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Firms Opinions, the Confirmation Letters and the Gift Program Materials in making their respective decisions to become involved in the Gift Program and would not have proceeded with the Gift Program without them. Harris knew or ought to have known this was the case.

224. Before, while and after the Gift Program was being offered ParkLane, TAL and TTL were led to believe by Harris and the Law Firms, and did believe, that Harris and the Law Firms had met their duty of care, and performed their duties in a diligent and prudent manner without negligence. They were led to believe, and did believe by Harris and the Law Firms, that the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials had been prepared and provided with skill and diligence in accordance with the applicable standards of practice.

225. It was reasonably foreseeable and Harris and the Law Firms knew and expected that ParkLane, TAL and TTL would rely on the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials and the advice and representations contained therein before, while and after the Gift Program was offered, and ParkLane, TAL and TTL have done so.

226. Because Harris and the Law Firms provided the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials knowing and intending that ParkLane, TAL and TTL would rely upon them this established a special relationship between Harris and the Law Firms on the one hand and ParkLane, TAL and TTL on the other that gives rise to the duty of care owed by Harris and the Law Firms to ParkLane, TAL and TTL.

227. Harris issued the Law Firms Opinions knowing and expecting that they would be used by the Distributors (i.e. the professional advisors of the Donors) for the purpose of advising their clients, the Donors, regarding whether they should participate in the Gift Program.

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228. Harris issued the Confirmation Letters knowing and expecting they would be used in the Gift Program Materials to inform Donors he had issued the Law Firms Opinions and to invite the Donors to have their Distributors review those Opinions.

229. Harris reviewed and provided advice regarding the Program Documents, including the Donor Declarations and the Tax Risk Disclosure Statements knowing and expecting they would be provided to Donors to inform them about the Gift Program and that Donors would be required to sign these documents in order to participate in the Gift Program.

230. Harris's allowed his name, photograph and biography to be included in the Gift Program Materials knowing and expecting that they would be used to market the Gift Program to Donors.

231. In providing the Law Firms Opinions to Distributors, by approving the Confirmation Letters, the Program Documents, and by allowing his name, biography and his photograph to be used in the Gift Program Materials, Harris knowingly brought himself into direct proximity with the Donors and owed them a duty of care.

232. In these circumstances, to the extent the Donors reasonably relied on the Opinion Letters, the Confirmation Letters and/or the Gift Program Materials and suffered losses or damages as a result, Harris and the Law Firms, and not ParkLane, TAL and TTL, are liable for those losses or damages.

233. Therefore, ParkLane, TAL and TTL claim contribution and indemnity in contract, in equity, in law and/or under the *Negligence Act* and any other applicable legislation or statute, from Harris and the Law Firms for any amounts that may be found owing by ParkLane, TAL and TTL to any Donors relating to the allegations in the Action.

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234. ParkLane, TAL and TTL acted properly and prudently in respect of any and all conduct in relation to the Gift Program. No act or omission on their part caused or contributed to any losses or damages alleged by any Donor.

235. If the Court concludes that the Gift Program was not a valid and legitimate charitable donation program (which is disputed) it must be the case that, in breach of their duty of care to ParkLane TAL and TTL, Harris and the Law Firms provided the Law Firms Opinions, the Confirmation Letters and/or the Gift Program Materials containing incorrect, false or misleading statements, and/or they acted negligently in preparing and providing these materials, and in addition breached their contract with ParkLane.

236. Accordingly, if ParkLane, TAL and TTL are found liable to any Donors (which liability is denied), ParkLane, TAL and TTL are entitled to full indemnification from Harris and the Law Firms. But for their reliance on the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials and their reliance on any negligent misrepresentations that a Court finds were contained within those materials, ParkLane, TAL and TTL would not have been involved with the Gift Program or the Gift Program would have been offered in a materially different form and ParkLane, TAL and TTL would not have been exposed to the claims in the Action.

237. ParkLane, TAL and TTL propose that this crossclaim be tried with the Action in the City of Toronto.

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August 2013

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MICHAEL CANNON  
Plaintiff

FUNDS FOR CANADA  
FOUNDATION ET AL.  
Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FURTHER FRESH FURTHER AMENDED  
STATEMENT OF DEFENCE, COUNTERCLAIM  
AND CROSSCLAIM OF THE DEFENDANTS,  
PARKLANE FINANCIAL GROUP LIMITED,  
TRAFALGAR ASSOCIATES LIMITED AND  
TRAFALGAR TRADING LIMITED**

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THIS IS EXHIBIT "K" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

*David Fogel*  
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 FIANNCIAL 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 ALBENESE, KEN FORD, RIYAD MOHAMMED, DAVID RABY and GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

**AMENDED STATEMENT OF DEFENCE AND CROSSCLAIM  
OF APPLEBY SERVICES (BERMUDA) LTD., as trustee of  
THE BERMUDA LONGTAIL TRUST**

1. Except as may be hereinafter admitted, the defendant, Appleby Services (Bermuda) Ltd. as trustee of The Bermuda Longtail Trust ("ASBL") denies and/or has no knowledge of each and every allegation in the **Fresh Further** Fresh as Amended Statement of Claim dated November 3, 2010 (the "Amended Claim"), and puts the Plaintiff to the strict proof thereof.
2. ASBL denies that the Plaintiff and/or the Class is entitled to the relief sought in paragraph 1 of the Amended Claim, or any relief at all.
3. There is no basis in fact or law for any of the claims that the Plaintiff advances against ASBL.

*ASBL is an Independent, Corporate Trustee*

4. The Bermuda Longtail Trust is one trust of hundreds of which ASBL is trustee.
5. ASBL was incorporated under the laws of Bermuda and carries on business as an independent, corporate trustee in the jurisdiction of Bermuda. ASBL administers trusts for public and private corporations, financial institutions, individuals and families. The Bermuda Monetary Authority has licensed ASBL to conduct trust business.
6. Contrary to the allegations in the Amended Claim at paragraph 12, ASBL does not share common offices, employees, officers, directors, shareholders, legal/beneficial owners and/or professional advisors with any of the Defendants in the action. ASBL does not have any offices in Canada.
7. ASBL is not affiliated with any of the Defendants.

*No Relationship between ASBL and the Plaintiff Class*

8. With respect to the allegations in the Amended Claim, at no time before this proceeding did ASBL have any contact with, or knowledge of, the Plaintiff, Michael Cannon, or any other member of the Class ("Donor") participating in the charitable gift program that is the subject of this proceeding (the "Gift Program").

*The Settlement of The Bermuda Longtail Trust*

9. The Bermuda Longtail Trust (the "Longtail Trust" or "Trust") was created by a deed of settlement dated October 30, 1998 (the "Deed") between Mr. Edward Furtak (the "Settlor") and Harrington Trust Limited (now ASBL). The Settlor is a businessman who resides in Bermuda and holds Canadian citizenship. He is associated with the defendants Trafalgar Associates Limited, Trafalgar Trading Limited ("TTL") and Parklane Financial Group Limited. The beneficiaries of the Longtail Trust are the Settlor, his

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wife and his children. The Salvation Army is the sole ultimate beneficiary of the Trust. The Longtail Trust was settled under, and is governed by, Bermuda law.

10. ASBL has wide-ranging powers with which to administer the Longtail Trust. Subject to the terms of the Deed, these include powers to manage the assets of the Trust as if ASBL were the absolute owner beneficially entitled to the trust fund, to receive additions to the trust fund, along with powers to borrow and to charge the assets held in the trust fund and to invest trust monies.

***The Role of the Longtail Trust in the Settlor's Business Ventures***

11. ASBL understands the Settlor to be a successful businessman. Over the years, the Settlor has conducted business through various entities under a business style known as "The Trafalgar Group". Since its creation, the Trust has been involved in a number of the Settlor's business ventures.

12. One of the assets of the Longtail Trust is a software program called the Trafalgar Index Program (the "TIP"). The TIP is a program for use in trading S&P futures contracts. As required by the Deed, after the Trust was settled ASBL entered into both a loan agreement and a charge agreement with TTL, and also a license agreement with another Trafalgar entity known as TCL Trafalgar B.V. This license agreement granted TCL Trafalgar B.V. a non-exclusive, limited-use license to use the TIP in exchange for paying the Trust a license fee. The TIP does not appear to be at issue in this proceeding.

13. In 2003, ASBL accepted, as an addition to the Trust, the services of the Settlor in developing a software program known as the Trafalgar Global Index Futures Program (the "TGIFP"). TGIFP is another program for use in trading S&P futures contracts.

14. Since 2003, ASBL has granted non-exclusive, limited use licenses for the TGIFP to companies in the Trafalgar Group in exchange for consideration. Whenever ASBL licensed the TGIFP, the terms of the license prohibited the licensee from using the TGIFP in Canada or sub-licensing the TGIFP for use in Canada. ASBL thus expected that the TGIFP would not be used in Canada.

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*ASBL was Not Responsible for Any Aspect of the Gift Program*

15. In 2005, the Settlor approached ASBL regarding licensing the TGIFP to TTL as part of a new venture. At all times, ASBL understood this venture to be a legitimate business undertaking.

16. ASBL granted TTL a non-exclusive, limited use license to use the TGIFP in this new undertaking. The license ASBL granted TTL specifically excluded Canada and therefore, specifically, ASBL expected that the TGIFP would not be used by TTL in this jurisdiction.

17. Contrary to the allegations in the Amended Claim, ASBL was not responsible for any aspect of the Gift Program. More specifically, 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, commission, request, review, draft, supervise, approve or authorize the preparation or distribution of any promotional materials, opinion letters, client confirmation letters, or any other materials related to the Gift Program;
- c) enter into any contracts or agreements of any kind with the Plaintiff or any other Donor, relating to the Gift Program or otherwise;
- d) did not make any representations of any kind, directly or indirectly, oral or written, to the Plaintiff or any other Donor, relating to the Gift Program or otherwise;
- e) did not authorize, and did not have the authority to authorize, any representations of any kind, directly or indirectly, oral or written, to the Plaintiff or any other Donor, relating to the Gift Program or otherwise; and/or
- f) have any contact with the Plaintiff or any other Donor, relating to the Gift Program or otherwise.

18. After ASBL licensed the TGIFP to TTL in 2005, ASBL received, from time to time,
- a) transfers of money in payment of license fees and/or loan repayments; and
  - b) requests from the Settlor and/or his agent(s) to transfer money out of the Trust. ASBL was not obliged, per the terms of the Deed, any other agreement, or otherwise, to satisfy these requests. ASBL was also not involved in the planning or deciding of the details of these transactions. Rather, among other things, ASBL took into consideration the Settlor's wishes on when to transfer money, in what amount, and to which bank and bank account.
19. From September 2005 and until January 2009, ASBL received payments totalling approximately \$430 million dollars in license fees and/or loan repayments. Also during this period, ASBL made, in satisfaction of requests from or on behalf of the Settlor, approximately \$412 million in payments out of the Longtail Trust to the law firm of Aylesworth LLP in Toronto and to the Continental Trust Company Ltd. in Bermuda.

***The Supreme Court of Bermuda has Sanctioned ASBL's Defence***

20. After the Plaintiff served ASBL with his Amended Claim, ASBL sought and received, from the Supreme Court of Bermuda, authorization to contest the jurisdiction of the Ontario Court over the claims asserted against ASBL in this proceeding, including by appeal.
21. Subsequently, ASBL sought and received, from the Supreme Court of Bermuda, authorization to attorn to the jurisdiction of Ontario and to defend the Plaintiff's claims.

***The Plaintiff Has No Cause of Action Against ASBL***

22. The Plaintiff has no cause of action against ASBL. More specifically, as described in detail above at paragraph 17, ASBL played no role in creating and/or administering the Gift Program.

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23. The Amended Claim is prolix and confusing. Following several motions and amendments, the following claims against ASBL have been dismissed or withdrawn:

- a) breach of contract;
- b) breach of consumer protection legislation;
- c) *quantum meruit*; and
- d) negligent misrepresentation.

24. Nevertheless, the Plaintiff continues to assert the following unparticularized claims against ASBL, which are subject to the defences pleaded herein:

- a) negligence;
- b) fraud/fraudulent misrepresentation;
- c) conspiracy; and
- d) unjust enrichment.

***No Negligence by ASBL***

25. Contrary to the allegations of negligence against ASBL in the Amended Claim, ASBL pleads:

- a) there is no, and never has been any, relationship between ASBL and the Plaintiff or any other Donor and, in particular, no special relationship could or did exist between ASBL and any Donor at any time;
- b) ASBL does not owe the Plaintiff or any other Donor a duty of care;

- c) there are no facts or circumstances upon which such a duty of care could be based and, in any event, there is an insufficient relationship of proximity between ASBL and the Plaintiff or any other Donor, and harm to the Plaintiff or any other Donor has never been a reasonably foreseeable consequence of any act or omission of ASBL;
- d) even if ASBL did owe a duty of care to the Plaintiff or any other Donor (which is denied), ASBL did not breach this duty and did nothing that could have breached it; and
- e) in any event, there is no causal relationship between any of ASBL's actions or omissions and any of the alleged damages.

26. ASBL also has no knowledge with respect to any of the allegations of negligence that the Plaintiff makes against the other Defendants.

***No Fraud and/or Fraudulent Misrepresentation by ASBL***

27. Contrary to the allegations of fraud/fraudulent misrepresentation against ASBL in the Amended Claim, ASBL pleads that it has not:

- a) made any representations of any kind to the Plaintiff or any other Donor relating to the Gift Program or otherwise, let alone false or deceptive representations;
- b) engaged in any conduct that ASBL knew or ought to have known was fraudulent or otherwise deceptive in any way;
- c) engaged in any conduct with the intent of causing harm or loss to the Plaintiff or any other Donor;
- d) engaged in any conduct that ASBL knew or ought to have known could cause harm to the Plaintiff or any other Donor; or
- e) engaged in any conduct that did or could have caused any harm to the Plaintiff or any other Donor.

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28. In any event, the Plaintiff has failed to plead his claim of fraud/fraudulent misrepresentation with full particulars as required by law.

29. ASBL also has no knowledge with respect to any of the allegations of fraud/fraudulent misrepresentation that the Plaintiff makes against the other Defendants.

*No Conspiracy by ASBL*

30. Contrary to the allegations of conspiracy against ASBL in the Amended Claim, ASBL pleads that it has not acted:

- a) in concert, combination, or agreement with any other Defendant in respect of the Gift Program in any way except to the extent described herein;
- b) unlawfully in any respect;
- c) in any way directed at the Plaintiff or any other Donor;
- d) in any way in respect of which ASBL knew, or should have known, that harm to the Plaintiff or any other Donor was likely or even possible; or
- e) in any way that has, or possibly could have, caused harm to the Plaintiff or any other Donor.

31. In any event, the Plaintiff does not plead, as required by law, that he and/or the Class have suffered damages as a result of the alleged conspiracy that are distinct, and in addition to, the damages he alleges the Class suffered from each of the other causes of action alleged in the Amended Claim.

32. ASBL also has no knowledge with respect to any of the allegations of conspiracy that the Plaintiff makes against the other Defendants.



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*No Unjust Enrichment of ASBL*

33. Contrary to the allegations of unjust enrichment against ASBL in the Amended Claim, ASBL pleads:

- a) the Plaintiff and the other Donors have suffered no deprivation given that they intended, and did make, donations of the cash and trust units that they contributed to the Gift Program, and (among other things) donative intent is a recognized juristic reason for the conferral of a benefit;
- b) ASBL has not been enriched by any amount of the contributions that the Plaintiff and other Donors made to the Gift Program, and (among other things) there is no direct nexus as required by law;
- c) if ASBL received any funds that originated from the Gift Program, then such funds were paid to it by TTL (and not by the Plaintiff or any other Donor) pursuant to contracts and/or other binding and enforceable legal obligations that constitute juristic reasons for these payments; and
- d) in any event, all of the transactions that constitute the Gift Program are juristic reasons for any alleged enrichment and corresponding deprivation.

34. Further and in the alternative, if the Trust has been enriched by any amount of the contributions that the Plaintiff and other Donors made to the Gift Program (which is denied), then ASBL pleads and relies on the defence of change of position.

35. ASBL has no knowledge with respect to any of the allegations of unjust enrichment that the Plaintiff makes against the other Defendants.

*No Damages and No Entitlement to Remedies*

36. ASBL denies that the Class has suffered any damages. In the alternative, if the Plaintiff or any other Donor has suffered any damages (which is denied), then such damage:

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- a) was caused solely and exclusively by the Donor's own acts or omissions (including the particulars pleaded at paragraph 37 below), or by the acts or omissions of others (and not ASBL);
  - b) is the result of a failure on the part of the Donor to take reasonable steps to mitigate his or her damages; and
  - c) is excessive and too remote to be recoverable.

37. Further and in the alternative, ASBL pleads that, if any Donor suffered any damage, then such damage was a result of that Donor's own negligence and recklessness, the details of which include (but are not limited to) the Donor:

- a) failing to properly review the tax consequences of participating in the Gift Program with an independent professional advisor;
- b) willingly accepting all tax risks arising from participating in the Gift Program, including the risk that the charitable donation would be reassessed, yet taking no steps to understand or evaluate those risks;
- c) failing to review fully all of the available information on the Gift Program;
- d) making assumptions concerning the Gift Program, and in particular the opinion letters associated with the defendant, Mr. Harris, without having an independent professional advisor first review and confirm the content of this material; and
- e) willingly accepting all risks associated with participating in the Gift Program.

38. For all of the reasons set out above, there is no basis in fact or law for the claims of restitution, constructive trust, waiver of tort or punitive damages.

39. ASBL pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c.N.1, as amended, and the *Class Proceedings Act*, 1992, S.O. 1992, c.6. as amended.

40. ASBL pleads that the within action be dismissed as against it with costs payable to it on a substantial indemnity basis.

**CROSSCLAIM**

41. ASBL claims against the Defendants, Edwin C. Harris Q.C., Patterson Palmer (also known as Patterson Palmer Law), Patterson Kitz (Halifax), Patterson Kitz (Truro), and McInnes Cooper (collectively, the "Lawyer Defendants"); Funds for Canada Foundation, Gleeson Management Associates Inc., Mary-Lou Gleeson and Matt Gleeson (collectively, the "Gleeson Defendants"), for:

- (a) Contribution and/or indemnity 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 amounts payable by ASBL to the Plaintiff Class (the "Class") in the main action;
- (b) pre-judgment and post-judgment interest on all amounts awarded pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) costs of this crossclaim on a substantial indemnity basis;
- (d) costs of the main action on a substantial indemnity basis; and,
- (e) such further and other relief as this Honourable Court deems just.

**No Liability by ASBL**

42. ASBL repeats and relies on its Amended Statement of Defence.

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43. ASBL pleads that the Gift Program was a valid and legitimate charitable donation program, and it is not liable to the Class on any basis.

**To the Extent that ASBL is Liable, the Lawyer and Gleeson Defendants are Jointly Liable**

44. In the alternative, if ASBL is liable to the Class with respect to any cause of action in the Amended Claim, which is not admitted but denied, such loss was caused by or contributed to by the wrongful acts and omissions of the Lawyer Defendants and the Gleeson Defendants. ASBL is entitled to contribution and indemnity from these parties for any amounts, including costs, for which ASBL may be found to be responsible to the Class. In this regard, ASBL pleads and relies upon *Negligence Act* R.S.O. 1990 c. N. 1.

**There Would Be No Gift Program Without the Opinions**

45. Additionally, if ASBL is liable to the Class for any loss, ASBL is entitled to indemnification for the full amount of ASBL's liability from the Lawyer Defendants, as a result of these defendants' negligence and/or negligent misrepresentations.

46. Edwin C. Harris issued legal opinions and comfort letters in 2005, 2006 and 2007, which had the effect of endorsing the legal compliance of the Gift Program (the "Opinions"). The legal opinions from 2006 and 2007 explicitly stated that the donors "should be entitled to tax credits" for their donations, thereby suggesting that the Gift Program was a *bona fide* charitable donation program that would sustain a challenge by the Canada Revenue Agency.

47. No prudent donor would have participated in the Gift Program in the absence of legal reassurance as to the Gift Program's legitimacy. As such, but for the Opinions there would have been no Gift Program – the validity of which is the subject of the main action – and therefore, no claim against ASBL by the Class.

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48. ASBL relied upon the Opinions to its detriment, even though it was not a participant in the Gift Program. In its capacity as trustee of the Bermuda Longtail Trust, ASBL granted TTL a license for use of the TGIFP in the Gift Program, which ASBL understood to be a legitimate business undertaking.

49. The Lawyer Defendants, as the providers of the Opinions, owed a duty of care to ASBL to ensure that the Opinions were accurate and not misleading. The Lawyer Defendants owed this duty because of a special relationship, which arose from, *inter alia*, their knowledge that: (1) the Opinions played a pivotal role in the Gift Program; and (2) ASBL licensed the TGIFP for use in the Gift Program.

50. It was reasonable and foreseeable that ASBL relied on the Opinions. The Opinions were designed to garner participation in and otherwise promote the operation of the Gift Program, both by way of the actual content of the Opinions and by virtue of their existence. Further, Mr. Harris knew, or ought to have known, that ASBL would receive copies of the Opinions. As such, the fact that ASBL would rely on the Opinions was both reasonable and foreseeable in the circumstances.

51. If the Court concludes that the Gift Program was not a valid and legitimate charitable donation program, which is disputed, the Lawyer Defendants breached the aforementioned duty to ASBL. To the extent that ASBL is liable to the Class, which is denied, such liability was caused by the negligence and/or negligent misrepresentations of the Lawyer Defendants. ASBL is entitled to full indemnification for same.

52. ASBL requests that the crossclaim be tried together with the main action.

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August [•], 2013

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Lawyers for the Defendants,  
Patterson Palmer (aka Patterson Palmer Law),  
Patterson Kitz (Halifax), Patterson Kitz (Truro),  
McInnes Cooper and Edwin C. Harris, Q.C.

**AND TO: RICKETTS, HARRIS LLP**  
Barristers and Solicitors  
181 University Avenue  
Suite 816  
Toronto ON M5H 2X7

**Gary H. Luftspring**  
Tel: 416-364-6211 ext. 282  
Fax: 416-364-1697

Lawyers for the Defendants,  
Matt Gleeson and Gleeson Management Associates Inc.



MICHEAL CANNON -and- FUNDS FOR CANADA FOUNDATION et al.  
Plaintiff  
Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AMENDED STATEMENT OF DEFENCE AND  
CROSSCLAIM OF APPEBY SERVICES  
BERMUDA LTD. as trustee of THE BERMUDA  
LONGTAIL TRUST**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

**Bradley E. Berg** LSUC #38755M  
Tel: 416-863-4316  
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**Erin Hout** LSUC #54002C  
Tel: 416-836-4011  
Fax: 416-863-2653

Lawyers for the Defendant,  
Appleby Services (Bermuda) Ltd.,  
as trustee of The Bermuda Longtail Trust

THIS IS EXHIBIT "L" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

*David Fogel*  
\_\_\_\_\_  
A Commissioner, etc.

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Form 4.02A

2013

BWTNo.: 418932

SUPREME COURT OF NOVA SCOTIA

RECEIVED  
BRIDGEWATER, NS  
AUG 25 2013  
PROTHONOTARY

BETWEEN:

PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED  
and TRAFALGAR TRADING LIMITED



PLAINTIFFS

-and-

EDWIN C. HARRIS Q.C., PATTERSON KITZ (Halifax) and MCINNES COOPER

DEFENDANTS

NOTICE OF ACTION

To: EDWIN C. HARRIS Q.C.  
PATTERSON KITZ (Halifax)  
MCINNES COOPER

Action has been started against you  
The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia

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- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

**Judgment against you if you do not defend**

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

**You may demand notice of steps in the action**

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

**Rule 57 - Action for Damages Under \$100,000**

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiffs state the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is not within Rule 57

**Filing and delivering documents**

Any documents you file with the court must be filed at the office of the Prothonotary, 141 High Street, Bridgewater, Nova Scotia, B4V 1W2 (telephone # 902-543-4679).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

**Contact information**

The plaintiffs designate the following address:

**JOHN P. BROWN**  
**MCCARTHY TÉTRAULT LLP**  
Barristers & Solicitors  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

Documents delivered to this address are considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

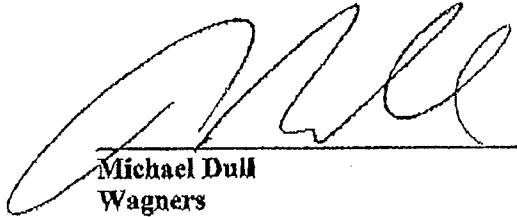
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**Proposed place of trial**

The plaintiffs propose that, if you defend this action, the trial will be held in Bridgewater, Nova Scotia.

**Signature**

Dated at Halifax, Nova Scotia this 23<sup>rd</sup> day of August 2013.



**Michael Dull**  
**Wagners**  
1869 Upper Water Street  
Suite PH 301, Pontac House  
HALIFAX, NS B3J 1S9,  
authorized to sign on behalf of:

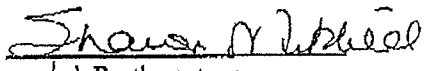
**John P. Brown**  
**Junior Sirivar,**

**MCCARTHY TÉTRAULT LLP**  
Barristers & Solicitors  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

Solicitors for the Plaintiffs

**Prothonotary's certificate**

I certify that this notice of action, including the attached statement of claim, was filed with the court on *August 26*, 2013.

  
(Deputy) Prothonotary  
**Sharon Mitchell**  
Deputy Prothonotary  
of the Supreme Court  
of Nova Scotia

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Form 4.02B

## STATEMENT OF CLAIM

### A. THE PARTIES

1. Parklane Financial Group Limited ("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") described in more detail below.
2. Trafalgar Associates Limited ("TAL") is a corporation incorporated pursuant to the laws of the Province of Ontario. TAL provided clerical support to ParkLane in respect to the Gift Program.
3. Trafalgar Trading Limited ("TTL") is a Bermudian company. It is a securities trading manager that markets and implements computerized trading programs in global securities markets on behalf of third parties. One of the programs it uses is the Trafalgar Global Index Futures Program (the "Global Index Program"), a sophisticated computerized securities trading program. TTL's services and the Global Index Program were used in conjunction with the Gift Program.
4. The Defendant Edwin C. Harris, Q. C. ("Harris") is a lawyer in the Province of Nova Scotia. Harris was counsel to Patterson Kitz (Halifax) beginning in 2001 and remained there until he became counsel to McInnes Cooper in January 2006.
5. The Defendant Patterson Kitz (Halifax) was a law firm that operated in Nova Scotia up to January 2006 at which time it ceased to operate and all or substantially all of its partners and employees joined the defendant McInnes Cooper. McInnes Cooper is a law firm operating in Nova Scotia and is the successor firm to Patterson Kitz (Halifax).

6. Patterson Kitz (Halifax) and McInnes Cooper are collectively referred to hereafter as the "Law Firms". They are vicariously liable for the acts and omissions of Harris.

#### B. THE GIFT PROGRAM

7. In 2005 ParkLane began reviewing a number of the available tax structures with a view to creating its own charitable donation program. ParkLane's intention was to assist registered Canadian charities such as amateur athletic associations, foundations and other qualified donees in raising capital in furtherance of the long-term objectives of each participating charity (the "Charity"). ParkLane planned to offer participating Charities the opportunity to access the trading advantages provided by the Global Index Program used by TTL.

8. It was important to ParkLane that any charitable donation program it offered be compliant with the *Income Tax Act of Canada* (the "ITA") and all applicable trust and securities laws. Therefore, ParkLane retained Harris and the Law Firms to provide opinions and advice regarding all aspects of the charitable donation program that ParkLane ultimately offered (i.e. the Gift Program). Harris, with the assistance of partners and employees of the Law Firms, provided comprehensive written opinions and ongoing advice regarding the Gift Program.

9. Harris and the Law Firms played an integral role in creating the design, structure and contents of the Gift Program and the Gift Program Materials (as described below). But for their legal advice, opinions and recommendations (that were provided in and from Nova Scotia) ParkLane would not have offered the Gift Program or would have offered the Gift Program in a materially different form and TAL and TTL would not have become involved in the Gift Program.

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10. Harris and the Law Firms provided ParkLane with written opinions (the "Law Firm Opinions") that the Gift Program was a valid and legitimate charitable donation gift program in compliance with the *ITA* that would not be successfully challenged by the Canadian Revenue Agency (the "CRA") or Revenu Quebec ("RQA"). Harris and the Law Firms issued the Law Firm Opinions knowing and expecting that they would be used by independent professional advisors to assess whether their clients (i.e. the "Donors") should participate in the Gift Program.

11. Harris and the Law Firms provided ParkLane with letters confirming that they had prepared and delivered the Law Firm Opinions (the "Client Confirmation Letters"). Harris and the Law Firms issued the Client Confirmation Letters knowing and expecting that these Letters would be provided to Donors in the Gift Program Materials.

12. Harris and the Law Firms prepared and/or assisted in the preparation of the Gift Program Materials. The Gift Program Materials were intended to implement a valid and legitimate charitable donation program in compliance with the *ITA* that could not be successfully challenged by the CRA. The Gift Program Materials included, *inter alia*, the Promotional Materials, Donor Declarations and Tax Risk Disclosure Statements (all described below).

13. The Promotional Material included, *inter alia*, a description of how the Gift Program worked, documents containing Harris's name, photograph and biography and the Client Confirmation Letters. This material was provided to each Donor with the knowledge and approval of Harris and the Law Firms.

14. The Donor Declarations and the Tax Risk Disclosure Statements advised Donors of the risks associated with participating in the Gift Program. Donor were required to sign Donor



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Declarations and Tax Risk Disclosure Statements in order to participate in the Gift Program. Harris and the Law Firms knew and expected that this would be the case.

15. In providing the Law Firms Opinions, approving the Confirmation Letters and the Program Documents, and allowing his name, biography and his photograph to be used in the Gift Program Materials, Harris knowingly brought himself into direct proximity with the Donors and owed them a duty of care.

16. To the extent the Donors reasonably relied on the Opinion Letters, the Confirmation Letters and/or the Gift Program Materials and suffered losses or damages as a result, Harris and the Law Firms, and not ParkLane, TAL and TTL, are liable for those losses or damages.

17. Harris and the Law Firms are professional legal advisors. In preparing and providing the Law Firm 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 Firm 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.

18. 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 Firm 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.

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19. Harris and the Law Firms 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.

20. ParkLane would not have proceeded with the Gift Program without the Law Firm Opinions, the Confirmation Letters and the Gift Program Materials. Harris and the Law Firms knew or ought to have known this was the case.

21. Harris and the Law Firms knew and expected ParkLane would share the Law Firm Opinions, the Confirmation Letters and the Gift Program Materials with TAL and TTL. TAL and TTL relied on the Law Firm Opinions, the Confirmation Letters and the Gift Program Materials in making their respective decisions to become involved in the Gift Program and would not have proceeded with the Gift Program without them. Harris and the Law Firms knew or ought to have known this was the case.

22. Before the Gift Program was offered, while the Gift Program was being offered and continually since the Gift Program ceased to be offered ParkLane, TAL and TTL were led to believe by Harris and the Law Firms, and did believe, that Harris and the Law Firms had met their duty of care, and performed their duties in a diligent and prudent manner without negligence. Throughout this time they were led to believe by Harris and the Law Firms, and did believe, that the Law Firm Opinions, the Confirmation Letters and the Gift Program Materials had been prepared and provided with skill and diligence in accordance with the applicable standards of practice. They had no reason to believe otherwise.

23. It was reasonably foreseeable, and Harris and the Law Firms knew and expected that ParkLane, TAL and TTL would rely on the Law Firm Opinions, the Confirmation Letters and the

Gift Program Materials and the advice and representations relating thereto before the Gift Program was offered, while the Gift Program was being offered and continually since the Gift Program ceased to be offered, and ParkLane, TAL and TTL have done so.

24. Because Harris and the Law Firms provided the Law Firm Opinions, the Confirmation Letters and the Gift Program Materials knowing and intending that ParkLane, TAL and TTL would rely upon them in this manner this established a special relationship between Harris and the Law Firms on the one hand and ParkLane, TAL and TTL on the other that gives rise to the duty of care owed by Harris and the Law Firms to ParkLane, TAL and TTL.

25. ParkLane, TAL and TTL acted properly and prudently in respect of any and all conduct in relation to the Gift Program.

26. The CRA has re-assessed Donors in the Gift Program and has taken the position that the Gift Program is not a valid and legitimate charitable donation program. Donors have filed Notices of Objection to these re-assessments (the "CRA Proceedings"). Until May 2012 Harris and the Law Firms were co-counsel for one of the Donors in the CRA Proceedings and on his behalf asserted that the Gift Program is a valid and legitimate charitable donation program. The CRA Proceedings are still pending and no determination has been made regarding the validity or legitimacy of the Gift Program.

27. Donors have commenced a class action (Ontario Superior Court of Justice Action No. CV-08-362807-00-CP - the "Class Action") in which they allege that the Gift Program is not a valid and legitimate charitable donation program. The Gift Program was offered in Nova Scotia and elsewhere in Canada. Donors participated in the Gift Program in Nova Scotia and elsewhere in Canada. They are seeking damages from ParkLane, TAL and TTL relating to their involvement

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in the Gift Program many of which damages were suffered in Nova Scotia. The Class Action is still proceeding and no determination has been made regarding the validity or legitimacy of the Gift Program.

28. ParkLane, TAL and TTL have defended the Class Action, denied the allegations against them therein and pleaded that they are not liable to the Donors on any basis because the Gift Program is a valid and legitimate charitable donation program.

29. Harris and the Law Firms are co-defendants in the Class Action. They assert in the Class Action that the Gift Program is a valid and legitimate charitable donation program, that they undertook the provision of the legal services they provided in a diligent and prudent manner without negligence and that the Law Firm Opinions and Client Confirmation Letters were prepared with skill and diligence exceeding or in accordance with applicable standards of practice.

30. In June 2013 Harris and the Law Firms entered in to a settlement agreement with the Class Members in the Class Action. ParkLane, TAL and TTL had no reason to believe and did not believe before that time that Harris and the Law Firms may have been negligent, may have made negligent misrepresentations or may have breached their contract with ParkLane.

31. If, in the CRA Proceedings, the CRA successfully challenges the Gift Program and establishes that it is not a valid and legitimate charitable donation program (which is disputed) or if, in the Class Action, the Donors successfully challenge the Gift Program and establish that the Gift Program is not a valid and legitimate charitable donation program (which is disputed) it must be the case that in breach of their duty of care to ParkLane TAL and TTL, Harris and the Law Firms provided the Law Firm Opinions, the Confirmation Letters and/or the Gift Program

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Materials containing incorrect, false or misleading statements, and/or they acted negligently in preparing and providing these materials, and in addition breached their contract with ParkLane.

**C. RELIEF SOUGHT**

32. In these circumstances, ParkLane, TAL and TTL have suffered losses and damages and and will continue to do so. Accordingly they claim against the defendants:

- (a) damages for negligence and/or negligent misrepresentation;
- (b) damages for breach of contract;
- (c) contribution and/or indemnity in contract, in equity, in law, and/or pursuant to the *Tortfeasors Act* RSNS 1989 c. 471 and any other applicable legislation or statute, for any and all sums that the ParkLane, TAL and TTL may be found liable to pay and/or do pay to the class members in the Class Action;
- (d) prejudgment interest in accordance with the provisions of the *Judicature Act*, RSNS 1989, c 240;
- (e) their costs of the this action; and
- (f) such further relief as this Honourable Court deems just.

33. ParkLane, TAL and TTL are entitled to full indemnification from Harris and the Law Firms for any damages, losses, costs and expenses that result from the negligence, negligent misrepresentation and/or breach of contract of Harris and the Law Firms. But for the existence of the Law Firms Opinions, the Confirmation Letters and the Gift Program Materials and the reliance of ParkLane, TAL and TTL on that material and on the advice provided by Harris and the Law Firms, ParkLane, TAL and TTL would not have been involved with the Gift Program, or the

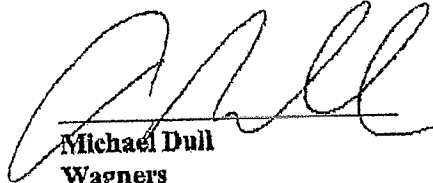
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Gift Program would have been offered in a materially different form and ParkLane, TAL and TTL would not have been exposed to the claims in the Class Action, to the expenses associated with the CRA Proceedings or to the other losses and damages described above.

34. Parklane, TAL and TTL plead and rely on the *Tortfeasors Act* RSNS 1989 c. 471 and the *Limitations of Actions Act* RSNS 1989, c 258.

**Signature**

Dated at Halifax, Nova Scotia, this 23<sup>rd</sup> day of August 2013.



**Michael Dull**

**Wagners**

1869 Upper Water Street  
Suite PH 301, Pontac House  
HALIFAX, NS B3J 1S9,  
authorized to sign on behalf of:

**John P. Brown** LSUC#: 22635H  
Tel: 416-601-7719

**Junior Sirivar**, LSUC No. 47939H  
Tel: 416-601-7750

**MCCARTHY TÉTRAULT LLP**  
Barristers & Solicitors  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

Solicitors for the Plaintiffs,  
ParkLane Financial Group Limited,  
Trafalgar Associates Limited and Trafalgar  
Trading Limited

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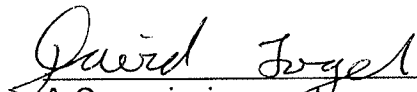
**TO:** EDWIN C. HARRIS Q. C.  
Purdy's Wharf Tower II  
1300-1969 Upper Water Street  
P.O. Box 730  
B3J 2V1

**AND TO:** PATTERSON KITZ (Halifax)  
Purdy's Wharf Tower II  
1300-1969 Upper Water Street  
P.O. Box 730  
B3J 2V1

**AND TO:** MCINNES COOPER  
Purdy's Wharf Tower II  
1300-1969 Upper Water Street  
P.O. Box 730  
B3J 2V1

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

  
A Commissioner, etc.



## 1. Firm Profile

Our firm was established in London over twenty years ago and comprises twelve partners, along with a combination of other supporting staff of Chartered Accountants, Certified General Accountants and students in training for each designation and program. In total, we have over 60 full-time employees, including Partners. NPT provides services in four areas: accounting services, business valuations, wealth management, and class action administration.

### Claim Administration Services

Class action administration services are provided through NPT RicePoint Class Action Services Inc. ("NPT RicePoint"). Over the past nine years, we have administered more than 25 cases involving securities, product liability and price fixing settlements and distributed over \$100 million in settlement assets. These services address each phase of the settlement process, from designing custom websites and databases for claimants, to administering the Notification, Claim Processing and Settlement Distribution stages of a case. For a list of representative cases, please see Appendix B of this proposal or visit our website at [www.nptricepoint.com](http://www.nptricepoint.com).

### Notice Services

In addition to traditional claims administration, NPT RicePoint's Notice Group designs and executes all aspects of the Notice including:

- **Notice Plan Design:** Developing a strategy, tactics and budget to effectively and efficiently reach class members.
- **Notice Placement:** Media estimating, negotiating, preparation and booking of orders, auditing, and reporting.
- **Social Media Campaigns:** Assisting in pre-certification case collection or post settlement notice plans.
- **Expert Opinions:** Opining on the method of dissemination or the form of notice.
- **Search:** Locating missing class members.



**REPRESENTATIVE CASES**

ADMINISTRATION	CLAIMS PROCESSED	SETTLEMENT FUND	CLAIM DEADLINE
Vioxx Class Action	In progress	CAD \$33,112,500	In progress
Voyageur Colonial Class Action	In progress	CAD \$1,330,000	In progress
OPSEU Local 330 Surplus Benefits	In progress	CAD \$1,780,000	In progress
Arctic Glacier Income Fund Securities Litigation	In progress	CAD \$13,750,000	September 11, 2012
Redline Communications Securities Litigation	In progress	CAD \$3,600,000	March 5, 2012
Canadian Superior Energy Securities Litigation	In progress	USD \$5,200,000	December 7, 2011
Ethylene Propylene Diene Monomer Class Action	34	CAD \$4,249,537	October 11, 2011
Fleet Phospo-Soda Class Action	60	CAD \$11,995,000	September 22, 2011
MyTravel Canada Class Action	393	CAD \$2,250,000	May 25, 2011
Gildan Activewear Securities Litigation	22,749	USD \$22,500,000	March 10, 2011
PetroKazakhstan Inc. Securities Litigation	2,112	CAD \$9,900,000	February 24, 2011
SunOpta Inc. Securities Litigation	5,059	USD \$11,250,000	June 11, 2010
CP Ships Ltd. Securities Litigation	11,216	CAD \$12,800,000	June 7, 2010
TVI Pacific Securities Litigation	609	CAD \$2,100,000	January 18, 2010
Hydrogen Peroxide Class Action	73	CAD \$20,490,000	September 8, 2009
Tequin Class Action	91	CAD \$5,000,000	February 27, 2009

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THIS IS EXHIBIT "N" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

*David Fogel*  
\_\_\_\_\_  
A Commissioner, etc.

**NOTICE OF SETTLEMENT APPROVAL**  
**IN**  
**CANNON v. PARKLANE FINANCIAL GROUP LTD. CLASS ACTION**

**Who this Notice is For**

This notice is for 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 did not opt out of the Class Action, or who is not an "Excluded Person".

**READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.**

Please note that this is a summary of the Court approval of settlements reached with some of the Defendants in this Class Action. The full terms of the settlements are available on Class Counsels' websites referenced below.

**A Settlement with Some of the Defendants Has Been Approved by the Court**

On June 4, 2013 and July 9, 2013 the Plaintiff entered into Settlement Agreements with some of the Defendants. Complete copies of the Settlement Agreements are available to be viewed on Class Counsels' websites referenced below.

The Settling Defendants are:

Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro), McInnes Cooper (together, the "Law Firm Defendants"), and Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc. (the "FFCF/Gleeson Defendants").

This Action was commenced in 2008 in the Ontario Superior Court of Justice. The Plaintiff 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 out of pocket to participate in the Gift Program, as well as any interest or penalties charged by the Canada Revenue Agency at the time the Class Members' tax returns were reassessed.

All of the Defendants have, and continue to deny any liability to the Class. The Class Action has been vigorously contested.

The Class Action will continue to be prosecuted against all the other Defendants, including ParkLane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, and Appleby Services Bermuda Ltd. as trustee for the Bermuda Longtail Trust (the "Non-settling Defendants"). The Non-settling Defendants continue to deny liability to the Class.

**TERMS OF THE SETTLEMENTS**

On June 4, 2013, the Court approved the Settlements and declared that they are fair, reasonable, and in the best interest of the Class.

The Settlements are compromises of disputed claims and are not admissions of liability, wrongdoing or fault on the part of any of the Settling Defendants, all of whom denied, and continue to deny all the allegations made against them.

Under the terms of the Settlement with the FFCF/Gleeson Defendants, the FFCF/Gleeson Defendants have paid to the Class a total of \$950,000 including legal fees and expenses, and the expenses to administer the settlement.

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Under the terms of the Settlement with the Law Firm Defendants, the Law Firm Defendants have paid to the Class a total of \$•, including legal fees and expenses, and the expenses to administer the settlement.

In return for the Settlement Amount, the Settling Defendants will receive releases, and the Class Action will be dismissed against them. The Third Party Claim brought by the Law Firm Defendants will also be dismissed against any Class Members who are also Third Parties.

The Court also awarded Class Counsel legal fees, expenses, and applicable taxes in the amount of \$• ("Class Counsel Fees"). As is customary in these cases, Class Counsel conducted the Class Action on a contingent fee basis, meaning that Class Counsel were not paid as the matter proceeded. The amount awarded as Class Counsel Fees includes \$• as reimbursement for amounts spent by Class Counsel in the conduct of the Action. The remainder of this amount, net of applicable taxes, represents Class Counsel's only compensation for conducting the Class Action, to date. Class Counsel Fees will be deducted from the Settlement Funds before they are distributed to Class Members. Expenses incurred or payable relating to approval, notification, implementation, and administration of these Settlements ("Administration Expenses"), will also be paid from the Settlement Funds before they are distributed to Class Members.

The Class Proceedings Fund, which has provided some funding for the Class Action, as well as indemnification in the event of any adverse cost award, will also be paid a total of \$• from the Settlement Funds, as required by statute.

#### **HOW TO MAKE A CLAIM TO RECEIVE PART OF THE SETTLEMENT FUNDS**

The Court has appointed NPT RicePoint Class Action Services Inc. as the Administrator of the Settlements. The Administrator will oversee the claims (described below) and will distribute the Net Settlement Fund to all Class Members who submit a valid Claim Form.

Claim Forms will be mailed or emailed to all Class Members for whom Class Counsel have current contact information. Claim Forms will also be available by contacting the Administrator or visiting either the Administrator's website or Class Counsels' websites. The Administrator's contact information is: ●

Class Members who wish to receive compensation from the Settlement Amount must mail or email a completed Claim Form to the Administrator no later than ● (the "Claims Bar Deadline").

Class Members who send a valid Claim Form to the Administrator, postmarked prior to the Claims Bar Deadline will be paid a *pro rata* share of the Net Settlement Amount, following deduction of all fees, expenses, and taxes. The Distribution Protocol posted on Class Counsels' websites contains an explanation of how the Net Settlement Fund will be distributed *pro rata* to the Class Members.

The Settlement Agreements, the Settlement Approval Order, the Distribution Protocol and Claim Forms, as well as other information regarding the Class Action are available on Class Counsels' websites at:

[http://www.thetorontolawyers.ca/class\\_actions.htm](http://www.thetorontolawyers.ca/class_actions.htm) or

<http://www.parklaneaction.com>

or may be obtained by calling: 1-855-666-1053 or 1-855-556-5529

For questions relating to the Class Action, for further information about the Settlements, please contact Class Counsel:

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ParkLane Class Action  
Paliare Roland LLP  
155 Wellington St. W., 35<sup>th</sup> Floor,  
Toronto, ON  
M5H 3E5  
Fax: 416-646-4301  
[info@parklaneaction.com](mailto:info@parklaneaction.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: [parklaneaction@lmklawyers.com](mailto:parklaneaction@lmklawyers.com)  
(t): 1-855-556-5529

The Ontario Superior Court of Justice offices cannot answer any questions about the matters in this notice, please do not contact the Court regarding this notice.

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THIS IS EXHIBIT "O" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

*David Fogel*  
A Commissioner, etc

## 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 they maintain.

### Notice of Settlement Approval

4. The Claims Administrator will send the Notice of Settlement Approval (French and English versions) by email to all Class Members for whom current email addresses are available.
5. The Claims Administrator will mail the Notice of Settlement Approval to all Class Members for whom there is a current address in the updated Master Donor List. For addresses in the Province of Quebec, the Notice of Settlement Approval will also be mailed in French.
6. Internet - The Notice of Settlement Approval (French and English versions), along with a summary of the core terms of the Settlement Agreements with the FFCF/Gleeson Defendants and the Lawyer Defendants, and a link to the



A handwritten number '550' is circled in the top left corner of the page.

Approval Order will be published on the web pages maintained by Class Counsel in respect of this proposed class proceeding.

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

8. 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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THIS IS EXHIBIT "P" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

*David Fogel*  
A Commissioner, etc.

**Cannon v. Funds for Canada et al.**

**Distribution Protocol re Settlements with:  
Law Firm Defendants and FF/CF/Gleeson Defendants**

Background

1. The ParkLane Defendants have provided to Class Counsel their Master Donor Lists which enumerate:
  - a. The name of each Class Member;
  - b. The year or years each Class Member participated in the Gift Program;
  - c. The total amount of each Class Member's cash donations and "donations in kind" (i.e. the value attributed to the sub-trust units) for each year in which each Class Member participated in the Gift Program; and,
  - d. The last known address for each Class Member, including email and telephone numbers where available.
2. Class counsel have been contacted directly by over 1600 Class Members. The Master Donor list has been updated as appropriate with Class Members' current addresses and/or email addresses.
3. The opt out period for all Class Members other than Class Members who are also Distributors expired on February 22, 2013.
4. The opt out period for all Class Members who are also Distributors will expire on a date to be set by the court.
5. The Master Donor list has been and will be updated by Class Counsel to remove all Opt Outs.
6. The Notice of Settlement Approval will be delivered by mail and/or email to all Class Members with current addresses in the Master Donor List, and it will be published in accordance with the Notice Protocol approved in the Settlement Approval Order.

The Net Settlement Fund

7. The Net Settlement Fund will be comprised of the Settlement Fund from the Settlement Agreement with the FF/CF/Gleeson Defendants dated June 4, 2013, and the Settlement Fund from the Settlement Agreement with the Law Firm Defendants dated July 9, 2013, plus all accrued interest, less:
  - a. Class Counsel's fees as approved by the Court;

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- b. The levy payable to the Class Proceedings Fund;
- c. the costs of publishing and delivering the Notice of Settlement and Claim Forms; and
- d. the Claims Administrator's costs of delivering the Notices and administering the Settlements.

#### Claim Forms

8. Claim Forms will be in a form to be created by the Claims Administrator in consultation with Class Counsel.
9. Claim Forms will be delivered to each Class Member with a valid address and/or email address in the Master Donor List at the same time as the Notice of Settlement Approval.
10. Claim Forms will be provided to any Class Member who requests a copy from Class Counsel or the Claims Administrator.
11. Claim Forms will also be available to be downloaded from Class Counsels' websites and the Claims Administrator's website.
12. Class Members who wish to make a claim for compensation from the Net Settlement Fund must mail or email a completed and signed Claim Form to the Administrator on or before the Claims Bar Deadline set by the Court, failing which the Class Member will not be entitled to receive compensation from the Net Settlement Fund.
13. Completed and signed Claim Forms must be postmarked or emailed on or before the date set by the Court as the Claims Bar Deadline.
14. The Claims Administrator shall authenticate each Claim Form it receives from Class Members on or before the Claims Bar Deadline. Claim Forms authenticated by the Claims Administrator will be Valid Claim Forms.
15. Any Claim Form received by the Claims Administrator on or before the date set by the Court as the end of the Claim Period that is incomplete will not be accepted. The Claims Administrator will, by return mail or email, advise any Class Member who delivers an incomplete Claim Form of the deficiencies in the Claim Form, and such Class Member will be permitted a further 21 days from the date on which the Class Member is notified of that the Claim Form is incomplete within which to correct the deficiencies. If, after 21 days from the date the Claims Administrator advises the Class Member who delivered an invalid Claim Form of the deficiencies in the Claim Form, the Class Member has not delivered a Valid Claim Form, the claim of that Class Member will not be valid, will be rejected by the Claims Administrator, and the Class Member will not qualify to receive a distribution from the Net Settlement Fund.

16. The failure of a Class Member to deliver a Valid Claim Form in respect of the distribution of the Net Settlement Fund from the settlements with the FFCE/Gleeson Defendants and the Law Firm Defendants will not disentitle any such Class Member from the right to make a claim for distribution from any subsequent settlement or judgment in the Action.

#### Pro-rata Distribution

17. At the end of the Claim Period, and after the further 21 day extension has expired for the completion of any incomplete Claim Forms, the Claims Administrator will compile a list of all Class Members who have delivered Valid Claim Forms (Qualifying Class Members).

18. The list of all Qualifying Class Members will include the total of all cash donations made by each such Class Member.

19. The Net Settlement Fund will be distributed on a pro-rata basis among all Qualifying Class Members applying the formula  $A/B \times C = D$ , where:

- a. A = the total cash donations of each Qualifying Class Member
- b. B = the total of all cash donations made by all Qualifying Class Members
- c. C = the Net Settlement Fund, and
- d. D = the total amount to be distributed to each Qualifying Class Member.
- e. In no circumstances shall D be greater than A.
- f. If, in any case, D is greater than A, then D shall be decreased to equal A, and the difference will be included in the Net Settlement Funds as set out in paragraph 21, below.

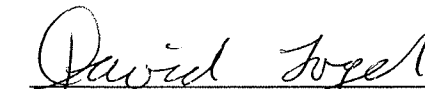
20. In calculating the Pro-rata Distribution, the Claims Administrator will hold back from the Net Settlement Fund the total amount of its estimated fees and disbursements, plus an additional 10%, to be held in trust and used to pay the Claims Administrator's total administration fees.

21. Any Net Settlement Funds remaining after the pro-rata distribution has been completed and the Claims Administrator has been paid in full, including the value of any stale-dated cheques, will be held in trust by the Claims Administrator for the benefit of the Class until further order of the Court.

22. Any such remaining Net Settlement Funds may be added to the Settlement Funds paid in any subsequent settlement with any Non-settling Defendant, or included for distribution with any proceeds from any judgment following the common issues trial.

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THIS IS EXHIBIT "Q" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

  
A Commissioner, etc.

**SUMMARY CHART**  
**TOTAL TIME SPENT PALIARE ROLAND LLP**  
**TOTAL DISBURSEMENTS INCURRED BY CLASS COUNSEL**

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<b>LAWYERS</b> — Paliare Roland Rosenberg Rothstein LLP	<b>TIME/HOURS</b>	<b>FEES</b>
Margaret L. Waddell	1,803.00	1,171,950.00
Andrew Lewis	253.40	145,495.00
Susan Brown	701.85	245,545.00
Karen Jones	49.80	26,643.00
Gregory Ko	87.50	27,992.50
Other lawyers	133.80	19,518.00
Law Clerks	493.90	89,491.00
Students	689.80	57,610.00
<b>TOTAL TIME AND FEES</b>	4,213.05	\$1,889,801.00
<b>HST</b>		245,674.13
<b>TOTAL FEES + HST</b>		\$2,135,475.13

<b>DISBURSEMENTS</b>	
Postage	555.02
Courier Expense	2,993.48
Process Server Fees, Filing Fees, Sheriff Fees	14,929.02
Telephone and Facsimiles	733.23
Photocopies and Cerlox/Binding	94,815.03
Miscellaneous Meals	2,393.21
Travel and Taxis	1,925.80
Legal Research and Searches	15,931.14
ACL Action Commencement	75.00
Access to Information Fees	85.00
Court Reporter Fees, Examination Fees, Transcripts	22,770.06

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Platinum Legal Services	168.55
Website Fees	2,042.00
Press Releases	19,725.00
Outside Legal Services and Experts	252,793.80
NPT + RICEPOINT Class Action Services - Notice	28,525.36
<b>TOTAL DISBURSEMENTS</b>	<b>\$460,460.70</b>
TOTAL HST on Disbursements	50,522.86
<b>TOTAL DISBURSEMENTS + HST</b>	<b>\$510,983.56</b>



558

THIS IS EXHIBIT "R" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

*David Joyal*

\_\_\_\_\_  
A Commissioner, etc.

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## NOTICE

### To: All Individuals who Participated in the ParkLane Financial Group - Donations for Canada Gift Program between 2005 - 2009

Federal Tax Shelter Identification # TS070623, or  
Quebec Tax Shelter Identification # QAF-05-0109

#### NOTICE OF CERTIFICATION AS A CLASS ACTION

This Notice may affect your rights. Please read it carefully.

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**PURPOSE OF THIS  
NOTICE:**

A nation-wide class proceeding has been certified by the Ontario Superior Court of Justice.

On January 18, 2012, Cannon v. Funds for Canada Foundation et al., Court File No. CV-08-362807 CP was certified as a class proceeding, and Michael Cannon was appointed as the representative plaintiff on behalf of the Class (the "Class Action").

The Defendants' motions for leave to appeal from the certification order were denied on October 29, 2012.

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**Who this Notice is for:**

You are a member of the Class if you fit this description:

**THE CLASS**

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.

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**What the Action is  
About:**

The Class 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.

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The class action seeks, among other things, an order requiring the

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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 as a result of the disallowance of the claims for charitable deductions arising from the Class Members' participation in the Gift Program, with the interest reimbursement to include at least one month of interest after delivery of the CRA notice of reassessment.

The Defendants deny all the allegations made against them in the action, and deny that the Class are entitled to any compensation. By certifying this action as a class proceeding, the Court has not determined the merits of the Plaintiff's claims or the Defendants' defences. The Plaintiff will be required to prove his allegations at a trial in order to obtain the relief that he seeks for the Class.

A copy of the Statement of Claim and the Order certifying this action as a class proceeding can be reviewed at [Statement of Claim and Certification Order](#) or [www.thetorontolawyers.ca/class\\_actions.htm](http://www.thetorontolawyers.ca/class_actions.htm)

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**The Defendants:**

The Defendants are:

ParkLane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, Funds for Canada Foundation, 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., Matt Gleeson and Mary-Lou Gleeson

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**HOW THIS CLASS ACTION AFFECTS YOU:**

If you are a Class member, and you wish to participate in the proceeding, then you do not need to do anything more at this stage. You are automatically included in the Class.

**No Cost to You**

There is no cost to you to participate in the class action. You will have no responsibility to pay any legal fees. Class Counsel will only be paid in the event that the action succeeds at trial or there is a settlement. Class Counsel have entered into a contingency fee agreement with the representative plaintiff. The agreement provides for a contingency fee of 33% of the amount recovered in the Class Action to be paid to Class Counsel, along with reimbursement of all disbursements and taxes. The court must first approve Class Counsel's legal fees before they will be paid.

**No Liability for Court**

The representative plaintiff has obtained funding from the Ontario Class Proceedings Fund. The Fund will cover the cost of some of

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**Costs** the disbursements incurred in prosecuting the Class Action, and it is responsible to pay any adverse cost awards. In exchange, the Fund is entitled to be paid 10% of any amounts paid by or received from the Defendants in a settlement or judgment.

**You will be Bound by a Judgment or Settlement in the Action** Each Class member who does not opt out of the Class Action will be bound by the terms of any judgment or any settlement approved by the Court. Each Class member may be entitled to share in the amount of any judgment awarded or settlement reached in the Class Action.

**HOW TO OPT OUT OF THE CLASS ACTION** If you DO NOT WANT TO PARTICIPATE in this proceeding, then you must say so in writing by delivering a letter to Class Counsel, including your full name and address on or before February 22, 2013 at 5:00 pm EST to the following address:

**If you do not want to participate in the Action**

**Address for Sending Your Notice of Opt Out:**

ParkLane Class Action  
Paliare Roland LLP  
155 Wellington St. W., 35<sup>th</sup> Floor,  
Toronto, ON  
M5H 3E5  
Fax: 416-646-4301

If you decide to opt out, you will not be bound by the terms of any judgment or settlement. However, you also will not be eligible for any of the benefits of any settlement or judgment if the action is successful.

**Opt Out Deadline:** No Class member will be permitted to opt out after February 22, 2013.

**ADDITIONAL INFORMATION** Any questions about the matters in this notice should be addressed to Class Counsel.

The certification order and other information regarding the Class Action is available on the websites [http://www.thetorontolawyers.ca/class\\_actions.htm](http://www.thetorontolawyers.ca/class_actions.htm) or <http://www.paliareroland.com/practice-areas/details/class-actions/parklane>

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

Requests for information or questions for Class Counsel should be directed to:

ParkLane Class Action  
Paliare Roland LLP  
155 Wellington St. W., 35<sup>th</sup> Floor,

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Toronto, ON  
M5H 3E5  
e-mail: [info@parklaneaction.com](mailto:info@parklaneaction.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: [parklaneaction@lmklawyers.com](mailto:parklaneaction@lmklawyers.com)  
(t): 1-855-565-5529

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**INTERPRETATION**

This notice is a summary of the terms of the certification order. If there is a conflict between the provisions of this notice and the terms of the certification order, the certification order prevails. The certification order can be viewed at the web addresses referenced above.

This notice was approved by the Ontario Superior Court of Justice

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THIS IS EXHIBIT "S" REFERRED TO IN THE  
AFFIDAVIT OF KEITH M. LANDY, SWORN  
BEFORE ME THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2013

*David Fogel*  
\_\_\_\_\_  
A Commissioner, etc.

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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

You are a Class member in this action if you participated in the ParkLane Donations for Canada Charitable Gift Program (Federal Tax Shelter ID #TS070623 or Quebec Tax Shelter ID #QAF-05-0109) while resident in Canada during the period between January 1, 2005 and December 31, 2009, and if you have not opted out of the Class Action.

What the Action is About

The Donations for Canada Charitable Gift Program was a charitable donation tax program which was offered or otherwise available between 2005 and 2009 (the "**Gift Program**").

A class proceeding, Court File No. CV-08-362807 CP, has been certified in Ontario against a number of parties responsible for the Gift Program (the "**Class Action**"). The Class 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 Some of the Defendants, being:**

**Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro), McInnes Cooper, Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc.**

The Plaintiff has entered into proposed settlements with some of the Defendants, particularly - Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro), McInnes Cooper (together, the "Law Firm Defendants"), and also with Funds for Canada Foundation, Mary-Lou Gleeson, Matt Gleeson and Gleeson Management Associates Inc. (the "FFCF/Gleeson Defendants"). These Defendants are the "**Settling Defendants**".

The settlements require court approval before they will become effective.

The Class Action will continue to be prosecuted against all the other Defendants, including ParkLane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, and Appleby Services Bermuda Ltd. as trustee for the Bermuda Longtail Trust (the "Non-settling Defendants"). The Non-settling Defendants continue to deny liability to the Class.

**The Terms of the Proposed Settlements**

The settlement represents a resolution of disputed claims, and the Settling Defendants do not admit any wrongdoing or liability in connection with Class Action.

According to the Settlement Agreement with the FFCF/Gleeson Defendants, the FFCF/Gleeson Defendants will pay to the Class a total of \$950,000 including legal fees and expenses, and the expenses to administer the settlement, in exchange for a full release of claims against them relating to the Class Action.

According to the Settlement Agreement with the Law Firm Defendants, the Law Firm Defendants will make the following payments in exchange for a full release of claims against them relating to the Class Action:

- A Base Settlement Amount of \$23,130,789; and
- A Bonus Payment of up to \$4,112,054.

The Law Firm Defendants have already paid the Base Settlement Amount to Class Counsel, in trust. At the time when the opt out period for Distributor Class Members ends, the Law Firm Defendants will pay the Bonus Payment, minus the value of cash donations of Distributor Class Members who choose to opt out of the Class



Action. The total Bonus Payment will depend upon whether any additional Distributor Class Members decide to opt out of the Class Action.

If approved by the Court, these Settlements resolve the Class Action as against the Settling Defendants. The calculation and timing of the distribution of the settlement funds will be determined by further court order. Under the Settlement Agreements, the Settling Defendants have agreed to provide cooperation to Class Counsel in pursuing the Class Action against the remaining defendants.

The Plaintiff recommends the Settlements to the Class. Class Counsel recommends the Settlements as fair and reasonable. In reaching the Settlements, Class Counsel considered the estimated total damages suffered by the Class, the likely proportionate liability of the Settling Defendants for the losses sustained by the Class, the defences that would be asserted by the Settling Defendants, the assets, including insurance, available from the Settling Defendants to satisfy any judgment made against them, and the value of obtaining co-operation from the Settling Defendants in providing evidence to the Plaintiff for the prosecution of the Claim against the Non-settling Defendants.

A more complete explanation of the Settlements and why Class Counsel recommends the Settlements will be provided to the Court. The materials Class Counsel will file with the Court for the purposes of seeking approval of the Settlements will be available to Class Members, on request, after September 6, 2013.

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

[http://www.thetorontolawyers.ca/class\\_actions.htm](http://www.thetorontolawyers.ca/class_actions.htm) or

<http://www.parklaneaction.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 Settlements must be approved by the Court before they can come into effect. The Court will determine if the Settlements are fair, reasonable and in the best interests of the Class.

The Settlement Approval Hearing will be held on October 17, 2013 at 10 a.m., at the Osgoode Hall Court House, 130 Queen St. W., Toronto, Ontario. Class Members may, but are not required to, attend the hearing.

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 33% of the Settlements, plus disbursements and applicable taxes ("Class Counsel Fees"). Class Counsel Fees and Administration Expenses will be deducted from the settlement amounts payable under the Settlements, 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, as required by statute.

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 who wish to comment on, or object to the proposed Settlements or Class Counsel's fee request should do so in writing. **All comments or objections should be received by Class Counsel (at the address listed below) no later than October 10, 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 or Settlements; 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 and the Claims Process will be Delivered**

If the Settlements are approved by the Court, another notice will be given to the Class that will also explain how Class Members can make a claim to receive compensation from the Settlement Funds.



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

ParkLane Class Action  
Paliare Roland LLP  
155 Wellington St. W., 35<sup>th</sup> Floor,  
Toronto, ON  
M5H 3E5  
Fax: 416-646-4301  
[info@parklaneaction.com](mailto:info@parklaneaction.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:  
[parklaneaction@lmklawyers.com](mailto:parklaneaction@lmklawyers.com)  
(t): 1-855-556-5529

The Ontario Superior Court of Justice offices cannot answer any questions about the matters in this notice, please do not contact the Court regarding this notice.

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

**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*

**AFFIDAVIT OF MICHAEL CANNON  
(Sworn September 13, 2013)**

I, Michael Cannon, of the Town of Newmarket, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the representative plaintiff in this certified class action. As such, I have personal knowledge of the matters set out below, except where I have been advised of such information, in which case I have stated the source of my information, and I do believe it to be true.

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2. Class Counsel are, jointly, the law firms of Landy Marr Kats LLP ("LMK") and Paliare Roland LLP ("Paliare Roland"). Both firms are experienced class action lawyers. LMK has been prosecuting this action since I retained them in 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 since that time.

3. This affidavit is sworn in support of a motion for approval of two settlements that have been entered into by me through Class Counsel with some of the Defendants to this action.

4. I participated in the ParkLane Donations for Canada Gift Program twice – once in 2005 and again in 2006. My tax returns were reassessed and the tax credits I claimed in respect of this program were disallowed by CRA.

5. I have been actively involved in the ongoing prosecution of this action.

6. I have sworn affidavits that were used in the jurisdiction motion and in the certification and summary judgment motions heard by this court. They set out my involvement in this program. I have also been cross-examined on my affidavits, and produced all my relevant documents.

7. I have attended in court for hearing in this proceeding when my job has allowed for my attendance (I am a police officer, and sometimes my duties have conflicted with court dates in this matter).

8. I have had regular meetings with Class Counsel (both in person and by telephone) about this action in which they have explained to me the theory of the claim, the nature of the many and different defences that have been raised by the parties and the relative strengths and weaknesses of the positions taken by the parties. I have reviewed most of the court filings, which have been voluminous, and Class Counsel have reviewed with me the facts of the case as they have come to light.

9. I have reviewed the affidavit of Keith Landy sworn in support of the motion for approval of the settlements, and I confirm that Class Counsel have shared their views of the case and the relevant merits of the settlements with me.

10. I confirm that I was kept apprised as the negotiations progressed and that I instructed Class Counsel to enter into these settlements. I believe that the settlements are reasonable in all the circumstances of this case, and that the settlements are in the best interests of the class as a whole, and I support them.

11. I believe, based on the advice of Class Counsel, that these are the best settlements that could be achieved with these Defendants in the circumstances of the case. I understand the uncertain state of the law regarding issues of liability and damages in this matter as against these Defendants in particular, and I understand the substantial risks and delays associated with a possible trial and any appeal from a trial decision. I believe that an immediate settlement - with these Defendants in particular, who are not the parties who received the vast majority of the Class' contributions to the Gift Program - for a sum certain payable now is beneficial to the Class who all incurred significant tax liabilities as a result of their participation in the Gift Program.

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12. Class Counsel has reviewed with me the details of the proposed notice program and claims distribution process. I am satisfied that this process will result in the distribution of the settlement fund to a maximum number of Class Members in the most fair and efficient manner.

13. I also support Class Counsel's request for this court's approval of the contingency fee retainer agreement that I entered into with them, and payment of their fees in accordance with that agreement.

Attached hereto and marked as Exhibit A is a true copy of the contingency fee retainer agreement I entered into with Class Counsel on November 4, 2010

14. I have been advised that Class Counsel intend to seek approval of the payment of their fees in this proceeding in the total amount of \$9,303,638, which is equal to 33% of the Settlement Fund. Class Counsel will also be asking the Court to approve payment of the taxes payable in respect of those fees out of the Settlement Fund, as is contemplated under the Retainer Agreement.

15. I am advised by Class Counsel that value of their time spent in prosecuting this action over the past 5 years is approximately \$4 million, and that additional time will be spent in completing the materials for the motion for settlement approval and completing the settlement, if approved. I understand that the action will continue to be prosecuted against the Non-settling Defendants (as that term is defined in the Landy affidavit).

16. I am advised by Class Counsel that approximately \$500,000 has been spent on disbursements to date, including applicable taxes, and that in accordance with the terms of the retainer agreement and the requirements of the Class Proceedings Fund, these

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disbursements have been paid from the costs awards made in my favour. I understand that the balance of the costs awards will be applied towards payment of future disbursements, and if any remains, they will be applied towards legal fees at the end of this proceeding.

17. It was and is my view that payment of Class Counsel fees in the amount of \$9,303,638 plus applicable taxes is reasonable and fair given the considerable risks involved in agreeing to undertake this complicated and risky litigation on a contingency fee basis, the work expended and the results achieved.

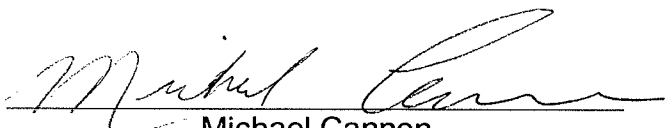
**Conclusion**

18. I make this affidavit in support of the 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

  
Commissioner for Taking Affidavits

Samuel S. Marr

}   
Michael Cannon

**MICHAEL CANNON**  
Plaintiff

-and-

**FUNDS FOR CANADA FOUNDATION et al.**  
Defendants

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**AFFIDAVIT OF MICHAEL CANNON**  
**(Sworn September 13, 2013)**

**LANDY MARR KATS LLP**

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Tel: 416.646.4310

Class Counsel

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THIS IS EXHIBIT "A"  
REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CANNON  
SWORN BEFORE ME, THIS 13<sup>th</sup>  
DAY OF SEPTEMBER, 2013

  
\_\_\_\_\_  
A Commissioner for taking Affidavits  
Samuel S. Marr



**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  $(\$1,000,000 \times 25\%) = \$250,000$  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  $(\$1,000,000 \times 25\%) = \$250,000$  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

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.

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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

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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**

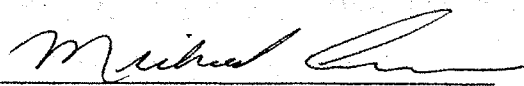
25. In the event that any particular provision or provisions of this agreement or a part of any provisions in this agreement is found to be void, voidable, or unenforceable for any reason whatever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this agreement and all other provisions shall remain in force.

**Entire Agreement**

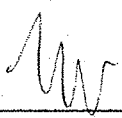
26. It is agreed there is no representation, warranty, collateral agreement, or condition affecting this agreement except as expressed in it.

Dated at Toronto this 4<sup>th</sup> day of November, 2010.


  
\_\_\_\_\_  
(Witness)

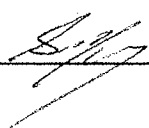
  
\_\_\_\_\_  
Michael Cannon

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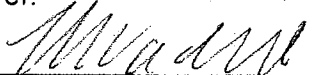
  
\_\_\_\_\_  
(Witness)

Landy Marr Kats LLP  
Per:

  
\_\_\_\_\_  
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416-221-9343

  
\_\_\_\_\_  
(Witness)

Paliare Roland Rosenberg Rothstein LLP  
Per:

  
\_\_\_\_\_  
250 University Avenue, Suite 501  
Toronto, ON M5H 3E5  
416-646-4300

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**

**MOTION RECORD**  
**(Motion for Settlement Approval, returnable October 17, 2013)**

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- and -

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