AMENDED THIS November 3 2010 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02 (_____)
☑ THE ORDER OF The Hon. Justice STRATHY
L'ORDONNANCE DU
DATED / FAIT LE October 28, 2010
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL CANNON

PLAINTIFF

and

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

DEFENDANTS

PROCEEDINGS COMMENCED UNDER THE *CLASS PROCEEDINGS ACT*

FRESH
FURTHER FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 18, 2008

Issued by "M. SMITH"
Local registrar

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

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

TO: SARAH STANBRIDGE as Trustee of
DONATIONS CANADA FINANCIAL TRUST
1455 Lakeshore Road South, Suite 205
Burlington, Ontario L7S 2J1

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

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

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

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

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

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

TO:
APPLEBY SERVICES BERMUDA LTD. as Trustee for the BERMUDA LONGTAIL TRUST
c/o Rory Gorman – Managing Director
Appleby Services (Bermuda) Ltd.
Cannon's Court
22 Victoria Street
PO Box HM 1179
Hamilton HM EX, Bermuda

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

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

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

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

TO:**PATTERSON KITZ (Halifax)**

To: **PATTERSON KITZ (Truro)**

TO:
McINNES COOPER
Purdy's Wharf Tower II
1300-1969 Upper Water Street
P.O. Box 730
Halifax, NS
B3J 2V1

TO:
SAM ALBANESE
Markham, Ontario

TO:
KEN FORD
Pickering, Ontario

TO:
RIYAD MOHAMMED
Oshawa, Ontario

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

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

TO:
MARY-LOU GLEESON
300 Beach Avenue
Toronto, Ontario
M4E 3J2

TO:
MATT GLEESON
300 Beach Avenue
Toronto, Ontario
M4E 3J2

TO:
MARTIN P. GLEESON
300 Beach Avenue
Toronto, Ontario
M4E 3J2

CLAIM

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

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

a. against all Defendants for negligence;

b. against Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, Appleby Services Bermuda Ltd. as trustee for the Bermuda Longtail Trust, Matt Gleeson and Sarah Stanbridge as Trustees for the Donations Canada Financial Trust (hereinafter, "the Donations Canada Trustees"), Funds for Canada Foundation, Gleeson Management Associates Inc., Matt Gleeson, Mary-Lou Gleeson and Martin P. Gleeson for unjust enrichment, restitution, and constructive trust;

c. against Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, Appleby Services Bermuda Ltd. as trustee for the Bermuda Longtail Trust, Donations Canada Trustees, Gleeson Management Associates Inc., Matt Gleeson, Mary-Lou Gleeson and Martin P. Gleeson for conspiracy, fraud, and fraudulent misrepresentation;

d. against Edwin C. Harris Q.C., Patterson Kitz (Halifax) Patterson Kitz (Truro), Patterson Palmer also known as Patterson Palmer Law, McInnes Cooper (together, the "Lawyers"), Parklane Financial Group Limited, Trafalgar Trading Associates Limited, Gleeson Management

Associates Inc., Matt Gleeson, Mary-Lou Gleeson and Martin P. Gleeson for negligent misrepresentation;

e. against Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, the Funds for Canada Foundation, the Donations Canada Trustees, Gleeson Management Associates Inc., Matt Gleeson, Mary-Lou Gleeson and Martin P. Gleeson a declaration that they engaged in unfair and unconscionable practices and are in breach of s. 17 of the Ontario *Consumer Protection Act*, S.O. 2002, c.30, Schedule A , (the Ontario "*CPA*") and that it is in the interests of justice to waive the requirement for giving notice under s. 18(15) of the Ontario *CPA,* and for declarations under similar legislation in other provinces and territories as set out in Schedule A hereto, and ordering rescission of the Gift Program contracts and granting damages, including exemplary and punitive damages pursuant to s. 18 of the Ontario *CPA* and the similar legislation in other provinces and territories;

f. against Parklane Financial Group Limited and the Donations Canada Trustees for breach of contract, or in the alternative, for rescission of the contract and the return of all monies paid under the Gift Program defined in paragraph 3 below; and,

g. against Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited, Appleby Services Bermuda Ltd. as

trustee for the Bermuda Longtail Trust, the Donations Canada Trustees, Funds for Canada Foundation, Gleeson Management Associates Inc., Matt Gleeson, Mary-Lou Gleeson, Martin P. Gleeson, and the FFCF Trustees (as defined below) for waiver of tort;

(ii) an interim Order or injunction, until trial or other final disposition of these proceedings restraining any of the Defendants (and their servants and agents), other than the Lawyers from dissipating any monies, wherever situated in the world, in their possession which directly or indirectly came from the Class Members described herein, and an interim Order or injunction freezing any bank accounts wherever situate in the world where such Class Members monies are held;

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

(iv) a tracing Order to trace all monies paid by the Class in respect of the Gift Program;

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

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

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

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

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

A/ THE PARTIES

2. The Plaintiff ("the Representative Plaintiff") resides in the Province of Ontario. He is a consumer as that term is defined in the Ontario *CPA*.

3. The Representative Plaintiff is representative of a class of persons all of whom participated in the Donations Canada Charitable Donation program ("the Gift Program"). The Representative Plaintiff participated in the Gift Program in 2005 and 2006. The proposed class ("the Class" or "Class Members") includes any persons who participated in

the Gift Program while a resident of Canada during the period between January 1, 2005 and December 31, 2009 (the "Class Period").

4. Funds for Canada Foundation ("FFCF Charity") was incorporated on September 12, 2005. It was granted status as a charitable public foundation with Registration No: 82160-0475-RR0001 effective as of December 2, 2005 by Canada Revenue Agency ("CRA"). The registration was subject to a written undertaking given by the FFCF Charity that it would restrict its activities to receiving and managing funds for the exclusive purpose of making gifts to other registered Canadian charities or organizations that are otherwise qualified donees as defined in s. 149.1(1) of the *Income Tax Act*.

5. The FFCF Charity was created by Gleeson Management Associates Inc., Matt Gleeson and Mary-Lou Gleeson in co-operation and in a conspiracy with, and under the direction of Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited and the Bermuda Longtail Trust. It was established for the purpose of participating in and facilitating the operation of the Gift Program more particularly described below.

6. Sam Albanese ("Albanese"), Ken Ford ("Ford"), Riyad Mohammed ("Mohammed"), David Raby ("Raby"), and Greg Wade ("Wade") (the "FFCF Directors") are, or were at all relevant times, directors of the FFCF Charity. The FFCF Directors were negligent in the performance of their duties and obligations as directors of the FFCF Charity, and as a result caused or materially contributed to the damages sustained by the Representative Plaintiff and the Class Members.

7. Donations Canada Financial Trust is a private charitable trust that was created by Gleeson Management Associates Inc., Matt Gleeson, Mary-Lou Gleeson and Martin P. Gleeson in co-operation with Parklane Financial Group Limited, Trafalgar Associates Limited, Trafalgar Trading Limited and the Bermuda Longtail Trust for the purpose of participating in and facilitating the operation of the Gift Program. Matt Gleeson was the original trustee of the Donations Canada Financial Trust, and Sarah Stanbridge became the trustee in 2006 and has continued in that role.

8. Parklane Financial Group Limited ("Parklane") is an Ontario corporation which created, promoted, marketed, administered, operated, participated in, and sold the Gift Program to the Class as more particularly described below.

9. Trafalgar Associates Limited ("Trafalgar Associates") is an Ontario corporation which created, promoted, marketed, administered, operated, participated in, and sold the Gift Program to the Class as more particularly described below.

10. Trafalgar Trading Limited ("TTL") is a Bermudan corporation which created, administered, and participated in the operation of the Gift Program as more particularly described below.

11. The Bermuda Longtail Trust is a Bermudan trust. The Defendant Appleby Services (Bermuda) Ltd. is the trustee for the Bermuda Longtail Trust (hereinafter the "Bermuda Longtail Trust").

12. TTL, Parklane, Trafalgar Associates and the Bermuda Longtail Trust are affiliated with each other, sharing common offices, employees, officers, directors, shareholders, legal and beneficial owners, and professional advisers. Together, these corporations and trust acted in concert effectively acting as one entity which created, controlled, promoted, marketed, administered, operated, participated, and sold the Gift Program to the Class, as more particularly described below.

13. Further, or in the alternative to paragraph 12, above, TTL, Parklane, Trafalgar Associates and the Bermuda Longtail Trust conspired together and with Gleeson Management Associates Inc., Matt Gleeson, Mary-Lou Gleeson, Martin Gleeson, and the Donations Canada Trustees for the purposes of creating, controlling, promoting, marketing, selling, administering, operating and participating in the Gift Program, as more particularly described below.

14. Edwin C. Harris, Q.C. ("Harris") was at all material times a lawyer and partner or counsel at the law partnerships of Patterson Kitz (Halifax) (carrying on business under the business name or style "Patterson Palmer" or "Patterson Palmer Law") and McInnes Cooper. Harris is a lawyer licensed to practice law in the Province of Nova Scotia. Harris is currently a member of McInnes Cooper, and holds himself out as "counsel".

15. Patterson Kitz (Halifax) and McInnes Cooper were, or are, partnerships carrying on the business of the practice of law in the Provinces of Nova Scotia, New Brunswick, Newfoundland & Labrador, and Prince Edward Island.

16. Patterson Kitz (Halifax) and Patterson Kitz (Truro) carried on business under the trade name or business style "Patterson Palmer Law". Patterson Palmer Law is an affiliation of law firms or a partnership comprised of several law offices, including but not limited to Patterson Kitz (Halifax) and Patterson Kitz (Truro). All the partners of Patterson Kitz (Halifax) and Patterson Kitz (Truro), and any partners practising under the name "Patterson Palmer" or "Patterson Palmer Law" at any other location are vicariously liable for the negligent acts or omissions and the negligent misrepresentations of Harris that occurred during the Class Period while Harris was a member of Patterson Kitz (Halifax), carrying on business as Patterson Palmer or Patterson Palmer Law.

17. Patterson Kitz (Halifax) and McInnes Cooper are vicariously liable for the damages resulting from the acts, omissions, and negligence and negligent misrepresentations of Harris as set out below for the periods during which Harris was a lawyer and partner or counsel at each of Patterson Kitz (Halifax) and McInnes Cooper during the Class Period. To the extent either of Patterson Kitz (Halifax) and McInnes Cooper is a successor of any previous law partnership or entity no longer carrying on business, Patterson Kitz (Halifax) and McInnes Cooper are vicariously liable for damages suffered by the Class for the period when Harris was a member of one of that firm. Those persons, who were at the material times, or who are now partners of Patterson Kitz (Halifax) and McInnes Cooper, are personally liable for any claims of the Class against the Lawyers.

18. Gleeson Management Association Inc. ("GMA") is a corporation duly incorporated pursuant to the Laws of Ontario. GMA, as agent for Parklane, and in furtherance of the

conspiracy particularized below, promoted, marketed, administered, operated, participated, and sold the Gift Program to Class Members.

19. Matt Gleeson, Mary-Lou Gleeson, and Martin P. Gleeson ("the Gleesons"):

(a) are Ontario residents;

(b) are the persons who control, manage, and direct the FFCF Charity, Donations Canada Financial Trust and GMA;

(c) treat the FFCF Charity, Donations Canada Financial Trust and GMA as their *alter-egos* for the purposes of participation in the Gift Program and in furtherance of the conspiracy particularized below; and

(d) created, controlled, promoted, marketed, administered, operated, participated and sold the Gift Program to the Class.

20. Matt Gleeson and Mary-Lou Gleeson are a married couple.

21. Matt Gleeson was the founding director and trustee of both the FFCF Charity and the Donations Canada Financial Trust. Both entities were created for the purpose of facilitating the operations of the Gift Program, and giving the Gift Program the appearance of undertaking legitimate charitable objectives. Both entities are subject to the overarching control and direction of their co-conspirators, TTL, Parklane, Trafalgar Associates and the Bermuda Longtail Trust.

22. Mary-Lou Gleeson is the Executive Director of the FFCF Charity, and controls the day to day operations of the FFCF Charity along with Matt Gleeson, subject to the

overarching control and direction of their co-conspirators, TTL, Parklane, Trafalgar Associates and the Bermuda Longtail Trust.

23. The Gleesons personally financially benefitted from the Gift Program. As part of the conspiracy and fraud described below, the Gleesons assisted in the creation of the FFCF Charity, Donations Canada Financial Trust, and its sub-trust, and/or designed and directed the Trusts and FFCF Charity with respect to their role in the Gift Program. For example, the Gleesons executed documents purporting to accept the Representative Plaintiff and Class Members as "beneficiaries of the sub-trusts", as part of the fraudulent scheme designed to create the illusion of charitable donations which were much larger than the amounts actually recovered by the charities.

24. In the alternative, even if any of the Gleesons did not personally financially benefit from the Gift Program, he or she knew, or was reckless or wilfully blind to the fact that, or ought to have known that some or all of GMA, TTL, Parklane, Trafalgar Associates and the Bermuda Longtail Trust would financially benefit from the Gift Program, to the detriment of the Class as a result of the fraud perpetrated on the Class by the Gift Program and those who controlled it.

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

B/ SEPARATE TORTIOUS CONDUCT

26. With respect to the acts and omissions of the Gleesons as set forth herein, the Representative Plaintiff states the following:

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

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

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

(iv) the tortious conduct of these Defendants was not in the best interests of the corporations, trusts, or entities with which these Defendants were employed, affiliated or associated, but was for the intended purpose of furthering the conspiracy and the fraud, and for their own personal enrichment.

The particulars of the tortious conduct are found in the allegations of fraud, conspiracy, and negligence as against the Gleesons in paragraphs 27, 44 – 49, 59 – 73, 95 – 123 below. The corporate veil should be pierced to expose the Gleesons to personal liability because of their grievous, negligent, fraudulent, and tortious misconduct.

C/ THE GIFT PROGRAM

27. The Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) conspired and acted in concert in all dealings in relation to the Gift Program.

28. Members of the Class were each provided with written promotion materials ("the promotional materials") that were identical or substantially similar. Parklane, TTL, Trafalgar Associates, the Bermuda Longtail Trust and Donations Canada Trustees prepared and disseminated the promotional materials to the Class, and intended that the Class Members would rely upon the representations contained therein, which they did.

29. The promotional materials falsely stated that the Donations Canada Financial Trust was established "with a funding commitment of $200,000,000 in cash to promote charitable giving in Canada." The promotional materials falsely represented to the Class Members that through the distribution by Donations Canada Financial Trust of sub-trust units to donors equivalent to three times the value of each donor's donation, each donor would be able to increase the value of their total charitable donation by that amount.

30. The promotional materials stated that for each $250.00 donated, the Class Member would receive a tax credit in the amount of $1,000.00. For example, for an Ontario resident, the promotional materials stated that for $250.00 donated prior to September 30th by an individual in any given year, the individual would receive a tax credit at the highest marginal tax rate of $464.00, resulting in a net cash return of $214.00 ($464.00 tax credit less the $250.00 actually donated). The promotional materials stated that this was an 86% return.

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

32. The promotional materials describe the mechanics of the Gift Program as follows, based upon a $10,000.00 donation example. The donor applies to become a beneficiary of the Donations Canada Financial Trust, and pays $2,500.00 to Parklane (for the year 2005) or the FFCF Charity (for each year thereafter). The donor then becomes a beneficiary of the Donations Canada Financial Trust and is issued sub-trust units totalling $7,500. The Donor then transfers their interest in the sub-trust units to the designated charity (for the year 2005), or to the FFCF Charity. Parklane or the FFCF Charity then would transfer the sub-trust units and the cash donation to a chosen charity, and the charity or the FFCF Charity would issue charitable tax receipts to the donor for $2,500.00 (cash donation) and $7500.00 (in kind donation).

33. Further, the promotional materials included express and/or implied representations that:

(a) Parklane had received a favourable tax opinion from Harris with respect to the Gift Program;

(b) the Gift Program complied with the *Income Tax Act*; and,

(c) the full amount of the donations would qualify for a charitable donation tax credit.

These representations were untrue. Harris permitted his name and comfort letters that he prepared to be included in the promotion materials, as particularized below.

34. Harris agreed that his tax opinion would also be made available to the Class Members through their professional advisors, on request, and confirmed this fact in the comfort letter that was included in the promotional materials.

35. None of the promotional materials explained to the Representative Plaintiff or to the Class Members that the cash and in kind donations to the charities were granted to the charities conditionally and on express terms limiting their use, as detailed below. The omission of these facts from the promotional materials was intentional, material, misleading, deceptive and unconscionable. The omission of material facts was made by Parklane, TTL, Trafalgar Associates, the Bermuda Longtail Trust and the Donations Canada Trustees with the intent to mislead and harm the Class. Had the Representative Plaintiff and the Class Members known that the charitable donation was not being gifted unconditionally to charities, they would not have participated in the Gift Program.

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

a. The Bermuda Longtail Trust — $20 million as profit for their role in the Gift Program;

b.	Parklane	$12 million (Parklane's profit is estimated at $12 million after paying its sales force an estimated $20 million);
c.	Trafalgar Trading Limited	$44 million dollars, which Trafalgar Trading Limited claims to invest to profit the charities, with unknown amounts benefiting this Defendant from fees for investing and securities trading;
d.	Funds for Canada Foundation	$4 million dollars remains from the original $100 million received by this charity and other charities from the Class Members. From these monies, unknown amounts were paid for the personal gain of the Gleesons, and GMA.

37. The sum of $500,000.00 of the Class Members' monies has been purportedly set aside by Parklane, TTL, Trafalgar Associates and the Bermuda Longtail Trust to retain counsel for Class Members who wish to litigate with CRA over the Gift Program tax credit reassessments described herein. The Plaintiff and Class Members seek an Order releasing this money to the Class.

38. The Defendants (other than the FFCF Directors) knew that the promotional materials including the opinion and comfort letters, represented to the Representative Plaintiff and the Class Members, and caused the Representative Plaintiff and the Class

Members to believe that there was a charitable purpose or intent for the Gift Program. The Defendants (other than the FFCF Directors) intended the Representative Plaintiff and the Class Members to receive and rely upon the promotional materials including the comfort letters confirming the existence of the opinion, and the opinion, and the representations contained therein to the effect that there was a charitable purpose or intent for the Gift Program, to induce the Representative Plaintiff and the Class Members to participate in the Gift Program. The Representative Plaintiff and the Class Members did, in fact, rely upon the representations contained in promotional materials including the comfort letters confirming the existence of the opinion, and/or the opinion in deciding to participate in the Gift Program.

39. The Defendants (other than the FFCF Directors) knew, or reasonably ought to have known, or were reckless or wilfully blind to the fact that there was no genuine charitable purpose or intent in the Gift Program. The transactions related to the Gift Program were transactions without a legitimate purpose, a fact that was not disclosed to the Class, and which was a material omission. The primary purpose of the Gift Program was to financially benefit the Defendants (other than the Lawyers and the FFCF Directors). Most of the money paid by the Class Members was received by the Defendants (other than the Lawyers and the FFCF Directors) and not by the charities. The facts set forth in this paragraph were not disclosed to the Class prior to the Class advancing money to the Gift Program. Had the Representative Plaintiff and the Class Members known that there was no legitimate charitable purpose or intent to the Gift Program, they would not have participated in the Gift Program.

40. In the alternative, if one or more of the Defendants (other than the Lawyers and the FFCF Directors) did not financially benefit from the Gift Program, then those Defendants nevertheless knew or ought to have known or were reckless or wilfully blind to the fact that some of the Defendants would improperly financially benefit from the Gift Program.

41. The Lawyers knew, or ought reasonably to have known, that there was no genuine charitable purpose or intent in the Gift Program such that the Class Members' donations would qualify as charitable donations under the *Income Tax Act*, but rather that the primary purpose of the Gift Program was to enrich the Defendants (other than the Lawyers and the FFCF Directors), to the detriment of the Class.

42. If the Lawyers did not know that there was no genuine charitable purpose or intent in the Gift Program, they failed to make reasonable inquiries and investigations prior to rendering the opinion and delivering the comfort letters, and accordingly failed in their duty of care owed to the Class.

43. The Lawyers knew, or ought reasonably to have known, that the Class Members were relying upon their representations included in the promotional materials set forth in paragraphs 28 – 35, above and 50 - 57, below.

D/ CREATING THE DONATIONS CANADA FINANCIAL TRUST and the FUNDS FOR CANADA FOUNDATION

44. In or about 2005, Parklane, Trafalgar Associates, TTL and the Bermuda Longtail Trust retained Matt Gleeson and/or GMA to establish the Donations for Canada Financial Trust and its sub-trust(s) for the purpose of creating, implementing and operating the Gift

Program. Thereafter, Matt Gleeson and/or Sarah Stanbridge as trustees for the Donations for Canada Financial Trust assisted in creating, promoting, marketing, administering and operating the Gift Program in a conspiracy with Parklane, Trafalgar Associates, TTL the Bermuda Longtail Trust, the Gleesons and the FFCF Charity.

45. In or about 2005, Parklane, Trafalgar Associates, TTL and the Bermuda Longtail Trust also retained Matt Gleeson and/or GMA to establish the Funds for Canada Foundation, for the purpose of promoting and expanding the Gift Program. Thereafter, GMA and the Gleesons assisted in creating, promoting, marketing, administering and operating the FFCF Charity and the Gift Program in a conspiracy with Parklane, Trafalgar Associates, TTL the Bermuda Longtail Trust.

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

47. Mary-Lou Gleeson is an employee and director of the FFCF Charity, holding the title of Executive Director of the FFCF Charity. Mary-Lou Gleeson also had full signing authority for the FFCF Charity and was compensated by the FFCF Charity for her role in the Gift Program. Mary-Lou Gleeson concurrently was a shareholder, officer and director of GMA. As Executive Director of the FFCF Charity, Mary-Lou Gleeson had effective control of its

day to day operations, and controlled the flow of operational information to the FFCF Directors.

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

49. The Gleesons were financial beneficiaries under the Gift Program. They acted as paid directors for the FFCF Charity which granted money to charitable donees, and they acted as directors for GMA. GMA was paid by the charitable donees a percentage of the money the donees received under the Gift Program in exchange for soliciting grant money from the FFCF Charity. GMA was also paid by Parklane for its efforts in promoting the Gift Program. Particulars of GMA's and the Gleeson's roles, duties, and involvement are particularized below. Accordingly, GMA, Mary-Lou Gleeson and Matt Gleeson were enriched by receiving a portion of the funds paid into the Gift Program by the Class Members.

E/ THE OPINION LETTERS AND COMFORT LETTERS

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

("the March 14, 2006 Opinion letter"). Other opinion letters with respect to the Gift Program were also issued by Harris ("the opinion letters").

51. The opinion letters concluded that the cash and "in kind" donations made by the Class Members under the Gift Program would qualify and be accepted by CRA as charitable tax donations.

52. The opinion letters and the comfort letters were issued to Parklane at the request of some or all of Parklane, Trafalgar Associates, TTL, Bermuda Longtail Trust, the Donations Canada Trustees and Funds for Canada Foundation, and were intended to be included directly or by reference in the promotional materials.

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

54. Class Members, including the Representative Plaintiff, received the comfort letters. The Defendants (other than the FFCF Directors) knew that the Class Members were intended recipients of the opinion and comfort letters as part of the promotional materials referenced above, and that the Class Members would reasonably rely upon the representations (express and implied) contained therein in making the decision to participate in the Gift Program.

55. Some of the Class Members, but not including the Representative Plaintiff, requested and received the opinion letters. The Representative Plaintiff was one of the Class Members who did not receive an opinion letter, but did receive the June 15th comfort letter and the March 20th comfort letter.

56. The Representative Plaintiff relied upon the aforesaid comfort letters, including the implicit representations therein that:

(a) the Gift Program was a legitimate charitable donation program;

(b) the donations in the total amount of the donor's cash donation and the value of the trust units would be received and kept by the charitable donees as a charitable donation;

(c) the Gift Program complied with the *Income Tax Act*; and,

(d) the donors would receive charitable tax credits equal to the value of the cash and in kind donations made to the charitable donees.

57. The opinion letters and comfort letters were necessary inducements and a necessary pre-requisite to the promotion and sale of the Gift Program. But for these letters, the Gift Program would not have been launched and the Class would not have participated in the Gift Program. These letters were designed to induce the Class Members to invest in the Gift Program without disclosing to the Class all of the material risks of investing in the Gift Program, and without disclosing to the Class the fact that virtually none of their donations would be received by any legitimate charitable organization. All Class Members were told of the opinion letters in the promotional

materials and the existence of the opinion letters, the existence of which was an express term of the contract with respect to the Gift Program.

58. By December, 2007, Harris knew that the CRA was taking the position that the donations made under Gift Program did not qualify for tax credits. He did nothing to notify or warn the Class of the potential consequences, and continued to permit his name, opinions and comfort letters to be included in the promotional materials.

F/ WHAT HAPPENED TO THE MONIES IN THE GIFT PROGRAM

59. The Representative Plaintiff participated in the Gift Program for the 2005 and 2006 tax years. The Gift Program was sold to Canadians between 2005 and 2009.

60. The Representative Plaintiff paid to Parklane, in trust, the sum of $10,600.00 in 2005 and the sum of $12,500.00 in 2006, for a total advance of $23,100.00.

61. The Gleesons and the Donations Canada Trustees, acting in concert with Parklane, TTL, Trafalgar Associates and the Bermuda Longtail Trust, created a sub-trust of Donations Canada Financial Trust. The sub-trust received the monies from Parklane, representing the monies paid by the Representative Plaintiff and Class Members.

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

63. The monies paid by the Representative Plaintiff and the Class Members were given to the FFCF Charity. The sub-trust units were then transferred to the Donations Canada Financial Trust on behalf of the Representative Plaintiff and the Class Members.

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

65. There was, in fact, no $200,000,000 "funding commitment" for the Donations Canada Financial Trust, as represented in the promotional materials. The representation was false, to the knowledge of the Defendants (other than the FFCF Directors). To the extent that any of the Defendants (other than the FFCF Directors) were unaware that there was no funding commitment, then they ought to have known, and would have been able to determine this fact upon making reasonable inquiry.

66. The FFCF Charity first received cash donations of the Representative Plaintiff and the Class Members and then it or the designated charity subsequently received sub-trust units. The FFCF Charity (and other charities designated by the FFCF Charity) redeemed those sub-trust units for an equivalent amount of cash. In the specific case of the

Representative Plaintiff, $69,300.00 (from the Bermuda Longtail Trust) and $23,100.00 (from Michael Cannon) was paid to the FFCF Charity, for a total of $92,400.00.

67. For every $2,500.00.00 a Class Member donated, the FFCF Charity received $7500.00 from the Defendant Donations Canada Financial Trust and its sub-trust, for what the Gift Program described as a $10,000.00 Aggregate Donation. Of the $10,000.00 Aggregate Donation, the FFCF Charity kept approximately $100.00 (or 1 per cent of the purported $10,000.00 aggregate donation). Approximately $800.00 of the purported $10,000.00 Aggregate Donation) was paid to Parklane for its "fees". In the specific case of the Representative Plaintiff, the FFCF Charity kept approximately $924.00 and paid Parklane approximately $7,392.00. Parklane then paid various amounts in commission to its sales force (the sales people received approximately 18-30 percent of the cash it obtained from Class Members). For every $2,500.00 paid by the Class Members, Parklane received approximately $800.00, paid about $500.00 to the sales force, and kept $300.00 for its own use and profit. Of the $7,392.00 Parklane received from the Representative Plaintiff, it paid its sales force, and then kept as its own profit approximately $2,772.00. Parklane was accordingly unjustly enriched in the amount of $2,772.00 from the payments that the Representative Plaintiff made to the Gift Program.

68. The remainder of the aggregate donations received by the FFCF Charity were paid to charities subject to strict terms and conditions. In particular, the charitable donees were obliged to redeem the sub-trust units, and then pay virtually all of the money back to the FFCF Charity, ostensibly to then be delivered to TTL to invest for the benefit of the charitable donees.

69. For every $10,000.00 donation, $9,100.00 was ultimately paid by the FFCF Charity to TTL. TTL kept $1,100.00 to trade on high risk futures and stocks using margin accounts. TTL paid $8,000.00 of every $9,100.00 it received from the FFCF Charity (or other charities) to the Bermuda Longtail Trust for the purported use of a licensed stock trading software program, owned by the Bermuda Longtail Trust. The software program is called the Trafalgar Global Index Futures Program.

70. In fact, the Gift Program was an elaborate fraud, made possible as a result of the conspiracy and fraudulent acts of the Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors).

71. The money travelled in a giant circle. In the example of a "$10,000.00 Aggregate Donation", Bermuda Longtail Trust gifted $7,500.00 to the Donations Canada Financial Trust, so the end result was that on the $10,000.00 Aggregate Donation, Bermuda Longtail Trust made a $500.00 profit from the Gift Program. (It paid a $7,500.00 "gift" and received back $8,000.00 in software license fees or royalties, for a $500.00 profit on a $10,000.00 Aggregate Donation). In the case of the Representative Plaintiff's payments of $23,100.00, the Bermuda Longtail Trust made a profit of $4,620.00.

72. TTL has approximately $44 million in its possession. A minute fraction of this sum has been paid as trading profits to the FFCF Charity and the charitable donees, pursuant to Royalty Agreements between TTL and the charities. However, TTL keeps 20 percent of all trading profits. TTL has converted the sum of approximately $44 million to its own accounts and the charitable donees have no registered ownership of these accounts.

Further, if trading losses exceed a certain amount, the charities lose all rights to future profits. In any event, TTL asserts its rights to keep the $44 million or whatever value remains of approximately $44 million for its own benefit.

Summary of where the money went

73. The total Aggregate Donations between 2004 and 2009 were approximately $400 million, including $100 million paid by the Representative Plaintiff and other Class Members. The following summarizes how this amount was disbursed amongst the Defendants:

a. of the $400 million, only $4 million was received by the FFCF Charity and other charities. From this $4 million, certain unknown amounts were paid for the personal gain of the Gleesons and GMA;

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

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

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

G/ CRA REASSESSMENT

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

75. A reasonably competent solicitor practicing in the field of tax ought to have known that CRA would conclude that the donations of the Class Members under the Gift Program would not qualify as charitable gifts under the *Income Tax Act*, given that the Class Members would achieve a net gain. The Lawyers were negligent in delivering the opinion letters with the opposite conclusion, and in delivering the comfort letters that implied the Gift Program would qualify as charitable gifts under the *Income Tax Act*.

76. On May 7, 2008 CRA advised the representative Plaintiff that they completed the audit of his charitable gifts relating to the 2005 Gift Program. In the same letter CRA advised the Representative Plaintiff that CRA "had completed our audit of your charitable gifts related to the [2005 Gift Program] ... and has determined that no amount is allowable as a charitable gift..." On June 19th, 2008 CRA sent the Representative Plaintiff a Notice of Reassessment for 2005, in which the Representative Plaintiff was advised that he owed

CRA the sum of $19,754.73 (which included $3,229.98 in interest charges). As a consequence of this communication by CRA, the Representative Plaintiff realized his investment in the 2005 Gift Program was lost. Other Class Members received similar CRA letters and Notices of Reassessment.

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

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

79. The total amount of the Representative Plaintiff's loss is the total of his cash donations to the Gift Program of $23,100.00, plus the interest penalties he was obliged to pay to CRA in the total amount of $6,703.76.

80. The total amount of each Class Member's loss is calculated on the same basis, the full particulars of which will be provided prior to the trial herein.

81. CRA has indicated its intention to audit all Class Members' claimed tax credits with respect to participation in the Gift Program and to disallow 100% of the tax credits claimed by Class Members. Each Class Member has been or will be assessed interest penalties as a result of these reassessments.

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

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

84. CRA has determined that even the cash portion of the donation amount actually paid by the Class Members does not qualify as a gift under the *Income Tax Act* due to the fraudulent structure of the Gift Program. The fraudulent structure of the Gift Program was unknown to the Class Members at all material times.

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

86. CRA has correctly concluded that the series of transactions involved in the Gift Program were all tax-avoidance transactions without any *bona fide* purpose. In disallowing the charitable donation claims of the Class Members, the CRA has concluded that the only purpose of the Gift Program was to obtain an improper tax credit. In fact, the primary purpose of the Gift Program was to fraudulently and unjustly enrich the Defendants (other than the Lawyers and the FFCF Directors) at the expense of the Class.

87. On June 29, 2009, the CRA issued a Notice of Intention to Revoke the charitable registration of Funds for Canada Foundation. This decision was a result of the CRA's findings that the FFCF Charity was operating for the primary or collateral purpose of furthering the Donations for Canada tax shelter by agreeing, for a fee, to act as a receipting agent in the tax shelter arrangement, and that the FFCF Charity had operated for the non-

charitable purpose of promoting a tax shelter arrangement for the private benefit of the tax shelter promoters. Further, CRA concluded that the FFCF Charity had issued receipts for transactions that did not qualify as gifts, issued receipts that did not comply with the *Income Tax Act*, failed to maintain sufficient books and records to support its activities and failed to meet its annual disbursement quota.

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

The CRA audit of the FFCF Charity

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

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

H/ BREACH OF CONTRACT

The Contract

91. The promotional materials set out the terms of the contract entered into by the Class with Parklane and Donations Canada Financial Trust. The terms of the contract were:

(a) The donor would make a cash donation to Parklane (for 2005) or to the FFCF Charity (thereafter) to be paid to a registered charity or other qualified donee, and make application to Donations Canada Financial Trust to receive sub-trust units with a value of three times the amount of the cash donation;

(b) In consideration of the Class Member's charitable donation, the Donations Canada Financial Trust would, upon confirmation that the cash donation had been made, issue the sub-trust units to the Class Member, to be held in escrow;

(c) Parklane or the FFCF Charity would then designate a charitable donee, and the cash donation and the sub-trust units would be gifted to the charitable donee for its exclusive use and benefit;

(d) The charitable donee would then issue charitable tax receipts to the Class Member for the value of the cash donation and the donation in kind; and,

(e) The charitable tax receipts could be used by the Class Member, and would be accepted by CRA as valid and legitimate claims for charitable donation tax credits.

92. The Class Members as participants in the Gift Program had a direct and specific understanding that they would receive charitable donation receipts that would be

recognized by CRA for tax credit purposes. It was an express, or in the alternative, an implied, term of the contract that all participants would receive a valid and legitimate charitable donation receipt, and would receive the tax savings as stated in the promotional materials and the contract.

93. Parklane and the Donations Canada Trustees fundamentally and materially breached the terms of the contracts with the Class Members. The Gift Program was a fraud, and virtually none of the Class Members' donations were gifted to charitable donees. The Class Members did not receive valid and legitimate charitable donation receipts recognized by CRA.

94. The Representative Plaintiff and the Class Members have therefore been damaged in the amount of their cash donations and the interest and other penalties assessed by CRA in respect of the disallowed charitable donation tax credits, and any special damages they have incurred.

I/ CONSPIRACY

95. All the Defendants, except the Lawyers, the FFCF Charity and the FFCF Directors engaged in a conspiracy to cause harm to the Class and the Representative Plaintiff, and for their own financial benefit.

96. The Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) agreed to act unlawfully, the predominant purpose of which was to cause injury to the Representative Plaintiff and the Class and which ultimately did cause injury to the Representative Plaintiff and the Class. The Defendants (other than the Lawyers, the FFCF

Charity and the FFCF Directors) together agreed to make the fraudulent misrepresentations and participated in the fraud set forth in paragraphs 107 - 123 below.

97. Further, or in the alternative, the agreement between these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) was an agreement to engage in unlawful conduct directed towards the Class, and the Representative Plaintiff, which caused injury to the Class, and the Representative Plaintiff, and the likelihood of the Representative Plaintiff and the Class suffering such injury was known to these Defendants, or should have been known to them in the circumstances.

98. These Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) agreed to create a scheme which deceived the Class Members into believing they would receive tax savings for participating in the Gift Program. As a result of their participation in the Gift Program, the Class suffered the loss of their donations, and the loss of their intended gifts to a charity and have been assessed interest and/or penalties by CRA. The purpose of the agreement between these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) was to cause the Class Members to suffer economic loss and injury while some or all of these Defendants received a corresponding financial gain. The creation of the Gift Program was fraudulent and therefore unlawful.

99. These Defendants (except the Lawyers, the FFCF Charity and the FFCF Directors) in creating, controlling, promoting, marketing, administering, operating, participating, and selling the Gift Program to the Class, by agreement, participated in a scheme designed to create the illusion of property being donated to charities, and caused the charitable donees

to issue charitable receipts for donations which were not, in fact, beneficially transferred to the charitable donees.

100. These Defendants (except the Lawyers, the FFCF Charity and the FFCF Directors) in creating the FFCF Charity, knew or ought to have known that the role of the FFCF Charity was to facilitate the issuance of charitable receipts for property which flowed through its accounts but to which it had no ownership, and which would ultimately be paid to themselves.

101. The object of the conspiracy was the financial benefit of these Defendants (excluding the Lawyers, the FFCF Charity and the FFCF Directors) who participated in the conspiracy. The Representative Plaintiff and the proposed Class Members rely on the following facts:

(i) The facts set forth in paragraphs 27 - 90 above;

(ii) The allegations of fraud set forth in paragraphs 107 - 123 below;

(iii) GMA and/or Parklane was instructed by the conspirators to establish the FFCF Charity and the Donations for Canada Financial Trust. The establishment of the Gift Program, the FFCF Charity, and Donations for Canada Financial Trust was designed to deceive the Class Members and CRA into believing that there was a charitable purpose or intent for the Gift Program where in fact no such purpose or intent existed. These Defendants (excluding the Lawyers, the FFCF Charity and the FFCF Directors) knew or ought to have known that CRA would conclude that the donations of the Class Members were not gifts (as defined in the *Income Tax Act*);

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

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

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

(vii) A Royalty Agreement existed between TTL and the FFCF Charity or the charitable donees whereby the FFCF Charity or the charitable donees would receive a small percentage of the investment gains earned by TTL over a long period of time;

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

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

(x) FFCF Charity retained a small portion of the original donation to be used for the grants. The remainder was paid to Mary-Lou Gleeson as executive director of the FFCF Charity, GMA for rent and utilities, GMA for administrative duties, and to the Gleesons;

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

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

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

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

102. The funds that were represented as donated, owned, and invested by the FFCF Charity (or other charities) were returned to the Bermuda Longtail Trust under the guise of software fees or royalties. As a result, the Bermuda Longtail Trust never actually relinquished any funds for the sub-trust units. These Defendants (other than the Lawyers,

the FFCF Charity and the FFCF Directors) were fully aware, reckless, or were wilfully blind to the fact that the funds would flow in a circular fashion back into their original account.

103. These Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) knew or were wilfully blind to the fact that CRA would never allow the tax benefits of the Gift Program to be realized by the Representative Plaintiff and the Class Members, given the fraudulent nature of the Gift Program, and the fact that the Gift Program did not qualify as a "gift" under the *Income Tax Act*.

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

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

106. The losses suffered by the Representative Plaintiff and the Class are the loss of the sums they donated to the Gift Program, and the interest and penalties that have been assessed against them by CRA as a result of disallowing their claims for charitable donation tax credits, and any special damages, being out-of-pocket expenses, including

professional accounting and legal fees and consulting fees, incurred as a result of CRA's reassessments.

J/ FRAUD AND FRAUDULENT MISREPRESENTATIONS

107. The Representative Plaintiff states that all of the Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) fraudulently planned and created the Gift Program, for the purpose of profiting themselves and defrauding the Class. The facts setting forth how the Class was defrauded of approximately $100 million dollars are set forth above.

108. The Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) promoted, perpetuated, participated, marketed, administered, created, controlled, and operated the FFCF Charity and the Gift Program which they knew was fraudulent, or they were wilfully blind or reckless as to the fact. These Defendants fraudulently misrepresented to the Class that they would receive from the Gift Program the tax benefits, including the specific tax benefits set forth above, when they knew or ought to have known that the Class Members would not receive the tax benefits and savings.

109. The Gift Program, which these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) helped to create, was a fraud and these Defendants knew that they were assisting with the fraud or they were reckless with respect thereto.

110. These Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) knew that the Gift Program violated the *Income Tax Act* and the CPA, as they knew that the real purpose and intent of the Gift Program was not to benefit any charities,

but to defraud the Class and the Representative Plaintiff of the amounts that they contributed to the Gift Program, and which the Class and the Representative Plaintiff intended to be charitable donations.

111. GMA and the Gleesons were parties to this fraudulent scheme, and knew that the Gift Program was a fraud. All of them received part of the donations made by the Class Members and the Representative Plaintiff with knowledge that the payments they received were the proceeds of the fraud. GMA and the Gleesons received monies while they provided no valuable services, and which they knew were the proceeds of a fraud, and received directly or indirectly the monies of the Class Members by way of commissions from the individual charities who received grants from FFCF Charity, and were thereby unjustly enriched at the expense of the Class and the Representative Plaintiff.

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

113. It was a fundamental express or an implied term going to the root of the contract that the donated money would be paid to charity, and Class Members were fraudulently and intentionally not told that this contractual term would be breached and was incapable of being honoured, based upon the structure of the Gift Program and the obligations imposed upon the charities by these Defendants.

114. The Class Members were never told by these Defendants that the primary purpose of the scheme was for the benefit of the Defendants such that *inter alia* these Defendants would receive the vast majority of the donated property.

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

116. Further and in the alternative, Parklane, TTL, Trafalgar Associates, the Bermuda Longtail Trust, GMA and the Gleesons created, reviewed, drafted, supervised, approved, and authorized or had the opportunity and authority to authorize the preparation and distribution of the promotional materials, the opinion letters, and the comfort letters. These Defendants knew, or were reckless or wilfully blind to the fact that the Class Members

would be receiving promotional materials, the opinion letters, and the comfort letters, and relying upon the accuracy and completeness of the information in making the decision to invest in the Gift Program.

117. Parklane, TTL, Trafalgar Associates, the Bermuda Longtail Trust, GMA and the Gleesons knew, or were reckless or wilfully blind to the fact that the information contained in the promotional materials, opinion letters, and the comfort letters was inaccurate, false, deceptive, misleading, and failed to contain material information, and yet these Defendants allowed those documents to be distributed to the Class, thus committing the tort of fraudulent misrepresentation either by way of express fraudulent representation or omission of material which ought to have been disclosed to the Representative Plaintiff or the Class Member.

118. Further, once Parklane, TTL, Trafalgar Associates, the Burmuda Longtail Trust, GMA and the Gleesons became aware of CRA's position, and became aware that the information in the promotional materials, opinion letters, and the comfort letters was inaccurate, false, deceptive, or misleading they failed to take any steps to contact the Class Members to advise them that these documents were inaccurate, false, deceptive, and misleading. Further, these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) failed to deliver revised promotional materials or letters, and continued to fraudulently sell and operate the Gift Program even after becoming aware of CRA's position.

119. As part of the fraud these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) refused to allow the Class to review any of the opinion letters relating to Gift Program prepared by the Lawyers, directly, but only through their professional advisors. These Defendants (except the Lawyers, the FFCF Charity and the FFCF Directors) created a complicated system designed to discourage the viewing of the opinion letters, and encourage the Class to rely upon the representations (express and implied) in the promotional materials, including the comfort letters. The opinion letters were only available over the internet and only accessible to the Class' professional advisors. Only some of the sales force could read it. Before viewing the opinion letters, the sales persons had to sign an agreement to keep the opinion confidential and promising not to share its contents with anyone including the Class Members. The computer technology was password protected, which passwords expired quickly allowing the sales force only a very limited amount of time to see the very lengthy opinion letters. The technology prevented the sales force from downloading or copying or printing the opinion letters.

120. As part of the fraud, these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) asked the Lawyers to prepare the comfort letters. But for these comfort letters being included it the promotional materials, the Gift Program would not have been launched and the Class would not have participated in the Gift Program. The comfort letters were designed to induce the Class to invest in the Gift Program without disclosing to the Class all of the material risks of participating in the Gift Program. The Defendants (other than the FFCF Charity and the FFCF Directors) knew, or ought to have known, or were reckless or wilfully blind to the fact that the Class Members receiving the comfort

letters (but not the opinion letters), would assume, based upon the representations in the promotional materials, including the comfort letters, that the opinion letters created by the Lawyers would opine that the income tax savings represented in the promotional materials for the Gift Program would be permitted without objection from the CRA.

121. To the knowledge of the Defendants (other than the FFCF Charity and the FFCF Directors), solicitors who are not parties to this action expressed doubt that participants in the Gift Program would receive the promised tax credits. These Defendants (other than the FFCF Charity and the FFCF Directors) did not advise the Class, or let the Class learn about or read any opinions from other solicitors doubting participants in the Gift Program would receive the promised tax credits.

122. The fraud and fraudulent misrepresentations of these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) were the proximate cause of the losses of the Class Members; but for the fraud and fraudulent misrepresentations of these Defendants, the Class Members and the Representative Plaintiff would not have suffered any losses.

123. The Representative Plaintiff and Class Members claim from these Defendants (other than the Lawyers, the FFCF Charity and the FFCF Directors) damages for the fraud, as set out in paragraphs 107 - 122 above. But for these Defendants' fraud, the Representative Plaintiff and the Class Members would not have donated money to this scheme, had their taxes re-assessed, and suffered damages.

K/ NEGLIGENCE

Negligence of the Defendants other than the FFCF Directors

124. All of the Defendants, other than the FFCF Directors negligently planned and created the Gift Program.

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

126. The Defendants other than the FFCF Directors knew or ought to have known that the information contained in the promotional materials, opinion letters, and the comfort letters ("promotional materials") was inaccurate, false, deceptive, misleading, and failed to contain material information, and yet these Defendants negligently distributed or permitted the distribution of the promotional materials to the Class, or negligently authorized the distribution of the promotional materials, and did not take steps to halt the distribution of the promotional materials when they had the authority, capacity and means to stop the distribution of the promotional materials.

127. Further, once the Defendants other than the FFCF Directors became aware of CRA's position, and became aware that the information in the promotional materials, was inaccurate, false, deceptive, or misleading, they negligently failed to take any steps to

contact the Class Members to advise them that these documents were inaccurate, false, deceptive, and misleading. Further, these Defendants negligently failed to deliver revised promotional materials, and negligently continued to allow the Gift Program to be sold to Class Members even after becoming aware of CRA's position.

128. As part of their negligence, these Defendants other than the FFCF Directors refused to allow the Class to review any of the opinion letters relating to the Gift Program as prepared by the Lawyers, but knew that they would rely upon the representations express or implied in the rest of the promotional materials, including the comfort letters. The Defendants other than the FFCF Directors created a complicated system designed to discourage the viewing of the opinion letters. The opinion letters were only available over the internet and only to some members of the sales force. The computer technology prevented the sales force from downloading or copying or printing the opinion letters. The Defendants, other than the FFCF Directors owed the Class a duty of care which required them to make any opinions available to the Class for review.

129. As part of the negligence, the Lawyers prepared the comfort letters on the instructions of Parklane with the intent that they would be read by the Class Members, and relied upon by the Class Members in making their decision to participate in the Gift Program. In particular, these Defendants other than the FFCF Directors knew that the only reasonable inference to be drawn from the comfort letters was that the Gift Program was a legitimate charitable giving program and that the tax receipts generated by donations under the Gift Program would be accepted as charitable tax credits by CRA.

130. But for these comfort letters, the Gift Program would not have been launched and the Class would not have participated in the Gift Program. The comfort letters were designed to induce the Class to invest in the Gift Program without disclosing to the Class all of the material risks of investing in the Gift Program, or the true facts relating to the actual operation of the Gift Program. These Defendants other than the FFCF Directors knew, or ought to have known, that the Class Members receiving the comfort letters (but not the opinion letters), would assume the opinion letters created by the Lawyers would opine that the income tax savings represented in the promotional materials for the Gift Program would be permitted without objection from the CRA.

131. These Defendants other than the FFCF Directors owed the Class a duty of care, which they breached. The particulars of the breaches of duty are described in paragraphs 29, 33 – 35, 39, 41 – 43, 58, 65, 75, 124 - 130 above and 133 - 140 below. The Defendants other than the FFCF Directors owed the Class Members a duty of care based, *inter alia*, on the special relationship between them and the members of the Class. The special relationship between the Defendants and the Class Members arose from the Defendants' knowledge of the reliance which the Class Members would place on the information provided to them in the promotional materials, the opinion letters, and the comfort letters, and arose from the facts set forth above. These Defendants other than the FFCF Directors had a duty to ensure that these letters and the promotional materials were accurate, and were neither deceptive nor misleading, and to ensure that these documents contained all material facts relevant to the decision to invest in the Gift Program.

132. These Defendants other than the FFCF Directors had an obligation to ensure that the sales persons selling the Gift Program to the Class Members understood the risk to the Class participating in the Gift Program and had a duty to ensure that the sales persons were properly trained, and a duty to take steps to ensure the sales force explained the risks of investing in the program to the Class, and explained to the Class that the primary purpose of the Gift Program was the financial benefit of the Defendants other than the Lawyers and the FFCF Directors.

133. The Representative Plaintiff and Class Members state that these Defendants other than the FFCF Directors were negligent, the particulars of which are as follows:

(A) as against all Defendants other than the FFCF Directors:

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

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

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

statements or information. The Defendants were aware of the necessity of the delivery of revised or amended documents but failed to provide these amended documents to the Class Members;

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

(v) they knew, or ought to have known, that the Gift Program would not qualify as a charitable gift under the *Income Tax Act,* and that the Class would be negligently misled into believing that the Gift Program had a charitable purpose or intent where no such intent or purpose existed. The Defendants knew or ought to have known that CRA would conclude that the donations of the Class Members were not gifts as defined in the *Income Tax Act*;

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

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

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

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

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

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

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

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

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

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

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

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

(xviii) they refused to allow the Class Members to view the opinion letters prepared by the Lawyers. They permitted the creation of a complicated system designed to discourage the viewing of the opinion letters. The

opinion letters were only available over the internet. Only some of the sales force could read it. Before viewing the opinion letters, the sales persons had to sign an agreement to keep the opinion confidential and promising not to share its contents with anyone including the Class members. The computer technology was password protected, which passwords expired quickly allowing the sales force only a very limited amount of time to see the very lengthy opinion letters. The technology prevented the sales force from downloading or coping or printing the opinion letters;

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

(B) as against the Lawyers:

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

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

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

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

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

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

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

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

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

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

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

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

(x) they failed to withdraw their opinions and the comfort letters when by December 6, 2007 they knew or ought to have known the contents of the opinion letters and comfort letters were inaccurate, incomplete, untrue and deceptive;

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

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

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

(xiv) they issued the opinion letters and comfort letters with the express intention that these letters would be relied upon by all or some of the

Defendants, Parklane, Trafalgar Associates, TTL, Bermuda Longtail Trust, the Donations Canada Trustees and Funds for Canada Foundation ("the Gift Program Defendants"), when it knew or ought to have known that these Defendants would rely upon and publish the existence of the opinion and comfort letters in promoting the Gift Program;

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

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

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

rely upon the accuracy and reliability of these letters in deciding whether to participate in the Gift Program;

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

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

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

135. The Lawyers owed a duty of care to those whom they intended to, or knew or ought to have known would, rely upon the existence and/or the accuracy and reliability of the content of the opinion letters they issued.

136. The Lawyers had a duty to warn the Gift Program Defendants and the Class Members, and to make full disclosure to them as to the facts and circumstances set out above and failed to do so. Particularly, the Lawyers failed to notify the other Defendants

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

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

Negligence of the FFCF Directors

138. The FFCF Directors owed a duty of care to the Class Members to ensure that the FFCF Charity was operated in keeping with its charitable objects, and that the donations that the FFCF Charity received from the Class Members under the Gift Program were gifted to charities as intended by the terms of the Gift Program as set out in the promotional materials.

139. The FFCF Directors owed a further duty of care to the Class Members to properly and adequately supervise the operation of the FFCF Charity by its Executive Director, Mary-Lou Gleeson, to ensure that the FFCF Charity was operated on a day to day basis in keeping with its charitable objects, and in accordance with the intent of the Class Members whose donations they received on the condition that the donations be gifted to charities.

140. The FFCF Directors failed in their duty of care to the Class Members and were negligent in that:

(a) they failed to adequately supervise the daily operations of the FFCF Charity undertaken by Mary-Lou Gleeson;

(b) they failed to ensure that the FFCF Charity kept adequate books and records;

(c) they failed to ensure that the FFCF Charity met its annual disbursement quotas;

(d) they permitted the FFCF Charity to be used as a vehicle by which the other Defendants, other than the Lawyers, perpetrated a fraud against the Class;

(e) they failed to make any or reasonable inquiry into the terms upon which donations were made to other charitable donees;

(f) they failed to make reasonable or any inquiries to determine if the Class Members' donations were being received by charitable donees as gifts such that the donations would qualify for charitable giving tax credits;

(g) they failed to identify the fact that FFCF Charity was obliging charitable donees to enter into contracts that obliged the charitable donees to pay the vast majority of the donations they received to the Bermuda Longtail Trust or TTL, and that the charitable donees did not have free and unfettered use of the donations made to them; and,

(h) they failed to warn the Class Members that the full amount of their donations was not reaching the intended recipients for their free and unfettered use.

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

L/ DAMAGES

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

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

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

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

(iv) special damages, being out-of-pocket expenses, including professional accounting and legal fees and consulting fees, incurred as a result of CRA's reassessments.

M/ RETURN OF THE MONIES OF THE CLASS AND RESCISSION

143. The Representative Plaintiff and the Class seek rescission and the return of the monies paid under the Gift Program on the basis that there has been a fraud, a mistake, or an unfair or unconscionable transaction, or that there were material misrepresentations by the other party (or parties) to the contracts with the Class.

144. Further, or in the alternative, the Representative Plaintiff and the Class seek rescission of the contract with Parklane and the Donations Canada Financial Trust in respect of the Gift Program on the basis of the fact that the Defendants other than the Bermuda Longtail Trust, the Lawyers and the FFCF Directors have engaged in unfair

and/or unconscionable practiced in breach of the provisions of ss. 17 and 18 of the Ontario *CPA* (for Ontario residents) and breaches of the similar legislation in the provinces and territories for Class members who at the time of the advance of monies resided in other provinces and territories of Canada.

145. In view of the fraud that has been perpetrated upon the Class, it is in the interests of justice to waive the notice provisions under s. 17 of the Ontario *CPA*, and any similar notice provisions established under similar legislation in the other provinces and territories.

146. In view of the fraud that has been perpetrated upon the Class, as well as the negligent misrepresentations, it is in the interests of justice that the Class be awarded exemplary and punitive damages pursuant to s. 18 of the Ontario *CPA* and similar legislation in other provinces and territories.

N/ RESTITUTION, UNJUST ENRICHMENT, WAIVER OF TORT, CONSTRUCTIVE TRUST

Unjust Enrichment

147. The acts, omissions, and misconduct of the Defendants other than the Lawyers and the FFCF Directors as set out herein were designed to induce the Representative Plaintiff and the Class Members to invest in the Gift Program. Directly or indirectly, these Defendants, or some of them, have received some or all of the monies paid by the Class Members for the Gift Program.

148. The Gift Program was a fraud, and the Representative Plaintiff and Class Members' donations were not received by legitimate charities, and the Representative Plaintiff and

the Class Members will not receive the tax benefits promised. Consequently, the following has occurred:

(i) these Defendants have been unjustly enriched;

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

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

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

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

151. Accordingly, the Class claims damages on the basis of unjust enrichment.

Waiver of Tort (Constructive Trust and Restitution)

152. The Representative Plaintiff pleads and relies upon the legal doctrines of waiver of tort, restitution, and constructive trust. The Defendants, other than the FFCF Directors created, reviewed, drafted, supervised, approved the Gift Program, and authorized the

preparation and distribution of promotional materials, the comfort letters, and the opinions letters which they knew, or ought to have known, were inaccurate, false, and misleading. The Defendants failed to confirm all material facts relating to the Gift Program. Not only did the Class not realize a financial benefit from the Gift Program, the Class has or will lose money in interest payments and penalties imposed by CRA and other damages as particularized in paragraphs 94, 106, and 123 above. In these circumstances, the Defendants should be compelled to disgorge all the funds which the Defendants received, directly or indirectly, from the Gift Program and to repay to the Representative Plaintiff and the Class Members all benefits, monies, and profits unjustly obtained by the Defendants' tortious, unlawful, and improper conduct as described herein.

153. The Defendants other than the Lawyers and the FFCF Directors have been unjustly enriched as a result of their conspiracy and/or the fraud they perpetrated. The funds paid to the Gift Program by the Class are therefore impressed with a constructive trust in favour of the Class and should be returned to the Class by these Defendants.

154. The Class is entitled to a tracing order to determine the present location of the funds they paid into the Gift Program and they are entitled to an order for restitution of those funds to them.

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

155. The Defendants (other than the Lawyers) owed duties to the Class to comply with the Ontario *CPA* and other the similar legislation in other provinces and territories of Canada set out in Schedule A and are liable to the Class for false, misleading, deceptive

representations, and unfair practices, and their unconscionable conduct. The Class claims damages and rescission for the breach of these Defendants' statutory duties.

P/ PUNITIVE AND EXEMPLARY DAMAGES

156. The conduct of all of the Defendants is such as to justify an award of punitive and exemplary damages. The Defendants' conduct has been a breach of the duty of good faith and separate actionable wrongs, including separate breaches of the provisions of the *CPA* (for Ontario residents) and other similar legislation in the provinces and territories for Class Members who at the time of the investment resided in other provinces and territories of Canada. The Defendants breached their obligations to the Representative Plaintiff and Class Members because of their desire to maximize profits and financial gain, causing them to suppress the conveying of accurate information to the Representative Plaintiff and Class Members, which the Defendants feared would hurt sales. The Defendants have behaved with arrogance and high-handedness, have shown a callous disregard and complete lack of care for the Representative Plaintiff and Class Members and the rights of the Representative Plaintiff and Class Members, and ought to be punished and deterred from future misconduct. The Defendants conduct was sufficiently harsh, vindictive, reprehensible, and malicious, so as to justify an award of punitive, exemplary, and aggravated damages from these Defendants. The Defendants were, or ought to have been, aware of the probable consequences of their conduct and the damage such conduct would cause to the Representative Plaintiff and Class Members.

157. The Defendants continue to be major participants in Canadian businesses. These Defendants have considerable assets. An award of $50 million for punitive and exemplary

damages is justified and required to punish the Defendants and deter their inappropriate conduct in the future.

Q/ ONTARIO IS THE PROPER FORUM

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

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

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

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

162. In these circumstances, there is a real and substantial connection between this claim and the Province of Ontario, entitling the Representative Plaintiff and Class Members

to bring this action in Ontario. Ontario is the most convenient forum for the trial of the action and the foreign defendants are necessary and proper parties to this action.

R/ SERVICE OUTSIDE ONTARIO

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

(a) 17.02(f)(i)(iv) - the contract was made and breached, in part in Ontario;

(b) 17.02 (g) - the tort was committed in Ontario;

(c) 17.02 (h) - the damages of many members of the proposed class were sustained in Ontario;

(d) 17.02 (o) - the Defendants are necessary and proper parties to this action which is properly served;

(e) 17.02 (p) - the Defendants carry on business in Ontario;

(f) 17.05 (3) - where service is to be made in a contracting state pursuant to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,* the document is to be served either (a) through the central authority in the contracting state, or (b) in a manner that would be permitted by the Convention and that would be permitted by the Rules if the document was being served in Ontario.

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

Date of issue: September 18th, 2008

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S:\Anna\CANNON - Parklane\Pleadings\Statements Of Claim\Statement Of Claim - Further Fresh As Amended (FFCF + Gleesons) - 2010\4th Amended Further Fresh As Amended SOC.Doc

Schedule A
Consumer Protection Statutes

	Jurisdiction	Legislation	Provisions
1	Alberta	*Fair Trading Act* R.S.A. 2000 C. F-2	s.6, 7
2	British Columbia	*Business Practices and Consumer Protection Act* S.B.C. 2004 c.2	s. 4, 5, 8, 10, 171
3	Manitoba	*Business Practices Act* C.C.S.M. c. B120	s. 2, 5, 23
4	Newfoundland and Labrador	*Consumer Protection and Business Practices Act* S.N.L. 2009, c. C-31.1	s. 7, 8, 9, 10
5	Ontario	*Consumer Protection Act* S.O. 2002, c.30	s.14, 15, 17, 18
6	P.E.I.	*Business Practices Act* R.S.P.E.I. 2007 c.17	s. 2, 3, 4
7	Quebec	*Consumer Protection Act* R.S.Q., c. P-40.1	Articles 219, 228, 229, 239, 272
8	Saskatchewan	*Consumer Protection Act* R.S.S. 1996, c. C-30.1	s.5, 6, 7, 14, 16

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

MICHAEL CANNON
Plaintiff

-and-

FUNDS FOR CANADA FOUNDATION, et al
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

FRESH
FURTHER FRESH AS AMENDED
STATEMENT OF CLAIM

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