in the Gift Program, including the risk that the charitable donation would be reassessed, yet took no steps to understand or evaluate those risks;

(c) they failed to ensure that they received independent professional advice from an advisor that had reviewed and evaluated the Gift Program;

(d) they failed to fully review all of the available Gift Program materials prior to their participation in the Gift Program;

(e) they made assumptions concerning the Opinion Letters without having their Professional Advisor review and confirm the actual content of the Opinion Letters;

(f) they failed to make appropriate inquiries of the CRA regarding the Gift Program specifically or incentivized gift programs generally;

(g) they failed to complete the Program Documents in a way that would ensure a valid gift would be found to be made.

200. In further answer to the whole of the Statement of Claim, if ParkLane, TAL or TTL has any liability to Cannon or any other Donor on any basis alleged, which such liability is not admitted but denied, ParkLane, TAL and TTL deny that Cannon or such Donor have any entitlement to injunctive relief since damages are an adequate remedy and no Donor (including

Cannon) has or will suffer irreparable harm. Further, neither Cannon nor any Donor is entitled to an injunction because of the delay in seeking such relief.

201. ParkLane, TAL and TTL therefore ask that this action be dismissed as against them with costs on a substantial indemnity basis.

COUNTERCLAIM

202. ParkLane claims from the Donors:

(a) an accounting of what is due from any Donor who provided an indemnity to ParkLane pursuant to the Donor's agreements with ParkLane (the "Indemnitors");

(b) an accounting of what is due from any Donor/Distributor who provided an indemnity to ParkLane pursuant to the Distributor Agreement signed by the Donor/Distributor;

(c) judgment for all amounts owing to ParkLane by each Indemnitor and Donor/Distributor, or alternatively judgment for the balance due and owing to ParkLane by any Indemnitor and Donor/Distributor, after the taking of accounts;

(d) prejudgment and post judgment interest on the said amounts pursuant to the *Courts of Justice Act;*

(e) costs and disbursements of this action on a substantial indemnity basis, plus H.S.T.; and,

(f) such further and other relief as counsel may advise and this Honourable Court may permit.

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203. ParkLane repeats and relies on the allegations in its Further Fresh Amended Statement of Defence.

204. In 2008 and 2009 the Indemnitors who participated in the Gift Program provided ParkLane with a written indemnity in respect of any and all claims or liabilities of any kind whatsoever that they had, or in the future may have with respect to matters occurring on, prior to or after the date of the Declaration, arising out of, based upon, resulting from or in connection with their participation in the Gift Program.

205. ParkLane has incurred costs and expenses, and will continue to incur costs and expenses, as a result of claims brought arising out of, based upon, resulting from or in connection with the Indemnitors' participation in the Gift Program.

206. If ParkLane has any liability to any Donor/Distributor, or has any liability to any Donor who participated in the Gift Program through a Donor/Distributor, ParkLane is entitled to a complete indemnity from each such Donor/Distributor under the Distributor Agreements for any loss, claim, damage or liability incurred by ParkLane in this action and the Third Party Claims and for and any and all legal and other expenses incurred by ParkLane in this action and the Third Party Claims.

207. The Indemnitors and the Donor/Distributors are required to pay ParkLane the amounts due and owing to ParkLane pursuant to their indemnities.

208. Accordingly ParkLane claims from the Indemnitors and the Donors/Distributors the amounts owing to it pursuant to the indemnities provided by them in the Program Documents and/or in the Distributor Agreements.

CROSSCLAIM

209. The defendants, ParkLane, TAL and TTL claim against Harris, the Law Firms, the FCF Charity, GMA. Matt Gleason and Mary Lou Gleason:

(a) contribution and/or indemnity in contract, in equity, in law, and/or pursuant to the *Negligence Act* R.S.O. 1990 c. N. 1 and any other applicable legislation or statute, for any and all sums that the ParkLane, TAL and TTL may be found liable to pay any Donors;

(b) prejudgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

(c) their costs of the main action and this crossclaim; and

(d) such further relief as this Honourable Court deems just.

210. ParkLane, TAL and TTL have defended the Action and plead and rely on the matters addressed in their Fresh Further Amended Statement of Defence and Counterclaim.

211. ParkLane, TAL and TTL have denied the allegations in the Action and have pleaded that the Gift Program is a valid and legitimate charitable donation program and that they are not liable to the Donors on any basis.

212. In the alternative, if liability is established against ParkLane, TAL or TTL with respect to any cause of action in the Action (which liability is expressly denied), any losses or damages suffered by Donors were caused by or contributed to by the wrongful acts and omissions of Harris, the Law Firms, the FCF Charity, GMA, Matt Gleason and Mary Lou Gleason. ParkLane, TAL or TTL are entitled to contribution and indemnity from these parties for any amounts that may be found owing by ParkLane, TAL or TTL to any Donors.

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213. Additionally, if ParkLane, TAL or TTL are liable to the Donors for any loss or damages (which liability is denied), ParkLane, TAL or TTL are entitled to indemnification for the full amount of such liability from Harris and the Law Firms as a result of those defendants' breach of contract, negligence and/or negligent misrepresentations.

214. Harris and the Law Firms were retained by ParkLane to provide opinions and advice regarding all aspects of the Gift Program. Harris, with the assistance of partners and employees of the Law Firms provided these opinions and advice.

215. Harris played an integral role in creating the design, structure and contents of the Gift Program and the Gift Program Materials. But for his legal advice and recommendations ParkLane would not have offered the Gift Program or would have been offered the Gift Program in a materially different form and TAL and TTL would not have become involved in the Gift Program.

216. In each of 2005, 2006 and 2007, Harris provided the Law Firms Opinions to ParkLane concerning the Gift Program.

217. Harris also provided the Confirmation Letters in each of these same years. The Confirmation Letters confirmed that Harris had provided ParkLane with the Law Firms Opinions concerning the Gift Program.

218. Harris also prepared and/or assisted in the preparation of the Gift Program Materials. The Gift Program Materials included the Program Documents such as the Donor Declarations and the Tax Risk Disclosure Statements signed by each Donor, and the Promotional Material such as Harris's name, photograph and biography along with the Confirmation Letters all of which were

included in the Gift Program Materials provided to each Donor with the knowledge and approval of Harris.

219. Harris and the Law Firms are professional legal advisors who prepared and provided the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials. They had a duty of care to give proper and accurate advice, and to take all reasonable steps to ensure that the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials were prepared and provided in accordance with all requirements of the applicable standards of practice expected of a lawyer and a law firm.

220. Moreover, it was an express and/or implied term of the retainer between ParkLane and Harris and the Law Firms that Harris and the Law Firms would provide proper and accurate advice, and take all reasonable steps to ensure that the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials in accordance with all requirements of the applicable standards of practice expected of a lawyer and a law firm.

221. Harris knew and expected that ParkLane would rely on the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials and ParkLane did so in deciding to offer the Gift Program.

222. ParkLane would not have proceeded with the Gift Program without the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials. Harris knew or ought to have known this was the case.

223. Harris knew and expected ParkLane to share the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials with TAL and TTL. TAL and TTL relied on the Law