

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992)

BEFORE THE HONOURABLE
MR. JUSTICE BELOBABA

) *Mon* DAY, THE *29* DAY OF
)
) FEBRUARY, 2016.

BETWEEN:



SHARUKH PALSETIA

Plaintiff

- and -

MUSA SULEMAN and 1376563 ONTARIO INC.

Defendants

AND BETWEEN:

MUSA SULEMAN and 1376563 ONTARIO INC.

Plaintiffs by Counterclaim

- and -

SHARUKH PALSETIA and NADIA PALSETIA

Defendants by Counterclaim

ORDER

THIS MOTION made by the Plaintiff for an order certifying this action pursuant to section 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6, ("CPA") was heard in writing at Toronto, Ontario.

ON READING the consent of the Plaintiff and of the Defendants to the agreed upon proposed class definition and common issues,

1. **THIS COURT ORDERS** that the Plaintiff is hereby granted leave pursuant to section 2(3) of the CPA to bring this motion for Certification.
2. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to section 5 of the CPA.
3. **THIS COURT ORDERS** that subject to the defence raised by the Defendants in their statement of defence as to the individual who made the investment in issue, Sharukh Palsetia is appointed as the representative Plaintiff for the Class.

4. **THIS COURT ORDERS** that the Class is defined as:

All persons (i) who reside in Canada, (ii) whose monies were in any way given to, received by or dealt with by the Defendants or either of them, between January 1, 2000 and April 27, 2002, on account of Salim Damji's fraudulent tooth whitening process promotion, variously known as STS Instant White and other related STS names, (iii) who have not recovered all of their said monies.

5. **THIS COURT ORDERS** that the following issues are certified as common issues:
 - (a) Did the Defendants, or either of them, engage in conduct between January 1, 2000 and April 27, 2002, which amounted to a knowing assistance of Salim Damji with respect to his defrauding of the Class Members?
 - (b) Did the Defendants, or either of them, engage in conduct between January 1, 2000 and April 27, 2002, which amounted to a knowing assistance of Salim Damji with respect to his breach of trust?
 - (c) Did the Defendants, or either of them, engage in conduct between January 1, 2000 and April 27, 2002, which amounted to a knowing receipt of monies, including trust monies, related to Salim Damji's defrauding of the Class Members.

- (d) Should the Defendants, or either of them, be declared a constructive trustee for the Class Members of all monies given to, received by or dealt with by the Defendants or either of them between January 1, 2000 and April 27, 2002?
- (e) Did the Defendants, or either of them, owe a duty of care to the Class members with respect to the monies given to, received by or dealt with by the Defendants or either of them between January 1, 2000 and April 27, 2002?
- (f) If the answer to issue (e) above is yes, did the Defendants, or either of them breach the said duty of care owed to the Class Members?
- (g) Have the Class Members suffered loss or damage as a result of any of the conduct referred to in issues (a), (b), (c), (d) and (f) above? If so, what is the appropriate measure or amount of such loss or damage?
- (h) Should the Defendants, or either of them, pay punitive damages to the Class Members? If so, what is the amount of such damages?

6. **THIS COURT ORDERS** that final form of Notice of Certification shall be approved by the court.

7. **THIS COURT ORDERS** that the opt-out deadline shall be 90 days after the first date of publication of the Notice of Certification as approved by the court.

8. **THIS COURT ORDERS** that the methods of publication of the Notice of Certification shall be:

- (a) Internet

The Notice of Certification and the Certification Order, along with a summary of the terms of the Order, shall be published on the web pages maintained by Class Counsel in respect of this proposed class proceeding; and

(b) E-mail

To the extent Class Members provide Class Counsel with e-mail addresses, Class Counsel will send the Notice of Certification and the Certification Order via e-mail to Class Members at the e-mail address provided.

9. **THIS COURT ORDERS** that any member of the Class may opt-out of this Class Action by mailing or faxing to Landy Marr Kats LLP and/or Solomon Rothbart Goodman LLP a signed and dated Notice of Opting-Out, which must be postmarked if sent by mail or received if sent by fax by no later than 90 days after the first date of publication. No Class Member may opt-out of the Class Action after the expiration of the opt-out period.

10. **THIS COURT ORDERS** that the Plaintiff's lawyers shall receive, review, document and record the written elections from Class Members opting-out of the Class Proceeding and, within thirty (30) days after the expiration of the opt-out period, deliver to the Court and to Defendants' counsel an Affidavit listing the names of all persons who have opted-out of this Class Proceeding.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 14 2016

PER / PAR:



THE HONOURABLE JUSTICE BELOBABA

SHARUKH PALSETIA
Plaintiff

-and- MUSA SULEMAN et al
Defendants

Court File No. 07-CV-341493 CP

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

LANDY MARR KATS LLP
Barristers & Solicitors
2 Sheppard Avenue East – Suite 900
Toronto, Ontario M2N 5Y7

Samuel Marr / Keith M. Landy / David Fogel
Tel: 416-221-9343
Fax: 416-221-8928

AND

SOLMON ROTHBART GOODMAN LLP
Barristers & Solicitors
375 University Avenue – Suite 701
Toronto, Ontario M5G 2J5

Melvyn L. Solman / Nancy Tourgis
Tel: 416-947-1093
Fax: 416-947-0079

Lawyers for the Plaintiff/Class Counsel