

APR 27 2016

AMENDED THIS / MODIFIÉ CE _____ PURSUANT TO / CONFORMÉMENT À _____

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RULE/LA RÈGLE 26.02 (C)

THE ORDER OF JUSTICE BELOBABA

Court File No. 08-CV-353663-CP

L'ORDONNANCE DU / L'ORDONNANCE DU / FAIT LE APRIL 26, 2016

Denann Taylor
CLERK / CLERK

ONTARIO

SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

(PROCEEDING UNDER THE CLASS PROCEEDING ACT, 1992)

BETWEEN:

RIZWAN JUMA and NASRIN JUMA

Plaintiffs

and

WESTERN UNION FINANCIAL SERVICES (CANADA) INC. O/A
WESTERN UNION

Defendant

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 does not have a lawyer, serve it on the Plaintiff, 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date April 25, 2008 Issued by "Register"
Local Registrar

Address of court office: 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO: Western Union Financial Services (Canada) Inc.
Toronto, Ontario

CLAIM

1. The Plaintiffs claim is against the Defendant for the following:

- a) If necessary, an Order certifying this Action as a Class Proceeding and appointing the Plaintiffs as Representative Plaintiffs of the Class, being those persons or corporations (i) who reside in Canada, (ii) who gave monies to or for Salim Damji ("Damji") on account of a fraudulent Damji tooth whitening process promotion variously known as STS Instant White and other STS related names, (iii) whose monies were provided by Damji to and transferred by 1096166 Ontario Inc. o/a Cash Plus Services ("Cash Plus") by way of Western Union money transfer and payment services between January 3, 2000 and January 24, 2002, (iv) who have not recovered all of their said monies;

- b) damages for:
 - a. knowing assistance of breach of trust;
 - b. knowing receipt of trust funds;
 - c. Negligence; and/or.
 - d. vicarious liability on account of the aforesaid knowing assistance of fraud and/or of breach of trust, knowing receipt and disbursal or misappropriation of trust funds or defrauded funds and/or negligence on the part of the Defendant's Agent, Cash Plus relating to money transfers by way of Western Union for or on behalf of Salim Damji between January 3 2000 and January 24, 2002;

- c) An Order requiring the Defendant to account for and repay the Plaintiff Class any and all monies relating to money transfers by Cash Plus by way of Western Union for or on behalf of Salim Damji between January 3, 2000 and January 24, 2002 (i) deposited into the bank

account or accounts of Cash Plus from the cheques and bank drafts of the Plaintiffs and the Plaintiff Class and (ii) which were withdrawn and taken from the said bank account or accounts of Cash Plus by the Defendant including, more particularly, the Defendant's fees and charges;

- d) An Order declaring that the assets of the Defendant are subject to a Constructive Trust or Equitable Lien in favour of the Plaintiff Class to the extent of all charges and fees withdrawn and taken by the Defendant from the process of the aforesaid cheques and bank drafts of the Plaintiff Class that were in the bank account or accounts of Cash Plus and, secondly, an Order requiring the Defendant to pay the total of same to the Plaintiff Class;
- e) An Accounting of all of the Defendant's withdrawals and/or receipts from the bank account or accounts of Cash Plus on account of or with respect to money transfers effected by, on behalf of or through the Defendant for Damji;
- f) Pre-judgment interest pursuant to Section 128 of the *Courts of Justice Act*, as amended;
- g) Post-judgment interest pursuant to Section 129 of the *Courts of Justice Act*, as amended;
- h) His costs of this action on a substantial indemnity basis or, alternatively, on a partial indemnity basis, together with G.S.T. thereon;
- i) Such further and other relief as the Court may deem just.

THE PARTIES

2. The Plaintiffs reside in the City of Toronto.
3. The Defendant is a duly incorporated limited company which carries on business across Canada including from within the City of Toronto. The business of the Defendant substantially involves money transfer and payment services (hereinafter "Money Transfer Services")

4. At all material times, 1096166 Ontario Inc. o/a Cash Plus Services ("Cash Plus") was a duly incorporated limited company which at all material times carried on business from offices in the City of Toronto as an Agent for the Defendant including, more particularly, as a provider and facilitator of Money Transfer Services on behalf of, by and through the Defendant. Cash Plus was dissolved on March 3, 2006, and is therefore not named as a Defendant in this Action.

BACKGROUND

5. Salim Damji ("Damji") is a convicted felon. From on or about late 1999 until his arrest by members of the Metropolitan Toronto Police Fraud Squad on April 26, 2002, he orchestrated a scheme that defrauded members of his Community and others in Ontario and elsewhere in Canada of sums approaching \$100 million. Throughout that period, Damji was unemployed and the proceeds of his fraud were his only source of funds.

6. Damji's fraudulent scheme basically involved fraudulent misrepresentations by Damji, both by Damji himself as well as by Damji's appointed representatives, to members of Damji's Community that, *inter alia*, Damji (i) had developed a new and revolutionary teeth whitening product ("the STS Product"), (ii) was engaged in the manufacturing, marketing, sale and distribution of the STS Product in Canada ("the STS Enterprise"), (iii) had organized and held the shares in a corporation to carry on the STS Enterprise known as, *inter alia*, STS Inc. and (iv) was about to sell the STS Product, STS Enterprise and STS Inc. (collectively "STS") to a multinational third party Corporation and/or through an IPO at a substantial financial return (collectively "the STS Misrepresentations" and "STS").

7. None of the STS Misrepresentations were true. There was no STS Product. There was no STS Enterprise. STS Inc. did not and never did exist. There was nothing at all. All of the STS Misrepresentations were fraudulent.

8. Damji wrongfully and fraudulently made or caused the STS Misrepresentations to be made to and relied upon by members of his Community and others with a view to fraudulently inducing them to invest in the non-existent STS.

9. Damji further fraudulently induced members of his Community and others to invest in STS by, more particularly, representing to and assuring them (i) that their investments would be held in trust upon defined terms and (ii) that they could request and in that event would receive a full refund of their investments at any time ("the Trust Terms").

10. Based and relying upon Damji's aforementioned STS Misrepresentations and the Trust Terms, thousands of members of Damji's Community as well as others invested in STS by, *inter alia*, giving cheques in various amounts payable to Damji in trust for investment in STS.

11. Without the knowledge of all of the aforementioned defrauded investors in STS, Damji misappropriated the money he so fraudulently obtained from the individuals who thought they were investing in STS and used those monies for various wrongful personal purposes including, *inter alia*, (i) laundering and hiding the monies from third parties for subsequent personal use, (ii) acquiring various assets for himself, members of his family and friends and (iii) personal gambling.

12. On or about April 26, 2002, Damji pleaded guilty to and was convicted of fraud in relation to the above. He was sentenced to imprisonment for 7 1/2 years. He has made no restitution to his Victims including the Plaintiffs and the Plaintiff Class.

PARTICULARS OF THE PLAINTIFFS AND OF THE PLAINTIFF CLASS

13. The Plaintiffs and all of the other members of the Plaintiff Class were so defrauded by Damji in the same identical manner.

14. More particularly, in relation to the claims in this action and repeating and relying upon the allegations set out in paragraphs 6-12 above, the Plaintiffs and all of the members of the Plaintiff Class issued cheques and bank drafts payable to Salim Damji, many of which were stated to be "in trust". Some monies were provided in cash. All of those cheques, bank drafts and cash were issued by the Plaintiffs and the other members of the Plaintiff Class subject to an express condition that the proceeds from those cheques, bank drafts and cash were to be held in trust and only used in strict accordance with the Trust Terms (the "Funds").

15. Hundreds, if not thousands, of such Funds from the Plaintiffs and the other members of the Plaintiff Class were so fraudulently obtained by Damji, thereafter endorsed by Damji and then accepted and deposited, as agreed upon between Damji and the Cash Plus, into one or more bank accounts of Cash Plus with Bank of Montreal. Ultimately, about \$47,000,000.00 came to be so accepted and deposited by Cash Plus into the bank account or bank accounts of Cash Plus from the aforesaid Funds of the Plaintiffs and the Plaintiff Class.

16. One of those cheques was a cheque from the Plaintiffs in the amount of \$42,000.00 that was made payable to "Salim Damji in Trust" (i) which the Plaintiffs issued and gave relying and based on the allegations set out in paragraphs 6-15 above and (ii) which was deposited into the bank account of Cash Plus with Bank of Montreal on or about October 31, 2001.

RELATIONSHIP BETWEEN THE DEFENDANT AND CASH PLUS

17. At all material times, Cash Plus was the duly appointed, authorized and apparent Agent of the Defendant for the purpose of, *inter alia*, offering for sale to the public all of the Money Transfer Services offered by the Defendant. Those Money Transfer Services included completing and seeing to electronic and/or wire Money Transfers by which the Defendant effected or completed or saw to the transfers of funds from, *inter alia*, Canada to, *inter alia*, the Caribbean and elsewhere offshore.

18. There was a formal Agency Agreement between the Defendant and Cash Plus.

19. Pursuant to the Agency Agreement between the Defendant and Cash Plus, Cash Plus was required, *inter alia*, (i) "to advertise and promote" the Defendant's Money Transfer Services, (ii) "to develop customer interest and confidence" in the Defendant's Money Transfer Services, (iii) "to enhance the goodwill associated"....with the Defendant's "trade names, trademarks, trade dress, symbols, logos and copyright materials" and (iv) to exclusively use the Defendant's Money Transfer Services.

20. The Defendant's Money Transfer Services were of critical importance to Damji. Had Cash Plus not been the Agent of the Defendant for the purpose of offering the Defendant's Money Transfer Services and had the Defendant not been offering the use of its Money Transfer Services through Cash Plus, Damji would not have come to deal with Cash Plus. In addition, Damji would not have dealt with Cash Plus but for his ability to access and use the Defendant's Money Transfer Services through Cash Plus as more particularly set out below.

21. Cash Plus was only able to effect Money Transfers for the benefit of Damji by and through the use of the Defendant's Money Transfer Services. The Money Transfer Services were those of the Defendant, not those of Cash Plus. Cash Plus was only able to access the use of the Defendant's Money Transfer Services, as Agent for the Defendant and to the extent allowed by the Defendant. The

Defendant ultimately had the right to deny the use of its Money Transfer Services for any particular proposed transfer and was also ultimately responsible for each and every transfer effected and completed through the use of its Money Transfer Services.

22. The Defendant was and is liable to the Plaintiffs and to the Plaintiff Class for all of the actions and liability of Cash Plus to the Plaintiffs and to the Plaintiff Class relating to money transfers by Cash Plus by way of Western Union for or on behalf of Salim Damji between January 3, 2000 and January 24, 2002 including, more particularly, for all of the proceeds withdrawn and taken by the Defendant from Cash Plus' pre-authorized bank account to fund or repay itself for Money Transfers effected on behalf of Damji. The Defendant is vicariously liable for the said conduct and liability of Cash Plus to the Plaintiffs and to the Plaintiff Class. The Defendant is otherwise directly liable to the Plaintiffs and to the Plaintiff Class in tort for the reasons more particularly set out below.

THE INVOLVEMENT OF CASH PLUS

23. Prior to December, 1999, Cash Plus had a small cheque cashing business with annual gross April 24, 2008 revenues of less than \$200,000.00. The average annual dollar volumes of cheques cashed with Cash Plus was less than \$10,000,000.00.

24. In or about December, 1999, Damji began (i) fraudulently raising significant monies from trusting and unsuspecting Victims as set out above and (ii) depositing those funds with the assistance of Cash Plus into a bank account or accounts of Cash Plus.

25. Damji's Victims gave the Funds to Damji by cheque, bank draft, or cash. The Funds forming the subject matter of this action were from the Plaintiffs and the Plaintiff Class and many of them were made payable to Salim Damji "in trust". All of the monies were provided to be held in trust.

26. The reference line on many of the cheques and bank drafts issued to Salim Damji "in trust" further described the purpose of or reason for the cheques and bank drafts from the Plaintiffs and the Plaintiff Class, as for or relating to the purchase of or to an investment in STS shares or STS.

27. The Plaintiffs state and plead that Cash Plus was given the same information by Damji with respect to the said cheques and bank drafts (and cash) as the information set out on the cheques and bank drafts themselves, but in greater detail.

28. Accordingly, from Damji personally as well as from the faces of the cheques and bank drafts themselves, Cash Plus at all times knew, *inter alia*, (a) that the subject cheques and bank drafts in question had been issued by the drawers thereof "in trust" for the exclusive purpose of acquiring shares in STS or of investing in STS on terms agreed upon with the Plaintiffs and the Plaintiff Class and (b) that the proceeds from those cheques and bank drafts were trust funds to be (i) strictly and only used for the acquisition of STS shares or investment in STS in accordance with the Trust Terms or (ii) otherwise returned to the drawers thereof.

29. Damji further specifically informed Cash Plus he had given the Funds the right to request the return of the monies payable to Damji pursuant to those Funds, at any time they wished to do so.

30. With specific knowledge of the facts set out in paragraphs 25-29 above, including, *inter alia*, (i) the reason for the provision of the Funds, (ii) the description of the payee on the cheques and bank drafts as Salim Damji "in trust" and (iii) the Trust Terms impressed upon and/or relating to the proceeds from the Funds, the following, *inter alia*, occurred:

- a) Cash Plus agreed to accept the subject Funds for deposit into its bank account or accounts, once endorsed by Damji;
- b) Damji endorsed the cheques payable to him in trust and gave the subject Funds to Cash Plus for deposit into the bank account or accounts of Cash Plus;

- c) Cash Plus agreed to allow Damji to deal with the proceeds from the Funds deposited into its bank account or accounts as directed from time to time by Damji;
 - d) Between January 3, 2000 and January 24, 2002, about \$47,000,000.00 of such Funds from the Plaintiffs and the Plaintiff Class were so endorsed by Damji, so received by Cash Plus and so deposited by Cash Plus into its bank account or accounts;
 - e) From time to time during the same period of time, there were balances in the bank account or accounts of Cash Plus of more than \$20,000,000.00;
 - f) In return for allowing Damji the use of the bank account or accounts of Cash Plus for the wrongful purposes of depositing the subject endorsed cheques and bank drafts of the Plaintiffs and of the Plaintiff Class into its said bank accounts and thereafter using the proceeds for whatever purposes Damji had in mind, Cash Plus negotiated a fee scheme with Damji pursuant to which a total of about \$650,000.00 from the proceeds of the subject Funds was in one way or another retained by or paid to Cash Plus for its unjust benefit.
31. From the \$47,000,000.00 or so of proceeds from the subject Funds of the Plaintiffs and of the Plaintiff Class payable to Salim Damji "in trust" that were so endorsed by Damji, given to Cash Plus and deposited by Cash Plus into the bank account or accounts of Cash Plus, Damji requested and Cash Plus agreed to actively assist, abet and even enable Damji with the following disbursements, *inter alia*, from the said proceeds:
- a) Cash Plus, acting throughout as the appointed, authorized and apparent Agent of and for the Defendant, arranged for a total of about \$19,000,000.00 of electronic or wire money transfers for Damji through the use of the Defendant's Money Transfer Services. All of those money transfers were to or for the benefit of Olympic Sports Inc., namely, a gambling organization to, *inter alia*, Jamaica and elsewhere in the Caribbean (collectively "the

Transfers to Jamaica"). Upon arranging for the aforesaid money transfers as requested by Cash Plus, the Defendant reimbursed itself for the \$19,000,000.00 or so total of the Transfers by from time to time withdrawing and taking the said \$19,000,000.00 or so from the proceeds of the aforesaid Funds of the Plaintiffs and the Plaintiff Class in the bank account or accounts of Cash Plus.

- b) Cash Plus, both by accessing and using the Money Transfer Services of the Defendant as the Defendant's aforesaid Agent and with the express or implied agreement of the Defendant thereto, not only agreed to make the Transfers to Jamaica but deliberately and actively accommodated Damji and made the Transfers to Jamaica for Damji with and through the Defendant and, at that, while avoiding detection, suspicion, investigation and questioning with respect to, *inter alia*, money laundering. More particularly, because such Transfers of more than \$5,000.00 would or could, *inter alia*, trigger regulatory review of the Transfers, Cash Plus arranged with the Defendant to make voluminous daily Transfers in the identical amounts of \$5,000.00 for Damji on a virtual daily basis to or for the benefit of Olympic Sports Inc. in Jamaica and elsewhere with and through the Defendant to avoid, *inter alia*, money laundering detection or other investigation. In this way, Cash Plus effected the Transfers to Jamaica and with the assistance of the Defendant at the rate of tens of thousands of dollars per day up to \$150,000.00 per day and on a virtual day-to-day basis. Damji could not have done so without the assistance of Cash Plus and the related arrangements. Cash Plus made with the Defendant including, *inter alia*, to avoid detection by regulatory authorities and/or to assist Damji with his aforementioned wrongful conduct;

- c) Payments to (i) Mercedes (2), (ii) Downtown BMW (2) and (iii) Parkway Honda (1) totaling about \$700,000.00 for luxury motor vehicles. The subject vehicles were later found and sold, but at fractions of their purchase prices and with no recovery to the Plaintiffs or to the Plaintiff Class;
- d) Substantial payments in cash to Damji or at Damji's direction;
- e) About \$26,000,000.00 of the Funds were issued to Damji personally. Those Funds were mostly deposited by Damji in his account with Bank of Montreal. From there, the \$26,000,000.00 was wrongfully forwarded by Bank of Montreal to a gambling organization in Costa Rica for purposes of, *inter alia*, (i) money laundering, (ii) gambling, (iii) dissipation and/or (iv) disappearance from detection by the Plaintiff Class. None of the \$26,000,000.00 has been recovered by the Plaintiffs or the Plaintiff Class;
- f) During the same period of time and as part of his overall arrangements with Damji, Cash Plus also forwarded numerous bets for Damji to the aforesaid gambling organizations in Jamaica and Costa Rica even though Cash Plus obviously knew Damji was wrongfully funding those bets with the trust proceeds from the aforementioned Funds of the Plaintiffs and of the Plaintiff Class. Here again, Cash Plus was actively assisting, enabling and abetting Damji's wrongful, fraudulent and breach of trust conduct to the detriment of the Plaintiffs and of the Plaintiff Class.

32. As a result of the above, about \$47,000,000.00 of proceeds from the subject Funds of the Plaintiffs and of the Plaintiff Class, which were impressed with the aforementioned Trust Terms, were fraudulently and wrongfully obtained, misappropriated, dissipated and/or hidden by, *inter alia*, Damji with the knowledge, active receipt, knowing assistance, active enabling and abetting of Cash Plus. The Plaintiffs and the Plaintiff Class have not recovered their losses.

33. ~~More particularly, the Plaintiff and the Plaintiff Class have not recovered a dime on account of the aforementioned \$47,000,000.00 of proceeds from their subject cheques and bank drafts and have therefore suffered damages and losses equal to at least the said \$47,000,000.00~~

THE MISCONDUCT AND LIABILITY OF CASH PLUS TO THE PLAINTIFFS AND THE PLAINTIFF CLASS

34. The Plaintiffs repeat and rely upon the above and plead the following on behalf of themselves and the Plaintiff Class:

- a) Cash Plus knowingly assisted Damji in defrauding the Plaintiffs and the Plaintiff Class from the proceeds of the Funds deposited into the bank account or accounts of Cash Plus;
- b) Cash Plus knowingly assisted Damji in breaching the Trust Terms impressed upon and/or relating to the proceeds of the Funds deposited into the bank account or accounts of Cash Plus, to the direct detriment and loss of the Plaintiffs and of the Plaintiff Class;
- c) Cash Plus knowingly allowed and accepted the deposit and receipt of the Funds from the Plaintiffs and of the Plaintiff Class into the bank account or accounts of Cash Plus in furtherance of Damji's aforementioned fraudulent conduct as well as in breach of Damji's trust obligations to the Plaintiffs and to the Plaintiff Class and aggravated the resulting wrongful receipt of those proceeds by wrongfully allowing, assisting and in fact enabling Damji to misappropriate and in due course dissipate or hid those proceeds by subsequently disbursing the proceeds from the bank account or accounts of Cash Plus as set out above, once again, to the direct detriment and loss of the Plaintiffs and of the Plaintiff Class.

35. With respect to the pleas set out in paragraph 34 above, the Plaintiffs plead, *inter alia*, the following on behalf of themselves and of the Plaintiff Class:

- a) Repeating and relying upon the allegations set out above, Cash Plus had actual knowledge of Damji's fraudulent conduct, of the Trust Terms impressed upon and/or relating to the proceeds from the Funds of the Plaintiffs and of the Plaintiff Class and of the fact that the proceeds from the Funds were deposited into and received by Cash Plus in breach of Damji's trust obligations to the Plaintiffs and to the Plaintiff Class;
- b) That, in accepting the subject cheques and bank drafts from the Plaintiffs and from the Plaintiff Class for deposit into the bank account or accounts of Cash Plus and in assisting, abetting and enabling Damji in wrongfully getting his hands upon the said proceeds from those cheques and bank drafts as already more particularly set out above, Cash Plus willfully shut its eyes to the obvious including, inter alia, (i) Damji's fraudulent conduct, (ii) Damji's aforementioned breach of trust, (iii) its receipt of the proceeds in breach of Damji's trust obligations to the Plaintiffs and to the Plaintiff Class and (iv) the wrongful disbursement of those proceeds to Damji or at Damji's direction as already more particularly set out above, to the resulting direct detriment and loss of the Plaintiffs and of the Plaintiff Class;
- c) That, again by reason of the above, Cash Plus willingly and recklessly failed to make such inquiries as an honest and reasonable person would make with respect to the subject cheques and bank drafts of the Plaintiffs and of the Plaintiff Class prior to acceptance of the subject cheques for deposit and/or prior to disbursement of the proceeds from the subject deposited cheques and bank drafts. Had such inquiries been made, the Plaintiffs and the Plaintiff Class would not have suffered the detriment and loss which they did;
- d) That, again for the reasons set out above, Cash Plus had knowledge of circumstances which would indicate to any honest and reasonable person (i) Damji's fraudulent conduct, (ii) Damji's breach of trust, (iii) that the depositing of the Funds of the Plaintiffs and of the

Plaintiff Class into the bank account or accounts of Cash Plus was a breach of Damji's trust obligations to the Plaintiffs and the Plaintiff Class and (iv) that it was beyond doubt or beyond any sort of objective or subjective doubt level that the subsequent disbursements and uses of those proceeds were fraudulent and in breach of trust;

- e) That, again for the same reason, Cash Plus's knowledge of the prevailing circumstances required it to make honest and reasonable inquiries which, had they been made, would have confirmed or revealed Damji's fraudulent conduct, Damji's breach of trust and/or the fact the depositing of the subject endorsed cheques and bank drafts of the Plaintiffs and of the Plaintiff Class into the bank account or accounts of Cash Plus was a breach of trust and that the disbursement of those proceeds was fraudulent and in breach of trust;
- f) That Cash Plus wrongfully assisted, abetted, enabled and benefitted from Damji's fraud and/or breach of trust, and that Cash Plus was at least a party, if not a co-conspirator, to or with respect to Damji's aforesaid fraudulent conduct and breach of trust.

36. In addition to the allegations already set out above, the Plaintiffs plead the following on behalf of themselves and of the Plaintiff Class in support of the pleas in paragraphs 34:

- a) Cash Plus was not and never was in the business of accepting cheques such as the cheques of the Plaintiffs and of the Plaintiff Class for deposit into the bank account or accounts of Cash Plus. Cash Plus was essentially in the business of assisting individuals who were in need of ready cash by cashing cheques payable to those individuals and remitting the proceeds to them at the substantial discount for doing so. It was not in the business of receiving cheques payable to a payee "in trust" or of accepting tens of millions of dollars for deposit by a single customer and then redirecting those tens of millions of dollars as instructed by the customer, let alone, as here, redirecting almost \$20,000,000.00 to a gambling organization in Jamaica and elsewhere in the Caribbean;

- b) Cash Plus had to have known and in fact did know that no one would use the bank account or accounts of Cash Plus for the purpose of depositing tens of millions of dollars therein, except for an unlawful, illegal and wrongful purpose. Individuals with tens of millions of dollars for lawful purposes operate proper bank accounts with financial institutions. Cash Plus had to have known that Damji was using Cash Plus and the bank account or accounts of Cash Plus for unlawful and wrongful purposes including, more particularly, in breach of Damji's obligations and trust duties to the Plaintiffs and the Plaintiff Class;
- c) It was or should have been obvious to Cash Plus that there was no legitimate reason for Damji's aforesaid use of the bank account or accounts of Cash Plus;
- d) In fact, Cash Plus was never given any sort of acceptable explanation for Damji's use of the Cash Plus bank account or accounts as a dumping ground within which to deposit the subject cheques and bank drafts of the Plaintiffs and of the Plaintiff Class and from which to later get his hands and use the proceeds from the subject cheques and bank drafts nor, for that matter, even some sort of explanation;
- e) Cash Plus was fully aware of and actively involved in Damji's gambling activities including, *inter alia*, by arranging the aforementioned Transfers of about \$19,000,000.00 of the proceeds from the Funds of the Plaintiffs and the Plaintiff Class to Olympic Sports Inc. through the Defendant as already more particularly set out above and by its facsimile transmissions of Damji's betting instructions to Jamaica and Costa Rica with many of those betting instructions being in Cash Plus's own handwriting;
- f) Cash Plus knew that Damji was engaged in fraudulent conduct or, at the very least, in wrongful conduct which was in breach of his trust obligations to the Plaintiffs and to the Plaintiff Class. For example, there is no other explanation for Damji's use of the

proceeds from the subject Funds of the Plaintiffs and of the Plaintiff Class to, *inter alia*, (i) fund Money Transfers to Olympic Sports Inc. in Jamaica and elsewhere in the Caribbean, (ii) purchase expensive motor vehicles and (iii) fund disbursements of cash from those proceeds to Damji and others;

- g) Cash Plus specifically knew the purpose for which all of the subject cheques and bank drafts had been issued by the Plaintiffs and by the Plaintiff Class to Salim Damji "in trust" and was or should have been at all times aware there were Trust Terms impressed upon and/or relating to the proceeds from those cheques and bank drafts yet Cash Plus nevertheless knowingly arranged for the deposit of the subject endorsed cheques and bank drafts and actively assisted and enabled Damji to later get his hands on the proceeds in breach of Damji's obligations to the Plaintiffs and the Plaintiff Class including, more particularly, in violation and breach of the Trust Terms;
- h) Cash Plus wrongfully actively assisted and enabled Damji to defraud and wrongfully breach his trust obligations to the Plaintiffs and to the Plaintiff Class with respect to the subject cheques and bank drafts and the proceeds therefrom. Instead of, *inter alia*, refusing to do so, Cash Plus specifically chose to wrongfully prefer its own financial interests including, more particularly, ultimately directly or indirectly paying itself about \$650,000.00 from the proceeds of the subject cheques and bank drafts.

37. The Plaintiffs and the Plaintiff Class therefore plead that, by reason of facts and allegations more particularly set out above, Cash Plus was and is responsible and liable to the Plaintiffs and to the Plaintiff Class for the aforementioned \$47,000,000.00 or so of damages and losses which have been sustained by the Plaintiffs and by the Plaintiff Class but there is no way of pursuing recovery of the \$47,000,000.00 from Cash Plus because Cash Plus was dissolved on March 3, 2006, and has no assets.

THE LIABILITY OF THE DEFENDANT TO THE PLAINTIFFS AND TO THE PLAINTIFF CLASS

38. The Plaintiffs plead and rely upon the allegations already more particularly set out above and plead that the Defendant is vicariously liable to the Plaintiffs and to the Plaintiff Class for the following relating to transfers by Cash Plus by way of Western Union for or on behalf of Salim Damji between January 3, 2000 and January 24, 2002: (i) the aforementioned knowing assistance of Damji's ~~fraud and/or~~ breach of trust on the part of Cash Plus, (ii) the aforementioned knowing receipt and ~~disbursal or misappropriation of defrauded or~~ trust funds on the part of Cash Plus and (iii) the related negligence of Cash Plus.

39. The Plaintiffs further plead and rely upon, *inter alia*, the following in support of the Defendant's vicarious liability to the Plaintiffs and to the Plaintiff Class for the aforementioned liability of the Defendant's Agent, Cash Plus, to the Plaintiffs and the Plaintiff Class in relation to money transfers by Cash Plus by way of Western Union for or on behalf of Salim Damji between January 3, 2000 and January 24, 2002:

- a) Cash Plus was, at all material times and in relation to Damji and the events, transactions and circumstances relating to the claims of the Plaintiffs and the Plaintiff Class, the Defendant's duly appointed, authorized and apparent Agent including more particularly, with respect to the Defendant's Money Transfer Services and the Transfers to Jamaica;
- b) The Money Transfer Services accessed and used by Cash Plus to implement, effect and cause the completion of the Transfers to Jamaica were always exclusively those of the Defendant. The Defendant is therefore responsible and liable to the Plaintiffs and to the Plaintiff Class for all of the consequences of the Transfers to Jamaica and for all damages and losses they sustained as a result of Transfers, including the Transfers to

Jamaica and the Defendant's consequent withdrawals for payment to itself of the proceeds from the Funds of the Plaintiffs and of the Plaintiff Class from the bank account or accounts of Cash Plus;

- c) It was the obligation and duty of the Defendant to monitor, supervise and ensure the propriety, legality and legitimacy of all Money Transfers, including the Transfers to Jamaica, through the Defendant's Money Transfer Services but the Defendant wrongfully and negligently failed to discharge that obligation and duty insofar as, *inter alia*, Cash Plus, the dealings between Cash Plus and Damji, Damji himself and the Transfers to Jamaica. As a result, the Plaintiffs and the Plaintiff Class were defrauded by Damji and their Funds were misappropriated to their detriment and loss;
- d) The Defendant had a duty to the Plaintiffs and to the Plaintiff Class in connection with the operation of its Money Transfer Services including, *inter alia*, to ensure that the Defendant and Cash Plus "know their customer" with respect to Damji to ensure that Damji, the receipts from Damji deposited into the bank account or accounts of Cash Plus including the sources of those deposits and the Transfers to Jamaica were all proper, legitimate and legal. The Defendant not only failed but in fact chose not to discharge that duty because of the profits the Defendant was earning from the Transfers to Jamaica;
- e) The Defendant was aware of the astounding and incredible daily volumes, daily totals, weekly totals, monthly totals and virtual daily substantial Transfers to Jamaica and had to have known in the circumstances that the Transfers to Jamaica defied common sense and were illegal, unlawful and wrongful but chose to blind itself and shut its eyes thereto in the interests of profitability and greed;

- f) The Defendant knew that its "Quick Collect" Transfer forms that Cash Plus was using in relation to the Transfers to Jamaica were not being properly or fully filled out but ignored that fact contrary to its own policies and procedures in the interests of profitability and greed.

40. The Plaintiffs therefore plead that the Defendant is vicariously liable to the Plaintiffs and to the Plaintiff Class for the aforesaid \$19,000,000.00 ~~or so~~ that the Plaintiffs and the Plaintiff Class lost by reason of the aforementioned misconduct of Cash Plus and are therefore seeking recovery of same from the Defendant in this Action.

41. The Plaintiffs repeat and rely upon the above and plead the following on behalf of themselves and the Plaintiff Class in relation to money transfers by Cash Plus by way of Western Union for or on behalf of Salim Damji between January 3, 2000 and January 24, 2002:

- a) The Defendant knowingly assisted Damji in defrauding the Plaintiffs and the Plaintiff Class from the proceeds of the Funds deposited into the bank account or accounts of Cash Plus to the detriment of the Plaintiffs and the Plaintiff Class by, *inter alia*, approving and/or allowing and/or completing the Transfers to Jamaica and withdrawing the amounts of those Transfers along with its charges and fees relating thereto from the proceeds of the Funds in the bank account or accounts of Cash Plus;
- b) The Defendant knowingly assisted Damji in breaching the Trust Terms impressed upon and/or relating to the proceeds of the Funds deposited into the bank account or accounts of Cash Plus, to the direct detriment and loss of the Plaintiffs and of the Plaintiff Class by, *inter alia*, approving and/or allowing and/or completing the Transfers to Jamaica and withdrawing the amounts of those Transfers along with its charges and fees relating thereto from the proceeds of the aforesaid Funds in the bank account or accounts of Cash Plus;

- c) The Defendant knowingly approved, allowed and/or completed the Transfers to Jamaica in furtherance of Damji's aforementioned ~~fraudulent conduct as well as in~~ breach of Damji's trust obligations to the Plaintiffs and to the Plaintiff Class to the direct detriment and loss of the Plaintiffs and of the Plaintiff Class;
- d) The Defendant wrongfully withdrew and paid itself about \$17,000,000.00 from the proceeds of the Funds of the Plaintiffs and the Plaintiff Class that had been deposited into the bank account or accounts of Cash Plus as set out above.

42. With respect to the pleas set out in paragraph 40 above, the Plaintiffs plead, *inter alia*, the following on behalf of themselves and of the Plaintiff Class:

- a) Repeating and relying upon the allegations set out above, the Defendant had actual knowledge of Damji's ~~fraudulent conduct and~~ breach of trust;
- b) That, in approving, accepting and completing the Transfers to Jamaica, the Defendant willfully shut its eyes to the obvious including, *inter alia*, (i) Damji's fraudulent conduct, (ii) Damji's use of defrauded funds and (iii) Damji's money laundering, to the resulting direct detriment and loss of the Plaintiffs and of the Plaintiff Class;
- c) That, again by reason of the above, the Defendant willingly and recklessly failed to make such inquiries as an honest and reasonable person would make with respect to the requested Transfers to Jamaica including inquiries regarding the employment, business history, finances and assets of Damji, the sources of the funding for the Transfers to Jamaica and the reasons for the Transfers to Jamaica prior to approving, allowing and completing the Transfers to Jamaica. Had such inquiries been made, Damji's ~~fraud and~~ breach of trust would have been revealed, the requested Transfers to Jamaica would not have been justified, the Transfers to Jamaica would not have taken place, none of the proceeds from the Funds of the

Plaintiffs and the Plaintiff Class would have been withdrawn from the bank account or accounts of Cash Plus and the Plaintiffs and the Plaintiff Class would not have suffered the detriment and loss which they did;

- d) That, again for the reasons set out above, the Defendant had knowledge of circumstances which would indicate to any honest and reasonable person (i) ~~Damji's fraudulent conduct~~, (ii) Damji's breach of trust, (iii) Damji's misappropriation of funds from the Plaintiffs and the Plaintiff Class, (iv) Damji's wrongful use of the bank account and accounts of Cash Plus including, *inter alia*, to money launder or cleanse the monies he had defrauded from the Plaintiffs and the Plaintiff Class, (v) that Damji was attempting to money launder or wrongfully distance the aforesaid trust monies of the Plaintiffs and the Plaintiff Class by transferring them offshore and (vi) that it was beyond doubt or beyond any sort of objective or subjective doubt level that the Transfers to Jamaica and the reasons for the deposits of the cheques and bank drafts of the Plaintiffs and of the Plaintiff Class into the bank account or accounts of Cash Plus were ~~fraudulent and~~ in breach of trust;
- e) That, again for the same reasons, the Defendant's knowledge of the prevailing circumstances required it to make honest and reasonable inquiries which, had they been made, would have confirmed or revealed ~~Damji's fraudulent conduct~~, Damji's breach of trust and/or the fact the depositing of the subject endorsed cheques and bank drafts of the Plaintiffs and of the Plaintiff Class into the bank account or accounts of Cash Plus was a breach of trust and that the requested Transfers to Jamaica were also fraudulent and in breach of trust;
- f) That the Defendant wrongfully assisted, abetted, enabled and benefitted from Damji's fraud and/or breach of trust and that the Defendant, both personally as well as through Cash Plus,

was at least a party to or with respect to Damji's aforesaid fraudulent conduct and breach of trust.

43. In addition to the allegations already set out above, the Plaintiffs plead, inter alia, the following on behalf of themselves and of the Plaintiff Class in support of the pleas in paragraphs 40 and 41:

a) Cash Plus was not and never was in the business of accepting cheques, bank drafts or cash such as from the ~~cheques of the~~ Plaintiffs and of the Plaintiff Class for deposit into the bank account or accounts of Cash Plus. Cash Plus was essentially in the business of assisting individuals who were in need of ready cash by cashing cheques payable to those individuals and remitting the proceeds to them at the substantial discount for doing so. It was not in the business of receiving cheques payable to a payee "in trust" or of accepting tens of millions of dollars for deposit by a single customer and then redirecting those tens of millions of dollars as instructed by the customer, let alone, as here, redirecting almost \$20,000,000.00 to a gambling organization in Jamaica and elsewhere in the Caribbean. The Defendant knew or should have known or ascertained all of that by reason of its dealings with and knowledge of Cash Plus and the unbelievable virtually daily Transfers to Jamaica and volumes of those Transfers;

b) Cash Plus had to have known and in fact did know that no one would use the bank account or accounts of Cash Plus for the purpose of depositing tens of millions of dollars therein, except for an unlawful, illegal and wrongful purpose. Individuals with tens of millions of dollars for lawful purposes operate proper bank accounts with financial institutions. Cash Plus had to have known that Damji was using Cash Plus and the bank account or accounts of Cash Plus for unlawful and wrongful purposes including, more particularly, in breach of Damji's obligations and trust duties to the Plaintiffs and the Plaintiff Class. Again, the

Defendant knew or should have ascertained all of that. If it did not do so, it also negligently failed to do so but is in any event responsible for the actions of its Agent, Cash Plus;

- c) It was or should have been obvious to the Defendant that there was no legitimate reason for Damji' s aforesaid use of the bank account or accounts of Cash Plus including, *inter alia*, to fund the Transfers to Jamaica;
- d) In fact, the Defendant was never given any sort of acceptable explanation, or any explanation whatsoever, for Damji's use of the Cash Plus bank account or accounts as a dumping ground within which to deposit tens of millions of dollars of the subject cheques and bank drafts of the Plaintiffs and of the Plaintiff Class and from which to later get his hands on and use the proceeds from the subject cheques and bank drafts;
- e) Like Cash Plus, the Defendant knew or should have known that Damji was engaged in ~~fraudulent~~ conduct or, ~~at the very least, in wrongful conduct~~ which was in breach of his trust obligations to the Plaintiffs and to the Plaintiff Class. For example, there is no other explanation for Damji's use of the proceeds from the Funds of the Plaintiffs and of the Plaintiff Class to, *inter alia*, fund the Transfers to Jamaica and elsewhere in the Caribbean. Cash Plus was the Agent of the Defendant and tens of millions of dollars were involved with the Transfers to Jamaica on behalf of Damji who had no apparent assets or source of income yet the Defendant approved, allowed and completed the Transfers to Jamaica when it knew or should have known the Transfers were not only suspicious but had to be for unlawful, illegal or wrongful purposes;
- f) Cash Plus specifically knew the purpose for which all of the Funds had been issued by the Plaintiffs and by the Plaintiff Class to Salim Damji "in trust" and was or should have been

at all times aware there were Trust Terms impressed upon and/or relating to the proceeds from those cheques and bank drafts yet Cash Plus nevertheless knowingly arranged for the deposit of the subject endorsed cheques and bank drafts and actively assisted and enabled Damji to later get his hands on the proceeds in breach of Damji's obligations to the Plaintiffs and the Plaintiff Class including, more particularly, in violation and breach of the Trust Terms. In the prevailing circumstances and given that Cash Plus was acting throughout as the Agent for the Defendant, the Defendant knew or should have known all of same;

g) The Defendant wrongfully actively assisted and enabled Damji to ~~defraud and~~ wrongfully breach his trust obligations to the Plaintiffs and to the Plaintiff Class by the Transfers to Jamaica. Instead of, *inter alia*, refusing to complete the Transfers to Jamaica and of investigating Damji, the Defendant specifically chose to prefer its own financial interests by paying itself substantial charges and fees from its withdrawals of the proceeds of the cheques and bank drafts of the Plaintiffs and the Plaintiff Class from the bank account or accounts of Cash Plus.

44. The Plaintiffs therefore plead that the Defendant is independently liable to the plaintiffs and the Plaintiff Class for (i) knowing assistance of Damji's ~~fraud and~~ breach of trust to the extent of the aforesaid \$19,000,000.00 of proceeds from the Funds of the Plaintiffs and the Plaintiff Class which were deposited into the bank account or accounts of Cash Plus as set out above and (ii) knowing receipt and disbursal or misappropriation of about \$19,000,000.00 of proceeds from the Funds of the Plaintiffs and the Plaintiff Class which were deposited into the bank accounts of Cash Plus as set out above between the period January 3, 2000 to January 24, 2002.

45. The Plaintiffs plead that, in the prevailing circumstances, the Defendant (i) owed a duty of care to the Plaintiffs and the Plaintiff Class with respect to the Defendant's Money Transfer Services including, *inter alia*, in relation to the Defendant's dealings with Cash Plus and the Transfers to Jamaica but (ii) negligently breached that duty of care to the Plaintiffs and to the Plaintiff Class for the reasons already more particularly set out above and to the detriment and loss of the Plaintiffs and the Plaintiff Class to the extent of as much as \$19,000,000.00.
46. The Plaintiffs repeat and rely upon the allegations already set out above and plead that the Defendant thereby wrongfully and/or negligently violated or breached its statutory obligations pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C.2000 ("the Act"), as amended, to the resulting detriment and loss of the Plaintiffs and the Plaintiff Class. The Plaintiffs plead that the Defendant is and should be held liable to the Plaintiffs and to the Plaintiff Class for their aforementioned damages by reason of the Defendant's violations and breaches of the *Act*.
47. The Plaintiffs therefore state that the Plaintiffs and the Plaintiff Class are seeking recovery from the Defendant of the \$19,000,000.00 ~~or so for the Extended Class and/or, alternatively, of the \$19,000,000.00 or so for the Restricted Class~~ or, in the further alternative, for such other amount and such other Class as the Court may deem appropriate.
48. The Plaintiffs and the Plaintiff Class further seek an award of punitive damages from the Defendant stating that the Defendant's conduct has been highhanded and deserving of punitive damages, given, inter alia, the massive volume of the Funds which flowed

through the Cash Plus account and which was transferred using the Defendant's Money Transfer Services. The Plaintiffs and the Plaintiff Class further plead that the very purpose of the applicable legislation and policies and procedures of Western Union was to prevent these very actions of Damji and Cash Plus, pleaded herein. The Defendant has the ability to pay an award of punitive damages.

The Plaintiffs propose that this action be tried at Toronto.

Date: ~~April 25, 2008~~ December 18, 2015.

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Court File No. 08-CV-353663-CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
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AMENDED STATEMENT OF CLAIM

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