AMENDED THIS Nov 04/22 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02 (4)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
"Jonathan Cosgrove"
REGISTRAR
SUPERIOR COURT OF JUSTICE

Court File No. CV-16-558165-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ARLENE MCDOWELL and SAVERIO AVERSA

Plaintiffs

-and-

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., CENTRO MORTGAGE INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy CROWE SOBERMAN INC, FFM CAPITAL INC., ROSALIA SPADAFORA, SAUL PERLOV, DEREK SORRENTI, and SORRENTI LAW PROFESSIONAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, 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 August 8, 2016 Issued by "F. Youssef"
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto, ON M5G 1R7

TO: Fortress Real Capital Inc.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: Fortress Real Developments Inc.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: Centro Mortgage Inc. (aka Building & Development Mortgages Canada Inc.)
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: Estate of Ildina Galati by its Trustee in Bankruptcy, Crowe Soberman Inc.
c/o Crowe Soberman Inc., Licensed Insolvency Trustee
2 St. Clair Ave. E., Suite 1100
Toronto, ON M4T 2T5

ND TO: FFM Capital Inc.
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

AND TO: Rosalia Spadafora
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

AND TO: Saul Perlov
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

AND TO: Derek Sorrenti
Sorrenti Law Professional Corporation
310-3300 Highway 7
Vaughan, ON L4K 4M3

AND TO: Sorrenti Law Professional Corporation
310-3300 Highway 7
Vaughan, ON L4K 4M3

CLAIM

1. The Plaintiffs, Arlene McDowell and Saverio Aversa, claim on their own behalf and on behalf of the proposed Class (as defined below):

(a) an order pursuant to the *Class Proceedings Act*, *1992*, S.O. 1992, c. 6 (the "*CPA*"), certifying this action as a class proceeding, and appointing McDowell and Aversa as the Representative Plaintiffs;

(b) a declaration that Fortress Real Developments Inc. ("Fortress Developments") holds in trust for the benefit of the Plaintiffs and the Class their interest in, or any funds received in respect of an agreement (the "Fortress Agreement") dated July 17, 2012 with Mady Collier Centre Ltd. ("Mady Collier") and any amendments thereto or further agreements between the same parties with respect to a mixed use real estate development project (the "Collier Centre"), built on land located at 90 Collier Street and 55 Mulcaster Street in Barrie, Ontario, and that all payments made to Fortress Developments by Mady Collier are impressed with a constructive trust in favour of the Plaintiffs and the Class, and an order compelling Fortress Developments to disgorge to the Plaintiffs and the Class all funds it received under the Fortress Agreement;

(c) a declaration that Fortress Real Capital Inc. ("Fortress Capital"), Fortress Developments, FFM Capital Inc. ("FFM"), Building and Development Mortgages Canada Inc. ("BDMC"), Ildina Galati ("Galati"), Derek Sorrenti, and Sorrenti Law Professional Corporation ("Sorrenti Law") breached their respective fiduciary duties owed to the Plaintiffs and the Class;

(d) an order compelling disgorgement of all funds received by those defendants who are found by the Court to be fiduciaries of the Plaintiffs and the Class (together, the "Investors") with respect to the Collier Centre Project;

(e) an accounting and equitable tracing of all funds received by Fortress Capital, Fortress Developments, Mady Collier, BDMC, FFM, Sorrenti, and Sorrenti Law from the Plaintiffs and the Class;

(f) rescission of all agreements between the Investors and Mady Collier, BDMC, the Fortress Brokers, or Sorrenti with respect to their investments in the syndicated mortgage registered against title to the subject lands ("the SML") as Instrument No.: SC1005953;

(g) general damages in the amount of $25,000,000 or as otherwise assessed by the court;

(h) exemplary and punitive damages in the amount of $2,500,000;

(i) pre-judgment and post-judgment interest at the rate of 8% per annum pursuant to the terms of the SML;

(j) in the alternative to subparagraph (i), pre-judgment and post-judgment interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1980, c. 43;

(k) costs of this action on a substantial indemnity basis together with the Harmonized Sales Tax thereon;

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

(m) the costs of providing notice of certification, notice of resolution of the common issues trial, any other notices required to be provided to the Class, and the costs of administering the plan of distribution of the recovery in this action; and

(n) Such further and other relief as this Honourable Court deems just.

DEFINITIONS

2. In this claim, the following definitions are used:

(a) **"BDMC"** means Building & Development Mortgages Canada Inc., which was at all material times a licensed mortgage brokerage firm;

(b) **"*BIA*"** means *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3;

(c) "**Class**" and "**Class Members**" means all persons in Canada who invested in a syndicated mortgage in respect of the Collier Centre project, that was secured by a charge registered against title to lands located at 90 Collier Street and 55 Mulcaster Street in Barrie, Ontario, as Instrument SC1005953;

(d) **"*CCAA*"** means *Companies' Creditors Arrangement Act* R.S.C., 1985, c. C-36;

(e) **"Collier Centre Project"** or **"Project"** means the mixed use development at 90 Collier Street and 55 Mulcaster Street in Barrie, Ontario;

(f) **"CUSPAP"** means the Canadian Uniform Standards of Professional Appraisal Practice which are the professional standards that appraisers must meet in performing a real property valuation as established by the Appraisal Institute of Canada ("AACI");

(g) **"FAAN"** means FAAN Mortgage Administrators Inc.;

(h) **"FFM"** means FFM Capital Inc., which was a licensed mortgage brokerage firm, that commenced carrying on business in 2013, using the trade name Fortress Financial Management, and which made an assignment into bankruptcy on December 4, 2018;

(i) **"Fortress Brokers"** means, jointly, FFM Capital Inc., FMP Mortgage Investments Inc., and FDS Broker Services Inc.;

(j) **"Fortress Collier"** means Fortress Collier Centre Ltd., a single-purpose corporation incorporated under the law of the Province of Ontario with an office in Richmond Hill, incorporated in 2015 by Rathore and Petrozza to acquire and develop the Collier Centre lands following Mady Collier's collapse;

(k) "**Fortress Defendants**" or **"Fortress"** means, jointly, Fortress Capital and Fortress Developments;

(l) **"FSCO"** means the Financial Services Commission of Ontario which regulated the financial services industry, including regulation and licensing of mortgage brokers, agents, brokerages and mortgage administrators with respect to dealing and trading in mortgages in Ontario, and which was replaced by FSRA in June 2019;

(m) **"FSRA"** means the Financial Services Regulatory Authority of Ontario, a regulatory commission established under the *Financial Services Regulatory Act of Ontario*, 2006 and replacing the Financial Services Commission of Ontario in June 2019;

(n) **"Mady Collier"** means Mady Collier Centre Ltd. which is an Ontario corporation that was the original developer of the mixed-use development at 90 Collier Street and 55 Mulcaster Street in Barrie, Ontario which entered into the SML with the Plaintiffs and other Investors;

(o) **"Mady Guarantors" or "Guarantors"** means David Mady Investments (2008) Inc. and D. Mady Holdings Inc., which are Ontario corporations and affiliates of Mady Collier, and which provided a guarantee of Mady Collier's obligations under the SML;

(p) **"*MBLAA*"** means *Mortgage Brokerages Lenders and Administrators Act 2006*, S.O. 2006, c. 29;

(q) **"SML"** means the syndicated mortgage loan (a mortgage that secures a debt obligation in respect of which two or more persons are lenders) granted by the Plaintiffs and the Class to Mady Collier and that was secured by a charge registered on title to the subject lands as instrument no. SC1005953; and,

(r) **"Sorrenti Defendants"** means Sorrenti and Sorrenti Law, inclusive of any other lawyers employed by Sorrenti Law who provided ostensibly independent legal advice to the SML Investors.

NATURE OF THE ACTION

3. This action concerns a syndicated mortgage loan made by the Plaintiffs and the proposed Class Members that was registered against the lands underlying the Collier Centre Project. Investments in the SML were marketed and sold to the Class by Fortress, BDMC, FFM, the other Fortress Brokers, and other mortgage brokerage firms or referring parties acting as subagents to BDMC, and for whom BDMC is liable in law.

4. The Collier Centre Project lands are located at 90 Collier Street and 55 Mulcaster Street in Barrie, Ontario. The development was planned as a mixed-use development comprised of residential condominium towers and commercial space. The legal description of the lands is set out at Schedule "A" to this Second Fresh as Amended Statement of Claim.

THE PARTIES

5. Arlene McDowell is a retiree who lives in the City of Toronto, in the Province of Ontario. McDowell invested in the SML in October 2012.

6. Saverio Aversa works in the construction industry, and lives in the City of Vaughan, in the Province of Ontario. Aversa and his wife invested in the SML in November 2012.

7. McDowell and Aversa (together "the Plaintiffs") bring this action on their own behalf and on behalf of the proposed Class of:

> All persons in Canada who invested prior to January 30, 2015 in a syndicated mortgage in respect of the Collier Centre Project No. 1, registered against title to lands located at 90 Collier Street and 55 Mulcaster Street, Barrie, Ontario, as Instrument SC1005953.

8. Fortress Developments is an Ontario corporation incorporated on July 9, 2012 with an office in Richmond Hill, Ontario. It carried on the business of real estate development, and as a development consultant that included assisting other developers in obtaining financing for their developments. Its officers, directors and owners are Vince Petrozza and Jawad Rathore (the "Fortress Principals").

9. Fortress Capital is a federal corporation incorporated in 2009 carrying on substantially the same business as Fortress Developments, and sharing office space with it. Its sole director and shareholder is Vince Petrozza.

10. Together, Fortress facilitated providing development loans to real estate developers through syndicated mortgages sold to unsophisticated retail investors.

11. Centro Mortgage Inc. changed its name to BDMC in or about January 2016. It is an Ontario corporation which had an office at the same location as Fortress in Richmond Hill. At all relevant times, BDMC was a licensed mortgage brokerage and a licensed mortgage administrator.

12. BDMC was the main mortgage broker that Fortress used to raise money from the investing public to fund development loans. The money was raised through syndicated mortgage loans. The loan proceeds were meant to cover the "soft costs" of real estate developments in the early stages of development. In many Fortress projects, BDMC also held the syndicated mortgage loans as a trustee for the syndicated investors, or acted as mortgage administrator, or both. In this case, it became the mortgage administrator after the original SML was discharged from title and replaced with a collateral charge granted by Fortress Collier.

13. Until some time in 2013, BDMC acted as the mortgage broker for both Fortress and for the investors in Fortress syndicated mortgage loans. Thereafter, BDMC was not the broker of record for the investors, but it continued to act in a conflict of interest and performed many functions of the mortgage broker for the investors, including conducting project due diligence reviews and drafting written disclosures for the investors - including the statutorily mandated FSCO disclosure forms and obtaining valuations of the properties securing the syndicated mortgage loans, which were to be disclosed to the investors as part of the disclosure package. In carrying out these functions, BDMC was in a conflict of interest with respect to its duties to investors, its duties to the borrower, and in respect of its own financial interests, which were tied to those of the Fortress Defendants.

14. On February 1, 2018, FSCO issued an order, on consent, revoking BDMC's mortgage brokerage license pursuant to s. 19 of the *MBLAA*. BDMC was ordered to pay an administrative penalty of $400,000 pursuant to s. 39 of the *MBLAA*. The license of Vince Petrozza, who was a director, and the vice-president and secretary of BDMC, was revoked. FSCO's actions arose from BDMC's involvement in Fortress syndicated mortgages.

15. As the Investors' mortgage administrator for the replacement collateral charge (referenced below), BDMC owed the Class a duty of care to act as a reasonably prudent mortgage administrator to protect their interests, as well as fiduciary duties, and statutory duties imposed by the *MBLAA*.

16. As the mortgage broker for the SML, BDMC owed the Class a duty of care to act as a reasonably prudent mortgage broker to protect the Class' interests under the SML, as well as fiduciary duties, and statutory duties imposed by the *MBLAA*.

17. On April 20, 2018, the Ontario Superior Court of Justice appointed FAAN as Trustee of all of the assets, undertakings and properties of BDMC, including all of the assets in the possession of or under the control of BDMC, including lenders under any syndicated mortgage, and all real property charges in favour of BDMC, until all assets under all syndicated mortgage loans have been realized and all property has been distributed to those entitled to it. This included BDMC's role as administrator for the Investors' interest in the replacement collateral charge granted by Fortress Collier. FAAN is now the trustee and mortgage administrator for the Investors.

18. Galati resided in Vaughan, Ontario and was at all material times the sole owner, and a director and officer of BDMC. Galati was a licensed mortgage broker and was the principal mortgage broker of BDMC at all material times. On or about February 1, 2018, as part of BDMC's

settlement with FSCO, Galati surrendered her broker license, and was required to cease all mortgage brokering activities effective February 5, 2018.

19. Galati died on September 26, 2020. On March 17, 2021 the Galati Estate made an assignment into bankruptcy. By order of the Bankruptcy Court dated September 13, 2021, the statutory stay of proceedings as against the Galati Estate in respect of this action was lifted.

20. FFM was a corporation incorporated under the laws of the Province of Ontario with an office in the City of Vaughan. The company carried on business under the trade name Fortress Financial Management. FFM was a mortgage brokerage licensed and governed by the provisions of the *MBLAA*, from July 10, 2013 until December 4, 2018 when it made an assignment in bankruptcy. By order of the Bankruptcy Court dated March 15, 2021, the statutory stay of proceedings as against FFM in respect of this action was lifted.

21. On February 1, 2018, FSCO issued an order that FFM pay an administrative penalty under section 39 of the *MBLAA* of $235,000 relating to its involvement in the Fortress syndicated mortgages.

22. Rosalia Spadafora ("Spadafora") was the principal broker of FFM from January 28, 2014 until her license was revoked by FSCO under section 19 of the *MBLAA* on February 1, 2018 because of her involvement in Fortress syndicated mortgages.

23. Saul Perlov ("Perlov") was the principal broker of FFM from at least July 25, 2013 until October 31, 2013.

24. This action is brought against Perlov and Spadafora only with respect to those Class members for whom FFM was the mortgage broker, and in respect of claims relating to these

defendants' negligence while they were acting as the principal brokers of FFM during the time periods set above.

25. Mady Collier is a corporation incorporated under the laws of the Province of Ontario with an office in the City of Markham. Mady Collier was the developer of the Collier Centre Project, and is liable for all amounts payable under the SML, including all costs incurred by the Investors in enforcing the SML debt.

26. Mady Guarantors are corporations incorporated under the laws of the Province of Ontario. Mady Collier and Mady Guarantors are related companies. Mady Guarantors guaranteed Mady Collier's obligations to the Investors under the SML, and were liable for all amounts payable thereunder. Both Sorrenti Law and BDMC failed in their obligations to pursue repayment of the SML from Mady Guarantors after the SML went into default.

27. Sorrenti is a lawyer licensed to practice law in Ontario. He practices through his professional corporation, Sorrenti Law, from offices in Vaughan, Ontario. From time to time, the Sorrenti Defendants employed other lawyers, who assisted the Sorrenti Defendants in providing the services set out herein with respect to the Plaintiffs' and the Class' investments in the SML. The Sorrenti Defendants are vicariously liable for the acts or omissions of their employees.

28. The Sorrenti Defendants provided ostensibly "independent" legal advice ("ILA") to the Investors about their proposed investments in the SML. The legal advice was not independent, and the Sorrenti Defendants breached the duty of care and fiduciary duty they owed to the Investors by providing negligent advice while they were acting in a conflict of interest.

29. Sorrenti acted as bare trustee to hold the SML investments of those Class Members who did not hold the SML in a registered account. Olympia Trust Company ("Olympia") held in trust the interests of those Class Members who held the SML in a registered account. After the charge securing the SML was discharged from title, BDMC assumed the role of Trustee in respect of the replacement collateral charge granted by Fortress Collier to the Investors. Sorrenti breached the duty of care and fiduciary duty he owed to the Investors by his negligence in fulfilling his role as the Investors' trustee, as set out below.

30. Sorrenti Law was retained by the Investors to register a charge on title to the Collier Centre Project lands, to secure the SML debt. Sorrenti Law breached its contract and breached its fiduciary duty owed to the Investors by registering charge terms that were materially different than the terms of the SML Agreement. This would have caused the Investors to lose their priority as a secured lender if construction financing had exceeded $61.6 million.

31. Sorrenti Law was also the mortgage administrator for all Class Members who did not hold their investment in a registered account. Sorrenti Law breached the duty of care and fiduciary duty it owed to the Investors by its negligence in fulfilling its role as mortgage administrator, as set out below.

32. On September 30, 2019, on the application of the Law Society of Ontario, FAAN was appointed as trustee of all of the assets, undertakings and properties of the Sorrenti Defendants relating to their professional business of trusteeship (and administration of) syndicated mortgage loans in Fortress projects, including all of the assets in the possession or under the control of the Sorrenti Defendants relating to their syndicated mortgage loan administration business. The

Sorrenti Defendants had been incapable and incompetent in fulfilling their role as trustee and mortgage administrator of the SML, as particularizing below.

MORTGAGE LAW IN ONTARIO

33. In Ontario, the mortgage brokerage industry is governed by the provisions of the *MBLAA* and its regulations. The *MBLAA* and its regulations set out standards of practice for mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors.

34. At the relevant times, the mortgage brokerage industry was regulated by FSCO and then FSRA, under the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, and the *FSRA Act*, respectively.

35. A license is required for anyone who:

(a) solicits a person or entity to borrow or lend money on the security of real property;

(b) negotiates or arranges a mortgage on behalf of another person or entity;

(c) carries on the business of dealing and trading in mortgages;

(d) solicits a person or entity to buy or sell mortgages;

(e) buys or sells mortgages on behalf of another person or entity;

(f) lends money on the security of real property; or

(g) holds themselves out as lending money on the security of real property.

36. The *MBLAA* codifies much of the previous common law with respect to the duties of mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors. Its regulations set out high standards of practice for mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors.

37. At all times, Fortress was acting as an unlicensed mortgage broker, and in breach of the statutory duties established under the *MBLAA*. At all times, BDMC, Galati, the Fortress Brokers, Perlov, Spadafora and the Sorrenti Defendants knew or ought to have known that Fortress was acting as an unlicensed mortgage broker, but they turned a blind eye to this misconduct because they wished to enrich themselves through their roles in supporting Fortress' syndicated mortgage business.

38. FSCO requires that investors receive an appraisal of the investment property based on its "as is" value if one has been prepared within the preceding 12 months. Appraisals are to be prepared in accordance with the CUSPAP standards established by the AACI. This requirement was known to BDMC, Fortress, FFM, Perlov, Spadafora, Galati, and the Sorrenti Defendants, but they ignored this requirement, and provided advice and made misrepresentations to the Investors based on opinions of value on an as-built basis which they represented to be "as is" appraisals. This resulted in the Investors being duped into believing their investments were fully secured on the Project lands, when they were not.

FORTRESS' BUSINESS MODEL

39. The Fortress Defendants, BDMC and FFM followed the same business model for each of the developments in which they raised capital for developers and builders through the vehicle of syndicated mortgages sold to individual retail investors, including with respect to the Collier Centre Project.

40. The Fortress Defendants acted as one corporate enterprise. Fortress Developments was primarily the entity that entered into development loan agreements with third party developers/builders, while Fortress Capital was primarily responsible for raising the investment

capital through the syndicated mortgages, which were used to fulfill Fortress' obligations under the development loan agreements. Both companies acted in concert, shared office space, shared management and staff, and pooled their financial resources.

41. Fortress followed a business model whereby it would enter into development loan agreements with developers/builders in which Fortress promised to provide real estate financing for the "soft costs" of the developments in return for 50% of the profits to be generated by the development. In some cases, the developer/builder was a single purpose entity incorporated wholly or partially by the Fortress Principals. (This was the case in respect of Fortress Collier, the entity that purchased the Collier Centre Project after Mady Collier filed for CCAA protection.)

42. Syndicated mortgage loans aggregate small investors' loans, which are held in the name of a trustee. The trustee then lends the aggregate amount of the syndicated mortgage loan capital to the developer through a loan agreement executed by the trustee acting on behalf of the beneficiary investors. The loan is secured by way of a charge registered on title to the development lands, often listing the names of all the investors as a schedule.

43. Prior to the popularization of syndicated mortgage financing by Fortress and other companies, the financing for the soft costs of a development was usually obtained through "mezzanine" financing, which is typically only available to a developer at higher interest rates than that charged on mortgages for the acquisition of the subject lands or for construction costs, both of which are registered in priority to mezzanine financing. Because of its subordinate position, mezzanine financing is risky and the interest rates are commonly as high as 30%, reflective of the degree of risk involved in the investment. The SML was high risk mezzanine financing, but the risk of mezzanine financing was never disclosed or explained to the Investors.

44. Fortress' development agreements with developers/builders called for advance payments to Fortress of "anticipated profits" at the time the financing was raised. This resulted in a substantial portion of investors' money (approximately 35%) being paid to Fortress years before any profits were actually earned, if at all. It diverted the loan money away from the developer or builder. Fortress used the funds that it received to pay mortgage brokers and agents' commissions at inflated rates of 15% in total, as well as to pay the Sorrenti Defendants for the allegedly "independent" legal advice that they provided to investors (discussed further below). The rest it kept as its own profits which were not returned to the developer if there were no profits generated by the development, as was the case with the Collier Centre Project. The fact that Fortress held back approximately 35% of the Investors' fund to pay these Fortress-related fees and commission was not disclosed, including to the Investors, and was intentionally withheld from the Investors by Fortress, BDMC, Galati, Spadafora, Perlov, the Fortress Brokers and the Sorrenti Defendants.

45. In this case, Mady Collier paid Fortress $6,021,950 as the advance on profit sharing, according to the records filed by Mady Collier in a *CCAA* proceeding. The Plaintiffs assert a constructive trust on behalf of the Investors over all payments received by Fortress from Mady Collier, and claim it should be disgorged to the Class. Fortress has been unjustly enriched insofar as they received profit payments from Mady Collier when the Project generated no profits whatsoever.

46. Sorrenti Law or BDMC and Olympia, as the mortgage administrators, also retained another 16% of investors' capital in an "interest reserve", which was used by them to pay investors the interest payable under the syndicated mortgage loans over the first two years of the mortgage's term. Effectively, this was a return of capital, as the interest paid to the investors was actually part

of the capital they invested. The result was that Investors paid taxes on ostensible income that was actually a return of capital, and suffered losses as a result.

47. The payment of interest from investors' own money is contrary to s. 23 of the *MBLAA* Regulation 189/08, which states that a mortgage administrator shall not make a payment to a lender or investor in connection with the administration of a mortgage unless the payment is made from the funds paid under the mortgage by a borrower.

48. Fortress, BDMC, Galati, FFM, Spadafora, Perlov and the Sorrenti Defendants knew, or ought to have known that the structure of holding back part of the capital of the syndicated mortgage investment to pay future interest obligations on behalf of the borrower was a breach of s. 23 of the *MBLAA* Regulation 189/08, and that this information ought to have been disclosed to the Investors before they entered into the SML, but no such disclosure was made to the Investors.

49. The result of the Fortress business model was that the developer or builder received no more than 50% of the funds raised from investors that was intended for use in the development of the project itself. This fact was not disclosed to the investors, including the Plaintiffs and the Class, was intentionally withheld from the investors, including the Plaintiffs and the Class, by Fortress, BDMC, Galati, Perlov, Spadafora and the Fortress Brokers, and was negligently withheld by the Sorrenti Defendants.

50. Fortress raised the capital to finance the developments predominantly from small and unsophisticated investors. Approximately 80 – 85% of the investors in Fortress syndicated mortgage loans held their investments in registered accounts. The fact that the syndicated mortgage loans were allegedly eligible to be held in a registered account was a key representation and selling feature of the Fortress syndicated mortgage loans, including the subject SML.

51. The Fortress syndicated mortgage loans were administered on behalf of the investors by either BDMC or by Sorrenti Law. In this case, Sorrenti was the administrator of the SML. BDMC was the administrator of the replacement collateral charge, until BDMC was replaced by FAAN by court order.

52. While Fortress actively marketed the syndicated mortgage loans to potential investors, including the Plaintiffs and the Class, Fortress could not directly sell the syndicated mortgage loans to investors because the Fortress Defendants were not licensed mortgage brokers. Instead, Fortress arranged for BDMC to be their front, to sell the syndicated mortgage loans.

53. BDMC both solicited investors and sold the syndicated mortgage investments to investors. It acted as the agent for both the investor and for Fortress or the developer. By acting for both the investors and Fortress on the sale of the syndicated mortgage loans, BDMC acted in an undisclosed conflict of interest.

54. In 2013, Fortress entered into agreements with FFM and the other Fortress Brokers to have these mortgage brokers market the mortgage investments widely to members of the public, as well as to other mortgage brokers and agents who, in turn, would act as their agents to solicit investments in the Fortress syndicated mortgage loans from members of the public.

55. Despite the interposition of the Fortress Brokers as the selling brokers, BDMC continued to perform duties that were the responsibility of a selling mortgage broker, and continued to provide mortgage brokerage services to the investors, including to those members of the Class who invested in the SML after the Fortress Brokers commenced carrying on business. Thus, BDMC acted in an undisclosed conflict of interest.

56. Although Fortress was not a direct party to the sale of the syndicated mortgage loans to investors, it was actively involved in marketing the syndicated mortgage loans. Fortress developed professional sales and marketing packages in respect of the developments in which it was involved, which were disseminated widely to its network of mortgage brokers and agents. The marketing packages were also circulated directly to members of the public, and Fortress held in-person sales events or "seminars" to promote investments in its syndicated mortgage loan products.

57. Fortress prepared the marketing packages and held the marketing seminars to solicit and induce investors such as the Plaintiffs and the Class to invest in the development projects through the syndicated mortgage loans. The marketing materials represented the real estate projects as large-scale developments with blue-chip, established, and reputable builders with decades of experience. The sales pitch did not disclose that even the established builders typically used a single purpose corporation for each development to avoid liability if the development failed.

58. Particularly, and consistent with its marketing representations for all of the developments that it was financing, Fortress represented to the Plaintiffs and the Class that the syndicated mortgage loans, including the subject SML:

(a) were fully secured against the development property;

(b) were a safe investment, providing a high (8%) rate of return, and the potential to obtain an even higher investment return through "profit participation" upon completion of the project "while still maintaining solid security and collateral on [the] principal investment";

(c) were low risk and secure investments, including that Fortress "chooses projects that have minimal zoning risk and strong sales objectives to protect the investor from any sort of protracted delays";

(d) were eligible to be held in registered accounts, which requires that the loan to value ratio was less than 100%;

(e) would pay interest at the rate of 8% per year, distributed monthly or quarterly, which would be income earned by the investor (and not a return of capital);

(f) were for a short term, of 2-4 years, and at the end of the term, the principal would be repaid in full;

(g) appraisals of the property are provided by AACI designated members to provide "hard, reliable valuations" which are used to assess the "loan to value" ratio of the syndicated mortgage loan; and,

(h) that in the unlikely event of default of the syndicated mortgage, the trustee would be able to take immediate steps to act upon the investors' security and would take such steps.

(Together, the "Core Misrepresentations".)

59. Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers all knew that the Core Misrepresentations were made to potential investors, including the Plaintiffs and the Class, to induce them to enter into the syndicated mortgage loans, including the SML. These Defendants knew, or ought reasonably to have known, that the Core Misrepresentations were false, or they were reckless in respect of determining the veracity of t the Core Misrepresentations. These Defendants knew, or ought reasonably to have known, that the investors, including the Plaintiffs and the Class, relied upon the Core Misrepresentations in making their decisions to invest in the syndicated mortgage loans, including the SML.

60. Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers intended that the investors, including the Plaintiffs and the Class, would rely upon the Core

Misrepresentations when making their decisions to invest in the Fortress syndicated mortgage loans. The Investors did rely upon the Core Misrepresentations set out in the marketing materials and provided to them at Fortress seminars and by representatives of Fortress, BDMC, FFM and the Fortress Brokers when the Investors decided to invest in the SML.

61. Fortress arranged for Olympia to act as the trustee to facilitate investors' Fortress syndicated mortgage loan investments to be held in registered accounts. To the knowledge of Fortress, BDMC, Galati, Spadafora, Perlov, FFM, the other Fortress Brokers and the Sorrenti Defendants, Olympia was never licensed to act as a trust company in Ontario. Nonetheless, Olympia proceeded to carry on business in Ontario acting as trustee for the investments held in registered plans. No other trust companies or financial institutions licensed to do business in Ontario would permit registered account clients to invest in Fortress syndicated mortgages through their registered accounts. These facts were not disclosed to the Plaintiffs or the Class until August 2017 when FSCO required that Olympia cease doing business in Ontario and long after the Investors had made their SML investments.

62. Fortress, BMDC, and the Fortress Brokers knew that they needed evidence that the syndicated mortgage loans would qualify to be held in registered accounts, which meant proof that the loan to land value ratio was less than 100%, otherwise the scheme would fail. However, these defendants did not obtain appraisals for the developments based on the actual "as is" value of the properties. Instead, they obtained either appraisals or "opinions of value" based upon a hypothetical future value calculated as if the project was completed. The appraisals or opinions of value were not compliant with CUSPAP, including the opinion of value prepared in respect of the Collier Centre Project (the "Misrepresentation of Value").

63. As part of Fortress' marketing scheme, it conspired with BDMC, and the Fortress Brokers to, and did, misrepresent to the investors that the valuations on the properties were compliant with FSCO's requirements, including that the current "as-is" value of the developments were sufficiently high so that the syndicated mortgage loans were eligible to be held in registered accounts, and therefore that the loan to value ratio was less than 100%.

64. Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers made the Core Misrepresentations and the Misrepresentation of Value to induce the investors to invest in the Fortress syndicated mortgage loans. These defendants knew that investors would rely upon these misrepresentations in making their decisions to invest in the Fortress syndicated mortgage loans. The Investors did, in fact, rely upon the Core Misrepresentations and Misrepresentations of Value of the Collier Centre Project made by these defendants when deciding to invest in the SML, including the decision to hold the investments in registered accounts.

65. Had Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers disclosed the true value of the development properties rather than grossly inflated values, none of the syndicated mortgage loans could have been held in a registered account, the Fortress syndicated mortgage lending scheme would never have succeeded, and the Investors would not have invested in the SML.

66. Fortress also intentionally omitted material information about the development projects it was financing in both the marketing materials and in the disclosure materials that it produced for the mortgage brokers to provide to the investors in the Fortress syndicated mortgage loans, including the terms of its agreements with the developers or builders whereby Fortress kept a secret profit of approximately 35% of the investment funds and that the "interest" payments were actually

a return of capital. These misrepresentations and omissions materially distorted the risk involved in investing in the syndicated mortgage loans. The omissions were intentionally withheld to induce the Investors to invest in the SML and are part of the Core Misrepresentations.

67. In September 2020, FRSA found that Fortress had been dealing in syndicated mortgages without a brokerage licence, and had violated section 2(2) of the *MBLAA* twelve times. FSRA imposed a $250,000 penalty against Fortress for its violations of the *MBLAA*.

DEVIATIONS FROM THE FORTRESS BUSINESS MODEL IN THIS CASE

68. In the present case, circumstances caused Fortress and the Fortress Principals to deviate from their usual business model after Mady Collier obtained creditor protection under the *CCAA* by order dated January 30 2015. The Fortress Principals then incorporated Fortress Collier to purchase the Collier Centre assets, and to continue the development of the Project. Fortress Collier purchased the Collier Centre Project on November 16, 2015 through a vesting order, which extinguished from title the charge securing the SML.

69. As part of that purchase, Fortress Collier granted a new charge in favour of the Investors pursuant to which it agreed that "all available cash flow after repayment of all construction and other financing required for acquisition, construction, development, leasing and sale of the [Collier Centre]...and after payment of all other costs to complete the [Collier Centre] not otherwise financed and appropriate reserves for future expenses and warranty claims, will be made available for repayment" to the Investors.

70. This did not happen, and in fact, payment of any funds to the Investors was never a realistic possibility, which the Fortress Defendants and Fortress Collier knew when Fortress Collier

acquired the Project. Fortress and Fortress Collier misrepresented to the Investors that they would receive repayment of their investment through the collateral charge to lull them into a false sense of security, and to deceive the Investors so that they would not take action to enforce the SML debt against Mady Guarantors, and to shield Fortress from a claim by either the Investors or Mady Collier for repayment of the unearned profit payment.

THE COLLIER CENTRE PROJECT

71. Mady Collier purchased the Collier Centre Project lands for a total of $6,951,000 million, on July 3, 2012. This was the actual, as-is market value of the subject lands, which was never disclosed to the Investors, even though BDMC, and the Fortress Brokers, were obliged to disclose this agreement of purchase and sale for the 12 month period following the closing, if the agreement was available to it (which it was). The agreement of purchase and sale was not disclosed to mislead the Investors about the true value of the subject lands.

72. Mady Collier was the bare trustee of the Collier Centre lands. The beneficial owner was David Mady Investments (2008) Inc., one of the guarantors of the SML.

73. On July 3, 2012, Mady Collier registered mortgages in favour of Aviva Insurance Company of Canada in the amount of $4 million and the City of Barrie in the amount of $3.5 million.

The Fortress Development Loan Agreement

74. On July 17, 2012, two weeks after Mady Collier bought the Project lands, Mady Collier as Borrower and Mady Guarantors as guarantors entered into a Development Loan Agreement with Fortress Developments (the "Fortress Agreement"). Under the terms of the Fortress Agreement, Fortress Developments agreed to advance a pre-construction loan of up to $16,923,077 to Mady

Collier. The loan was described as having two parts the "conventional part" also referred to as the "Secured Portion" and the secret second part, which was particularized in the Fortress Agreement, and described as the "Unsecured Portion."

75. The Fortress Agreement, and in particular the Unsecured Portion of the Fortress Agreement was never disclosed to the Investors by Fortress, BDMC, the Fortress Brokers, or the Sorrenti Defendants, although all were fully aware of its terms, and that the terms of the Unsecured Portion of the Fortress Agreement materially impaired the risk associated with participating in the SML by diverting approximately 50% of the SML proceeds away from Mady Collier and to Fortress, BDMC and the Fortress Brokers.

76. The "Secured Portion" of the Fortress Agreement was assigned by Fortress Developments to Derek Sorrenti in Trust and Olympia in Trust, as "an independent self-contained loan." It is the SML Agreement.

77. Key provisions of the Fortress Agreement were:

(a) The term of the Fortress Agreement was two years to August 1, 2014, with an option for Mady Collier to extend the term for a further six months to February 1, 2015;

(b) the maximum amount of the Secured Portion (the SML) would be $16,923,077; with interest payable at 8% per year;

(c) Fortress was entitled to 50% of the final net profit of the Mady Collier Project as its fee for obtaining the SML (less all payments, made by Mady Collier to the Investors under the SML Agreement);

(d) Mady Collier would pay Fortress an initial project set-up fee of $100,000;

(e) Mady Collier agreed to pay $5,000 to a charity chosen jointly by Mady Collier and Fortress Developments with both companies to share the tax receipt equally; but the funds for the charitable payment would actually come from the proceeds of the SML, so it was the Investors who truly paid the donation, although they received neither a credit nor the tax receipt for so doing. This payment was never disclosed to the Investors;

(f) interest was to be paid on the SML at 8% per year;

(g) the Profit Distribution Schedule set out in Schedule "C" of the Fortress Agreement contemplated Fortress Developments raising $16,923,077 through the SML, of which $11 million would be paid out to Mady Collier for the Project and $5,923,077.00 would be retained by Fortress Developments as priority profit sharing return. In fact, Fortress received up front at least $6,021,950 as the priority payment.

The Syndicated Mortgage Loan and other Charges

78. At some point prior to the execution of the Fortress Agreement, Fortress retained the Sorrenti Defendants to obtain an opinion of market value of the Project lands (the "Opinion"). At all times, each of Fortress, BDMC, the Fortress Brokers, Galati, Perlov, Spadafora, Mady Collier, Mady Guarantors and the Sorrenti Defendants knew that no appraisal that complied with CUSPAP had been sought or obtained for the Collier Centre Project. These defendants all knew that the Opinion was not a current "as-is" appraisal of the subject lands, and that the Opinion would not meet the mortgage brokers' disclosure obligations, nor would it suffice to establish that the SML qualified to be held in a registered account. None of these facts were disclosed to the Investors.

79. On July 18, 2012, John Filice of Cushman & Wakefield Ltd. delivered the Opinion to Sorrenti. The value expressed in the Opinion was based upon the assumption of construction of the whole Collier Centre Project, which was planned to include three building components: a seven-storey residential condominium building with 82 units, an eight-storey office building, and four levels of commercial retail space and underground parking. The Opinion concluded that the Project had an approximate market value of $72,042,875, as built, and that the aggregate "land contribution" to the as built value was $21,840,090.

80. The Opinion was used by Fortress, BDMC and the Fortress Brokers, Galati, Spadafora and Perlov to deceive the Investors regarding the risk they were taking, and their ability to hold the SML in registered accounts, and it formed the basis of the Misrepresentation of Value for the Collier Centre Project. Fortress, BDMC and the Fortress Brokers all represented to the Investors that the as is value of the land was $21,840,090, and that the loan to value ratio of the Project would stay under 100%, as required for the SML to qualify to be held in a registered account.

81. Fortress began its marketing efforts for the Collier Centre Project in or about August 2012. Fortress and BDMC marketed and sold the SML to the Investors in a manner consistent with Fortress' usual business model, set out above. The marketing and sale of the SML was predominantly to unsophisticated retail investors, the vast majority of whom invested through registered plans, such as their retirement savings plans. The fact that the SML qualified to be held in a registered account was a key selling feature, emphasizing the security of the investment. Once the Fortress Brokers were incorporated, they, too, marketed the Collier Centre Project to Investors in the same manner.

82. By agreement dated July 26, 2012, Mady Collier and Mady Guarantors entered into a syndicated mortgage loan agreement (the "SML Agreement") with Derek Sorrenti in Trust as the first lender and Olympia in Trust as the second lender. Key terms of the SML Agreement were:

a) the SML would be a loan of up to $16,923,077 to provide for Mady Collier's land, hard and soft costs to be incurred prior to the construction financing of the Project;

b) the loan was for a two year term, commencing on August 1, 2012, but Mady Collier could extend the maturity date for up to six additional months to February 1, 2015, by giving notice in writing not less than three months prior to the maturity date;

c) the principal and all accrued interest were wholly due and payable on the maturity date or upon full disposition of the Project, should that occur earlier;

d) Interest accrued at 8% per annum, calculated and payable monthly;

e) The Investors could earn a project completion fee equal to 6% of the principal of the SML (subject to adjustments) to be paid not later than 30 days after substantial completion of the Collier Centre Project, depending upon the final Project profit (if any);

f) A charge securing the SML would be registered against the subject property in the amount of up to $16,923,077, in advance of a fourth charge in favour of the City of Barrie;

g) the SML would be further secured by a third-ranking general security agreement charging Mady Collier's present and future personal property and undertakings used in connection with the Project;

h) the SML would be guaranteed by Mady Guarantors;

i) both Mady Collier and Mady Guarantors would indemnify the Lender from all reasonable losses, costs, expenses, etc. imposed on the Lender arising from being the lender under the SML Agreement;

j) the prior ranking charges would be in favour of arm's length construction lenders, in the aggregate principal amount not to exceed $56 million, plus a 10% contingency, if required (i.e. no more than a maximum of $61.6 million), and the Lenders agreed to postpone and subordinate the SML in favour of the first and second-ranking Lenders, and to enter into a standstill agreement with them;

k) There were certain conditions precedent that had to be satisfied prior to Sorrenti and Olympia making advances to Mady Collier including receipt of confirmation that the prior encumbrances were in good standing and that no event of default had occurred, and "an Opinion letter from Cushman Wakefield Global Real Estate Solutions indicating aggregate land contribution from the 3 categories (multi-residential, retail and office) of not less than $21,840,090.00";

l) Mady Collier covenanted not to create or permit any encumbrance of the Project other than the Permitted Encumbrances; and,

m) Events of Default included failure to pay the interest or principal when due, suspending or ceasing to carry on business, and commencing *CCAA* proceedings.

83. No particulars were provided to the Investors with respect to the terms of the postponement and subordination agreement, and no draft agreement was appended to the SML Agreement. The terms of the charge securing the SML were also not disclosed to the Investors. Sorrenti did not seek or obtain consent from any of the Investors to register a charge that materially deviated from

the terms of the SML Agreement, or to postpone the charge to any lenders in excess of $61.6 million.

84. On August 22, 2012, Sorrenti registered the charge securing the SML in the amount of $16,923,077 on title to the Collier Centre Project lands as Instrument SC 1005953. The Aviva mortgage ranked in priority. On August 24, 2012 the registered title holder for the charge was amended to include Olympia as well as Derek Sorrenti. The registration was updated from time to time as additional Investors participated in the SML. 310 Investors eventually participated in the SML, advancing a total of $16,921,950 between August 2012 and May 2013.

85. Although a charge was registered against the subject lands, the SML was unsecured when granted, as the true as-is value of the Collier Centre Project was less than the first ranking charges on title.

86. The terms of the charge registered on title to the subject lands to secure the SML were materially inconsistent with the SML Agreement with respect to postponement, subordination and standstill terms. Particularly, the charge stated:

(a) the "Permitted Encumbrances" – which are referred to as "Senior Security" in the registered charge, could "increase from time to time as may be necessary to reflect any necessary adjustments to the project as to scope of the project or anticipated costs (the "Total Adjusted Senior Security");

(b) the SML would be postponed to <u>all</u> of the Total Adjusted Senior Security (*i.e.* not just postponed to a maximum of $61.6 million as provided for in the SML Agreement), even if advances under the Total Adjusted Senior Security were made after default of the SML;

(c) the Investors could not initiate any steps to challenge the priority status of the Total Adjusted Senior Security; and

(d) the Lender could not take any collection or enforcement proceedings or seek remedies against Mady Collier or Mady Guarantors, or against the subject lands as a result of any breach or default, unless first approved in writing by all the holders of the Total Adjusted Senior Security, or until after all the Total Adjusted Senior Security was discharged from title.

87. Effectively, the charge terms allowed Mady Collier to register as much secured debt in advance of the SML as it could obtain, the Investors could not object, and had no ability to enforce a default under the SML. They lost many of the fundamental rights included in the SML Agreement. None of BDMC, the Fortress Brokers, Galati, Spadafora or Perlov nor the Sorrenti Defendants reviewed the terms of the charge with the Investors prior to the Investors entering into either the SML.

88. The Investors did not agree to the charge terms Sorrenti, as bare trustee, had no authority to agree to these terms on behalf of the Investors. Mady Collier and Mady Guarantors knew that Sorrenti did not have the authority to unilaterally agree to the charge terms on behalf of the Investors, but insisted upon the inclusion of the standstill and postponement terms in the charge. This non-disclosure was a material omission. BDMC, the Fortress Brokers, and the Sorrenti Defendants are liable to the Investors for all damages arising from the registration of the charge on terms to which the Investors did not agree, including the loss of their ability to enforce the default against Mady Guarantors.

89. The standstill and postponement terms in the charge are not enforceable against the Investors, who did not agree to these terms. The terms were unreasonable at the time the charge was registered, and they were, in fact, unreasonable under any circumstances, as well as being inconsistent with the payment, term and default provisions of the SML Agreement. The standstill and postponement terms in the charge were provided without consideration and are therefore not enforceable for this reason, as well.

90. By permitting the registration of a charge on title that was materially inconsistent with the SML Agreement, Mady Collier and Mady Guarantors failed to act honestly and in good faith in the performance of the SML Agreement, and breached its terms. The Investors have been damaged as a result thereof.

91. In registering a charge on title to the Collier Centre Project that was materially inconsistent with the SML Agreement, and that substantially prejudiced the rights of the Investors, the Sorrenti Defendants breached their contracts with the Investors, acted in breach of trust and breach of fiduciary duty, and were negligent.

92. $2,776,943 of the SML proceeds was retained by Sorrenti and Olympia, and used to make the interest payments under the SML before it went into default. The Investors were never told that the "interest" they received was in reality a return of part of their capital.

93. The result of the Fortress Agreement was that Mady Collier received less than 50% of the SML proceeds for the actual development of the Collier Centre Project, and Fortress obtained a 50% interest in the Project and an up-front payment of over $6 million without investing any of its own capital. These material facts were not disclosed to the Plaintiffs or the Class by any of the Defendants.

94. On August 9, 2013, a charge in favour of Laurentian Bank was registered on title in the amount of $69,965,000, and the SML charge was postponed in favour of it, and a mortgage granted to Aviva. The Laurentian Bank charge exceeded the amount of construction financing charges permitted to be registered in priority to the SML, but Sorrenti did nothing to prevent the charge from being registered, or to protect the Investors priority.

95. Laurentian Bank's first place mortgage had approximately $29.3 million owing as of December 17, 2014, when the Bank demanded repayment, as the mortgage was in default.

The CCAA Proceedings, the Purchase and Default by Fortress Collier

96. In addition to being the legal owner of the Project lands, Mady Collier was the original developer of the Collier Centre Project. By January 2015, the development was partially completed, but Mady Collier was insolvent. It had stopped construction. The development costs totalled $51.3 million, and it was estimated that the costs to complete the project would be a further $29 million – far exceeding the original cost estimates for the Project.

97. On January 30, 2015, Mady Collier was granted creditor protection under the *CCAA*. The court appointed Grant Thornton Ltd. ("GTL") as monitor over Mady Collier's business and financial affairs. The granting of the *CCAA* order put the SML into default.

98. After being extended by Mady Collier for 6 months, the SML matured on February 1, 2015. By that time the SML was already in default, as the Laurentian Bank mortgage was in default and a *CCAA* proceeding had been commenced by Mady Collier. Mady Collier defaulted in repayment of the SML.

99. Despite this default and the ongoing *CCAA* proceedings, Fortress misrepresented the status of the Collier Centre Project to the Investors. Its website represented that the Project was "winterized" and that "investors can anticipate this project completing this year [i.e. 2015]". It did not disclose the *CCAA* proceeding, or that Mady Collier was insolvent. Fortress intentionally withheld this information to shield Mady Guarantors from enforcement actions by the Investors, which also shielded Fortress from a demand for repayment of the advance on profits it had taken.

100. Shortly after the *CCAA* proceedings were started, Fortress' principals, Rathore and Petrozza, incorporated a new single use corporation, Fortress Collier, to purchase the Collier Centre Project from Mady Collier. On November 12, 2015, the court approved the purchase of the Collier Centre Project by Fortress Collier through a vesting order in the *CCAA* proceeding. All rights, title and interest in and to the Project were transferred to Fortress Collier free and clear of all encumbrances. This had the effect of extinguishing the charge securing the SML from title. As part of the vesting order. Fortress Collier granted a new collateral charge registered against the Project in favour of the Investors, and represented to the Investors that this charge protected their investment, although it did not.

101. The Plaintiffs and the Class were never advised by BDMC or Sorrenti Law of Mady Collier's default. Nor were they advised of their rights triggered by the events of default under the SML Agreement, including their ability to enforce the loan against Mady Guarantors.

102. Nor did Sorrenti Law take any steps to enforce the SML against Mady Guarantors, in breach of its obligations and duties owed to the Investors as mortgage administrator.

103. After taking over the Project, Fortress Collier entered into a new SML with new investors. The new SML ranked in priority to the Investors' collateral charge.

104. Further details relating to the *CCAA* proceeding are set out below.

The Misrepresentations that Induced the Investors to Invest in the SML

105. The Plaintiffs and the Class relied heavily upon Fortress' marketing materials, and the advice given to them by BDMC, its sales agents, or the other Fortress Brokers, all of which included the Core Misrepresentations and the Misrepresentations of Value, in making their investment decisions.

106. Fortress arranged for Sorrenti (or members of Sorrenti Law) to provide the Investors with ILA, which was paid for by Fortress, on behalf of Mady Collier, from the proceeds of the SML. The advice provided to the Investors was the same in each instance. A pre-set speech was delivered (often over the telephone) to the Investors, in which the Investors were assured that the SML was a low-risk, safe investment that qualified to be held in a registered account.

107. In providing its purported ILA, the Sorrenti Defendants repeated the Core Misrepresentations and Misrepresentation of Value. The Sorrenti Defendants' advice was not independent, it was misleading, and it was negligent. They provided a boilerplate promotion of the SML investments without providing a reasonable discussion of the risks associated with the SML investments, and without tailoring the advice to the client's individual circumstances, comprehension levels, or risk profile.

108. Each of Fortress, BDMC, the Fortress Brokers, and the Sorrenti Defendants falsely represented to the Investors that:

(a) the investment was safe, and would be fully secured against the subject lands, which were worth substantially more than the sum of the prior-ranking mortgages and the total to be advanced under the SML;

(b) the appraised "as is" value of the lands was at least $21,840,090;

(c) the investment would be for a defined term of two years, with the borrower's option to extend the term for an additional six months;

(d) there would be a "steady" annual fixed distribution of 8% paid monthly;

(e) there was a potential for additional profit sharing at the end of the term of the SML;

(f) the investment would qualify to be held in a registered account;

(g) the proceeds of the SML would be used to pay "soft costs" associated with the development; and,

(h) in the unlikely event of default of the SML, the trustee would be able to take immediate steps to act upon the Investors' security and would take such steps.

109. Fortress, BDMC, the Fortress Brokers, and the Sorrenti Defendants made these misrepresentations to induce the Investors to enter into the SML. The Investors relied upon these misrepresentations when making their investments in the SML, and they relied upon the ILA that they received from the Sorrenti Defendants to reassure them that an investment in the SML was safe, secure, and appropriate based upon their investment objectives.

110. Fortress, BDMC, the Fortress Brokers, and the Sorrenti Defendants failed to explain to the Investors that part of their own investments, and the investments of future Investors in the SML, would be used to pay the interest due to them under the SML – effectively that the structure for payment of the interest under the SML was tantamount to a "Ponzi" scheme.

111. Fortress, BDMC, the Fortress Brokers, and the Sorrenti Defendants failed to disclose to the Investors what the *real* "as is" value of the subject property was. Nor did they disclose the true nature of the investment the Investors were making – which was in fact very risky mezzanine financing that would be subordinated to other mortgages to be registered on title to the Collier Centre Project lands far and beyond the aggregate limit of construction financing set out in the SML Agreement.

112. The misrepresentations set out above, at paragraphs 99 - 102 are the "Collier Centre Misrepresentations".

113. Had the true facts about the SML been disclosed to the Investors, rather than the Core Misrepresentations, the Misrepresentation of Value and the Collier Centre Misrepresentations, the Investors would not have invested in the SML.

114. The ILA provided by the Sorrenti Defendants included the Core Misrepresentations, the Misrepresentation of Value and the Collier Centre Misrepresentations, and failed to disclose many material facts about the SML, including:

(a) the SML was a high-risk investment;

(b) the actual current "as is" market value of the subject lands;

(c) the Opinion was not a current value appraisal, prepared in compliance with CUSPAP standards;

(d) the SML was not fully secured against the subject lands;

(e) the true loan to value ratio for the SML was well in excess of 100%, which meant that the SML was not registered-plan eligible pursuant to s. 204 of the *Income Tax*

Act and s. 4900(1) of the *Income Tax Regulations*, C.R.C., c. 945, because it was not "fully secured";

(f) holding the SML in a registered plan could have adverse tax consequences for the Investors;

(g) no trust company registered to carry on business in Ontario was prepared to allow its registered account holders to hold the SML in their registered account;

(h) Olympia was not authorized to carry on business in Ontario;

(i) 16% of the capital advances would be used to pay the first two years of interest under the SML and future Investors' capital advances would fund the interest payments thereafter, which was a breach of *MBLAA*;

(j) approximately 35% of the capital advances would be kept by Fortress as an unearned "profit participation" payment, and the mortgage brokers were paid a commission at a highly inflated rate;

(k) Fortress was not a registered mortgage broker, but was receiving a substantial fee for facilitating the SML for Mady Collier;

(l) there was no guarantee of the high rate of return set out in the SML Agreements, or any return at all;

(m) the SML would rank below other mortgages in priority of repayment, which could exceed $61.5 million; thereby increasing the risks associated with the investment;

(n) Mady Collier had no revenue source from which to pay the interest payments due under the SML;

(o) City site plan amendment approvals changing the commercial space into residential units were obtained, but not implemented for the proposed

development upon which the original Opinion's assumptions were based, and therefore the Opinion was not a hard, reliable valuation of even the projected market value of the subject lands;

(p) the charge securing the SML Agreement contained postponement and standstill provisions which would limit the Investors' ability to enforce the SML in the event of default, and no advice was provided to the Investors as to what the terms of any such postponement and standstill would include or how that might affect the Investors' ability to enforce the SML if it went into default;

(q) the registered charge terms of the SML included a term about "Priority, Standstill, Forbearance and Postponement" that differed substantially from the disclosure about the standstill agreement in the Form 9D and the SML Agreement, and purported to prevent the Investors from acting upon their security in the event of default or when it came due, unless the "Senior Security" lender(s) consented to such action; and

(r) while the charge securing the SML would be registered on title to the property, this "security" did not guarantee repayment of the principal, as the value of the Project as-built might not be adequate to pay back the principal after repayment of higher-ranking lenders, and the land value was not adequate to secure the debt at the time that the SML was granted.

115. The Sorrenti Defendants also failed to disclose that they were acting in a conflict of interest, because they were also acting for Fortress and BDMC, they were paid by Fortress for the service of providing the ILA, and the Sorrenti Defendants would be paid from the mortgage proceeds for acting as the bare trustee and mortgage administrator, respectively, for each person who entered

into the SML. Therefore, the Sorrenti Defendants had a financial interest in ensuring that the Investors completed the SML investments.

116. The Sorrenti Defendants also failed to disclose to the Investors that they were acting for both the Investors as lenders, and Mady Collier as borrower in registering the charge, all at the expense of the Investors and not Mady Collier, which was negligent and a breach of fiduciary duty, particularly in light of the undisclosed terms of the registered charge, which grossly favoured Mady Collier.

117. As Trustee, Sorrenti held title to the charge securing the SML on behalf of the Investors. The Sorrenti Defendants failed to take any steps to protect the Investors' interests, to enforce the terms of the SML in favour of the Investors when the SML fell into default, or to advise the Investors that they could take such actions on their own. The Sorrenti Defendants abdicated their responsibilities as Trustee and Administrator, which was a breach of fiduciary duty, breach of trust, and negligent.

118. Neither the Sorrenti Defendants nor BDMC advised the Investors of their enforcement rights once the SML went into default. They were negligent in failing to do so.

119. The Investors were unable to enforce the default under the SML because the Sorrenti Defendants entered into postponement and subordination agreements with the construction lenders that prevent the Investors from taking any steps to enforce their rights until the construction lenders are paid in full or to commence enforcement action. These postponement and subordination agreements exceeded the authority granted to the Sorrenti Defendants in the SML Agreement, and as such, the Sorrenti Defendants breached their contracts with the Investors, acted in breach of trust and breach of fiduciary duty, and they were negligent.

120. In sum, the actions of Fortress, BDMC, Galati, Spadafora, Perlov and the Fortress Brokers in facilitating the SML exposed the Investors to tremendous risk due to the financing structure, which included high professional fees, advance profit sharing, lack of proper appraisal, over-leveraging the project and automatic subordination of creditor priority. The real risks of the SML were intentionally not disclosed to Investors at the time they invested, to induce them to invest so that Fortress could take excessive and unearned profits, and so the other defendants would also profit at the expense of the Investors.

121. An investment in the SML was not suitable for any individual, retail investor, either through a registered plan or not, regardless of the investor's risk profile.

Sorrenti Law's Negligence and Breach of Contract following Mady Collier's Default

122. Mady Collier began construction of the Collier Centre Project in August 2012. By December 2014, Mady Collier had ceased construction of the Project because it ran out of capital to continue building it, and Mady Collier defaulted on its loans. Neither Fortress nor BDMC disclosed these facts to the Plaintiffs and the Class, and Sorrenti took no action to enforce the SML.

123. As Trustee and Administrator, the Sorrenti Defendants did not:

(a) advise the Investors of their enforcement rights under the SML;

(b) enforce the SML following the default; or

(c) make a demand on Mady Guarantors for payment under its guarantee.

124. As the Lender and Trustee under the SML and as mortgage administrator, the Sorrenti Defendants were entitled and obligated by February 1, 2015 to take all actions and exercise all remedies available to the Investors as a result of the defaults. In choosing not to enforce the SML

Agreement, the Sorrenti Defendants preferred the interests of the Mady Guarantors, and Fortress to those of the Class, and acted in a conflict of interest.

125. The Sorrenti Defendants have never communicated with any of the Investors to obtain their instructions with respect to Mady Collier's default under the SML, or even to notify them of the status of the SML. The Sorrenti Defendants' conduct was grossly negligent.

The CCAA Proceeding and The Restructuring Agreement

126. Mady Collier applied for and obtained creditor protection under the *CCAA*. On January 30, 2015, Grant Thornton Ltd. ("GTL") was appointed by the court as monitor over Mady Collier's financial affairs.

127. In fulfilling its obligations as monitor, GTL made the following findings with respect to the Fortress Agreement and the Investors' SML:

(a) Mady Collier received thirteen advances of funds for the Project totalling $16,921,950 from the Investors, between August 24, 2012 and May 22, 2013;

(b) only $10,656,000 of the $16,921,950 of the SML funds could be traced; and,

(c) approximately $1,692,308 of the untraced funds were labelled by Mady Collier as "sales and referral bonuses", $1,438,461 for "marketing and promotional fees", $507,692 for mortgage brokerage fees and $2,284,616 for "co-development/priority returns". All these amounts were paid to Fortress.

128. A balance sheet prepared for Mady Collier, dated on or around November 30, 2014, shows that $6,021,950 of the Project funds (from the funds raised through the SML) had been disbursed

as an "advance on profit sharing", although no profit was ever earned by Mady Collier on the Collier Centre Project. This is the amount that was paid to Fortress.

129. Around the time that Mady Collier applied for creditor protection, the principals of Fortress incorporated Fortress Collier Centre Ltd. ("Fortress Collier"), a new single-use Fortress corporation, to purchase the Collier Centre Project "as is" from Mady Collier.

130. On October 26, 2015, Fortress Collier and Mady Collier, via its Monitor, entered into a proposed agreement of purchase and sale ("the Proposed Sale Agreement"). On November 12, 2015, the court issued an Approval and Vesting Order approving the Proposed Sale Agreement, conditional upon the delivery of the Monitor's certificate (the "Vesting Order"). The Vesting Order provides that Fortress Collier's rights, title and interest in the purchased assets (the Collier Centre Project) vested free and clear of any and all security interests, mortgages liens, unsecured or otherwise. In other words, the Vesting Order extinguished the SML and all registered charges from title. Therefore, the Plaintiffs' and Class Members' security and rights in respect of the original SML were extinguished through the Vesting Order.

131. On its face, Fortress Collier paid for $32.7 million to purchase the Project, which vastly exceeded the true fair market value of the Project. In fact, Fortress Collier only paid $3.2 million in cash for the Collier Centre Project – the rest of the purchase price was financed. Part of the purchase price was comprised of a "collateral charge" in the amount of $16,921,950 which was ostensibly to secure Fortress Collier's "Repayment Obligations" to the Investors under a Restructuring Agreement dated December 23, 2015, as approved by the court. In fact, the Collateral Charge was a sham. There was never any realistic prospect that any amount would ever

be paid to the Investors given the terms of the Restructuring Agreement, and the prior-ranking secured debt.

132. In fact, the same day as the closing on November 16, 2015, Fortress Collier registered:

(a) a first-ranking $60 million loan in favour of Morrison Financial Mortgage Corporation;

(b) a second-ranking $3 million mortgage in favour or Aviva Insurance Company;

(c) a third-ranking $7.225 million in favour of a related company, RW Fortress Inc. and

(d) a $10 million mortgage in favour of Centro Mortgage Inc. which secured a new syndicated mortgage loan Fortress Collier had entered into with new investors,

all of which exceeded the realistic as built value of the Project. The registration of these charges in priority to the Collateral Charge ensured that any profits from the ultimate sale and leasing of the Project would never be paid to the Investors, and would be diverted to Fortress or Fortress-related entities.

133. The Restructuring Agreement was made between Centro/BDMC and Olympia as Trustees for the Investors and Fortress Collier. BDMC took an assignment of the Trustee role from Sorrenti. Neither Olympia nor BDMC had instructions to enter into this agreement on behalf of the Investors when it was executed, and they were not subsequently authorized to enter into the Restructuring Agreement. BDMC did nothing to advise the Investors about the merits or demerits of the Restructuring Agreement, and through its silence it participated in Fortress Collier's misrepresentations to the Investors about the Restructuring Agreement.

134. BDMC acted in a conflict of interest by executing the Restructuring Agreement, as it had also agreed to act as the trustee for a new syndicated mortgage loan in the amount of up to $29.1 million, which would rank ahead of the Investors' new collateral charge, without disclosing this fact to the Investors.

135. The sole purpose for establishing the inflated sale price for the Collier Centre Project was to deceive the Investors into believing the Collier Centre Project was worth more than it was and to give the Investors the false impression that their investment would ultimately be repaid and was safely secured by a new Collateral Charge.

136. In fact, there was never any possibility that the Investors would be paid any amount under the Restructuring Agreement, as Fortress Collier wholly controlled the Net Cash Flow and would have diverted any cash flow to itself, had the Project not floundered again.

137. On November 24, 2015, Fortress Collier issued a Notice to the Plaintiffs and the Class Members with an update about the Project (the "Fortress Collier Notice"). The Fortress Collier Notice misrepresented to Investors that:

(a) Fortress Collier would be preserving the Investors' interest in the Project by entering into a new agreement with Sorrenti and Olympia "to re-establish rights to revenue from the Project" which would be registered on title;

(b) had Fortress Collier not acquired the Project, there would have been no recovery for the Investors (Fortress Collier did not reference the Investors' rights to pursue Mady Guarantors on their guarantee);

(c) Fortress Collier was "optimistic" that the new mortgage "may yield a positive return" for Investors, but this optimism was unfounded given that the Project was

incomplete and overleveraged, the Investors ranked behind all other lenders, and the targeted sale price for the commercial component of the Project was grossly inflated.

138. At about the time of the vesting order, the mortgage administrator for non-registered account Investors was changed from Sorrenti Law to Centro/BDMC, without the knowledge or consent of the Investors. The non-registered accounts Trustee of the SML also changed from Sorrenti to BDMC. The Sorrenti Defendants did not explain to the Investors the reason for their departure as Trustee or mortgage administrator, including Sorrenti Law's inability to perform the mortgage administration job adequately. Before resigning, the Sorrenti Defendants did not warn the Investors about their rights to enforce the SML debt as against Mady Guarantors. This was negligent, and caused harm to the Investors.

139. Under the terms of the Collateral Charge, the Investors would be paid any "Net Cash Flow" available from the Project, after repayment of all construction and other financing required to complete the Project. At all times, Fortress, Fortress Collier, and Centro knew that there would never be any Net Cash Flow upon the completion of the Project and payment of other enumerated expenses. The Collateral Charge and the Repayment Obligations under the Restructuring Agreement were a sham, the sole purpose of which was to make it appear to the court and the Investors that Fortress Collier was assuming the SML debt obligations of Mady Collier and Mady Guarantors, and to fool the Investors to prevent them from taking enforcement action against Mady Guarantors.

140. Centro/BDMC did not advise the Investors that the Collateral Charge was a worthless sham, nor did it provide any advice to the Investors about the terms of the Restructuring Agreement. Centro/BDMC entered into the Restructuring Agreement without first obtaining the

informed consent of the Investors, in breach of its fiduciary duties as mortgage administrator and Trustee, and knowing that the Collateral Charge was of no value.

141. Centro/BDMC agreed to grant the new Collateral Charge on behalf of the Investors without first advising the Investors of their options following Mady Colliers' default, including their right to make demand for immediate payment from Mady Guarantors. Nor were the terms of the new Collateral Charge explained to the Investors, including that the Collateral Charge would be subordinated to new financing required to continue the development. Centro/BDMC did not advise the Investors that Mady Guarantors was not providing a guarantee of the Collateral Charges, and that, by the granting of the Collateral Charges, the Investors would be losing the right to pursue their losses against Mady Guarantors under its guarantee, which would be extinguished through the vesting order. These were material omissions which BDMC, as mortgage administrator, was duty-bound to disclose to the Investors before taking actions on their behalf.

142. The Investors did not sign the Direction and Indemnity sent by BDMC. In the alternative, if any Investors did sign the Direction and Indemnity, they did so because of the false representations made to them by BDMC which induced them to sign the requested document. The Direction and Indemnity is unenforceable as against those Investors as it was procured by deceit.

143. Fortress Collier immediately overleveraged the Project, after purchasing it, by granting construction financing loans of $91,146,950 to various lenders. Fortress Collier granted Morrison a mortgage of $60 million, Aviva Insurance Company of Canada a mortgage of $3 million, another Fortress entity (RW Fortress Inc.) a mortgage of $7.225 million and the new syndicated mortgage of $26,921,950.

144. The Investors were never repaid any of their investments in the SML, despite the misrepresentations to the Plaintiffs and the Class Members in the Fortress Collier Notice.

145. Fortress Collier defaulted on repayment of its construction financing loans to senior lenders. In 2018, the priority lender, Morrison, issued a notice under section 244 of the *Bankruptcy and Insolvency Act* regarding more than $30 million in construction financing that was in default.

146. Morrison tried to sell the Project on the market, but it received no formal offers. On May 8, 2019, Morrison transferred the Collier Centre Project to its affiliate company for $18.457M (the "takeout price"), based on the highest informal offer it received.

147. The takeout price that Morrison accepted for the Collier Centre Project is less than the full amount that Morrison was owed by Fortress Collier. Because Morrison did not recover the full amount of its loan, there were no recoveries available for distribution to the subsequent mortgagees, including the Investors.

FSRA AND RCMP INVESTIGATIONS

148. In or around December 2015, FSCO, which, at the time, had regulatory authority over the mortgage industry, commenced an investigation into Fortress, BDMC, and the Fortress Brokers arising from concerns about the conduct and administration of syndicated mortgage loans arranged by Fortress with the aid of BDMC, the Fortress Brokers, and the Sorrenti Defendants.

149. In 2016, FSRA began issuing consumer communications to the investing public stating that it considers syndicated mortgage loan investments to be "high risk" investments that were often marketed to the investing public using techniques that belie the true risks of the mortgages.

That was, in fact, the case with respect to the marketing and sale of Fortress' syndicated mortgage loans including with respect to the Collier Centre Project.

150. The regulators' investigation culminated in settlement agreements between FSRA and each of BDMC and the Fortress Brokers, executed on January 31, 2018, which, amongst other things resulted in orders that:

(a) revoked the mortgage broker licenses for:

(i) BDMC;

(ii) Vincenzo Petrozza;

(iii) each of the principal brokers of the three Fortress Brokers;

(b) required BDMC to pay administrative penalties of $400,000; and

(c) required each of the Fortress Brokers to pay administrative penalties of $235,000.

151. BDMC agreed that FAAN would assume the mortgage administration for all Fortress-related syndicated mortgages that BDMC had been administering. Additionally, Galati surrendered her license, thereby ceasing all mortgage brokering activities.

152. In or around March 2018, BDMC (through its newly-formed alter ego corporation Canadian Development Capital & Mortgage Services Inc., which was run by Galati's mother, Giuliana Galati) engaged in various acts in breach of the FSCO settlement, including acting to frustrate FAAN's ability to carry out its role as administrator of the syndicated mortgages.

153. To prevent further harm to investors that would have been caused by continued breaches and obstruction of FAAN's operations, on April 20, 2018, on the application of the Superintendent of Financial Services, FAAN was appointed as trustee, without security, of all the assets,

undertakings and properties of BDMC. Since that date, FAAN has been the mortgage administrator with respect to BDMC-administered Fortress syndicated mortgage loans.

154. On September 9, 2020, FSRA entered into a settlement with Fortress Developments, pursuant to which it imposed administrative penalties against Fortress Developments in the amount of $250,000 for 12 contraventions of s. 2(2) of the *MBLAA*, related to Fortress Developments providing services to borrowers for the purpose of financing property developments when it was not licensed to do so.

155. On April 13, 2018, the RCMP's Integrated Market Enforcement Team obtained a search warrant for Fortress, BDMC and the Fortress Brokers in connection with a fraud investigation into Fortress's syndicated mortgage businesses. In the search warrant, the investigators asserted their belief that the key aspects of this fraud occurred from 2012 to 2017 and include:

(a) investors were presented with inflated "as is" property values for the lands securing their syndicated mortgage loans, which misrepresented the true risk of the investments and their ineligibility for investment through a registered plan;

(b) the actual loan to property value ratios in respect of the syndicated mortgage loans exceeded 100%;

(c) the syndicated mortgages were promoted as being registered plan eligible, when they were not, and therefore that investors who invested through registered plans could be subject to adverse taxation by the Canada Revenue Agency; and

(d) investment funds were used for purposes other than what was disclosed to investors. A portion of the investors' funds were not directed to the development project and instead were retained by Fortress at the time of placement of the loan.

156. These allegations were true with respect to the Collier Centre Project and the SML. Fortress was engaged in a fraudulent scheme. BDMC, Galati, and the Fortress Brokers were either complicit in the fraud, or they were reckless, or negligent with respect to their role in the scheme. The Sorrenti Defendants Spadafora and Perlov were grossly negligent with respect to their roles in the scheme.

157. On or about June 21, 2022, Rathore and Petrozza were charged with one count of fraud and one count of offering a secret commission in respect of their execution of the Fortress business model, including the making the Core Misrepresentations and Misrepresentations of Value.

MCDOWELL'S INVESTMENT IN THE COLLIER CENTRE PROJECT

158. McDowell's investment in the SML is representative of the investments made by all of the Investors. The Defendants engaged in the same misconduct with all the Investors as they engaged in with McDowell.

159. McDowell invested $80,000 in the SML on or about October 5, 2012, and at that time became a party to the SML Agreement.

160. McDowell's investment in the SML is one of several investments that she made in different Fortress syndicated mortgages. These investments were to provide McDowell with retirement income – she needed her money to make money to support her through her retirement.

161. McDowell is not a sophisticated investor. She chose to invest a very large proportion of her retirement savings in the Fortress syndicated mortgage loans because of the misrepresentations that she received and relied upon from Fortress, BDMC and FFM, and the subsequent misrepresentations that she received from the Sorrenti Defendants in respect of the SML - all of

which assured her that these were safe investments, fully secured against real property, which would deliver a return of 8% interest per year, and that they were for only a few years, so her investment funds would not be tied up for a long period of time. McDowell understood that the SML qualified to be held in registered accounts, including her registered retirement savings plan ("RRSP") account.

162. In or about April 2012, McDowell met Marcel Greaux ("Greaux"), a registered mortgage agent with Mortgage Alliance Canada. Greaux recommended to McDowell that she set up a RRSP account with Olympia, so that she could hold the SML investment in a registered plan. McDowell did so.

163. Greaux referred McDowell to Centro/ BDMC. Greaux recommended that McDowell make the investment in a Fortress syndicated mortgage, and was the referring mortgage agent to BDMC.

164. On October 2, 2012, McDowell completed a Client Suitability Form ("KYC"), which Greaux signed as her mortgage agent/broker. McDowell indicated on the KYC form that her risk tolerance was medium (the second lowest risk tolerance), that her objective in making the SML investment was generating income, that she would rather accept a lower rate of return to reduce her risk, and that she had a liquidity requirement of 1-3 years. Greaux advised McDowell that the investment in the SML was appropriate for her low-risk needs. BDMC did not conduct any KYC review with McDowell, despite acting as her mortgage broker in the transaction.

165. Greaux and BDMC represented to McDowell that the SML was a secure third mortgage with little or no risk, in keeping with McDowell's risk tolerance and investment objectives. None of Greaux, BDMC, nor Sorrenti reviewed the true risks associated with the SML investment in the Collier Centre Project with McDowell. No one advised McDowell that the SML was a high-risk

investment that did not qualify to be held in a registered account, and that the true current value of the land was only $6,951,000 million (what Mady Collier paid for the Collier Centre lands on July 3, 2012, three months before McDowell made the SML investment). If this information had been disclosed to McDowell, she would not have invested in the SML.

166. On or around October 5, 2012, McDowell met with Greaux and a notary to sign or complete various documents required to make the investment in the SML, including:

(a) Investor/Lender Disclosure Statement for Brokered Transactions ("Disclosure Statement") prepared by Galati at BDMC;

(b) Attestation (proof of identity);

(c) Investment Authority – Form 9D, in favour of Sorrenti;

(d) Mortgage Commitment from Derek Sorrenti, in trust (as bare trustee) on behalf of McDowell as lender/mortgagee to BDMC on behalf of Mady Collier as borrower/mortgagor;

(e) the SML Agreement;

(f) Memorandum of Understanding from McDowell to BDMC that included confirmation of BDMC's duties to her as the mortgage broker, and that Greaux was only making a referral, and was not acting as McDowell's mortgage broker;

(g) Authorization;

(h) Mortgage investment direction and indemnity agreement; and

(i) Solicitor's certificate of disclosure and undertaking regarding arms-length mortgages from Sorrenti.

167. Around the same time, McDowell also received a "Project Fact Sheet", prepared jointly by BDMC and Fortress Capital. The Project Fact Sheet, misrepresented that the loan to value ratio of the SML was 85%, thereby qualifying to be held in a registered account. It repeated that Filice had valued the lands at $21,890,090.

168. In reliance upon (i) the oral and written representations made to her by Greaux, (ii) written representations by Fortress in its marketing materials (including the Core Misrepresentations, the Collier Centre Misrepresentations, and the Misrepresentation of Value), and (iii) the purportedly ILA provided to her by Sorrenti Law, McDowell decided to proceed with an investment in the SML in the principal amount of $80,000. The SML was for a two-year term, and the interest rate was fixed at 8% per year, compounding annually. McDowell was to receive monthly interest payments of $533.33 until maturity.

169. Had any of the material omissions set out above been disclosed to McDowell, or had any of the misrepresentations set out above not been made by Fortress, BDMC and the Sorrenti Defendants to McDowell, she would not have invested in the SML. In particular, McDowell would not have made this investment if she had been advised of any of:

(a) the true as-is value of the lands;

(b) the true loan to value ratio, including the $52 million future construction financing loan that would rank in priority to the SML;

(c) the fact that the SML would not qualify as an investment in a registered account;

(d) the terms of the Fortress Agreement with Mady Collier; and,

(e) the actual risks associated with the SML investment.

170. The SML Agreement provides that the Lender agreed to "postpone and subordinate the Loan Documents in favour of the First-Ranking Construction Loan Security and to enter into such standstill agreements as the holders thereof may require". No standstill agreement was ever provided to McDowell for her approval or consent. The terms of the standstill agreement as registered on title to the Collier Centre Project were never disclosed to her.

171. The terms of the standstill agreement in the registered charge were unreasonable in any circumstance. Accordingly, the Sorrenti Defendants acted in breach of their fiduciary and contractual duties owed to the Plaintiffs and the Investors by agreeing to standstill terms that were materially unfair to and that prejudiced the rights of the Investors, and that were inconsistent with the SML Agreement.

172. Article 12(e) and (f) of the SML Agreement provides that each advance of the SML was conditional upon the Lender's receipt of a certificate from Mady Collier that there had been no Event of Default, and that it was in compliance with all the terms of the Agreement, and an appraisal or valuation indicating completed Project value of not less than $21,840,090. None of these conditions were ever fulfilled, as the Opinion was neither an appraisal nor a valuation in accordance with CUSPAP. Therefore, Sorrenti, as trustee, ought never to have advanced the loan funds to Mady Collier.

173. Mady Collier never provided Sorrenti with financial statements in respect of the Project, although required to do so under the SML Agreement, and Sorrenti failed to require Mady Collier to fulfil any of its reporting obligations under the SML Agreement. These were all breaches of trust and breaches of fiduciary duty by Sorrenti, as trustee.

174. In the alternative, if the Sorrenti Defendants were provided with this disclosure, they failed to provide this information to the Investors when they gave them ILA, or thereafter, to fairly and honestly fulfil Sorrenti's role as Trustee.

175. Sorrenti did not ensure that all the preconditions were met before advancing any of the loan proceeds to Mady Collier, in breach of his fiduciary and contractual obligations, including the duty of honest performance of contract owed to the Investors.

176. Mady Collier breached the covenant with respect to permitted encumbrances by granting construction loans in excess of the Permitted Encumbrances, and Sorrenti breached his fiduciary and contractual duties owed to the Investors as bare trustee by granting standstill and postponement agreements that permitted Mady Collier to grant construction financing in excess of the Permitted Encumbrances.

177. Ildina Galati of BDMC prepared a Disclosure Statement in respect of McDowell's investment, which the *MBLAA* required be provided to McDowell before she completed her investment in the SML. McDowell relied upon the representations in the Disclosure Statement in making the investment in the SML.

178. Galati and BDMC were required to include in the Disclosure Statement all material risks about the transaction, all actual or potential conflicts of interest that might arise in the transaction, all relationships of the broker with each party to the transaction, and all the referral fees that it would be receiving. The Disclosure Statement did none of these things, and was materially misleading.

179. Specifically, no material risks about the transaction were disclosed, at all. The Disclosure Statement represented that an appraisal of the property had been performed and the appraised "as is" value was $21,840,090 for the land. The "appraisal" was said to be dated July 17, 2012, and that the appraiser was John Filice of Cushman & Wakefield Ltd. The Disclosure Statement represented that the land to value ratio for the SML was 85% based on the "as is" value of the property, and was 85% of the projected value of the Project. The referenced "appraisal" was no such thing. It was the Opinion. The land to value ratio was based upon an inflated as is value and failed to incorporate the construction loan which would rank in priority to the SML as advanced.

180. The Disclosure Statement also stated that there would be no fees or charges payable by the lender. Derek Sorrenti in Trust would receive a fee of $2,500, and BDMC would receive a broker fee of $2,400 and a referral fee of $4,000, all of which would be paid by the borrower (Mady Collier). In fact, these fees were paid by the Investors. The Disclosure Statement did not disclose the other fees that were paid to Fortress under the Fortress Agreement, or the fees that Fortress paid to BDMC or the Fortress Brokers.

181. The agreement of purchase and sale for the Project was not produced as required by the Disclosure Statement, although the land had been purchased by Mady Collier less than 12 months prior. Nor did BDMC produce any documentary evidence about Mady Collier's ability to meet the SML payments, and it did not produce any of the required information about the Collier Centre Project required by the Disclosure Statement. BDMC also did not disclose any of the existing or potential conflicts of interest arising from the transaction. The Disclosure Statement was wholly deficient and grossly misleading.

182. The Disclosure Statement confirmed that the SML was a third mortgage and that the first mortgage was for $4 million, in favour of Aviva Insurance Company of Canada, and the second mortgage was for a future loan of $52 million in favour of an unspecified lender. The loan to value ratio on the Disclosure Statement was therefore calculated to be 85%, using the amount owing on the first mortgage of $1,651,392 and the face amount of the SML ($16,923,077). The $52 million second mortgage for future construction financing was not included in the loan to value ratio calculation, although Mady Collier's intention was to obtain significantly more financing which would obviously make investing in the SML much riskier than what was disclosed in the Disclosure Statement.

183. McDowell was provided with and signed an Investment Authority – Form 9D, directed to Sorrenti Law (the "Form 9D"). McDowell relied upon the representations about the SML contained in the Form 9D in making the decision to invest in the SML.

184. McDowell was never told that the interest payments that she received would be made from an "interest reserve" funded by a 16% holdback of the capital of her loan. Rather, the Form 9D expressly stated at paragraph 19 that interest would not be disbursed to the Lender until it was received from the Borrower.

185. The Form 9D contained many of the Collier Centre Misrepresentations. It stated:

(a) McDowell's investment of $80,000 represented 0.47% of the total loan to the borrower;

(b) there was no bonus or holdback or other special terms, and no collection or administration fee would be payable by the borrower;

(c) interest payments could not be disbursed by the Trustee until the funds were received by the Trustee from the Borrower;

(d) the SML would be required to postpone and standstill to prior construction financing to a maximum of $61.6 million, and would be permitted on the basis of cost consultant reports prepared for Mady Collier, and that the Trustee might be requested to execute other documents for the purpose of facilitating the development of the Collier Centre Project, and confirmed that she provided the Trustee with consent to execute such required documents;

(e) save and except as outlined in the Form 9D, there would be no other postponements or encumbrances that affect the position or security under the SML; and,

(f) the only fees and commissions to be paid by the borrower were:

(i) legal fees of $5,000 plus disbursements and HST (for initial registration);

(ii) $2,500 plus disbursements and HST per tranche (paid by Mady Collier);

(iii) mortgage broker fee of 3% payable to BDMC; and,

(iv) referral fee of $4,000 payable to "Centro Mortgage Inc. (Alta-Juknevicius)".

186. The Memorandum of Understanding was dated September 27, 2012, but executed by McDowell and Greaux on October 5, 2012. This document confirmed BDMC was the mortgage broker for the transaction. It enumerated BDMC's duties, which included:

- Suitability of lender
- Know Your Client (KYC)
- Document Completion

- Merits of the Project
- Risk Disclosure
- Conflict of Interest disclosure.

187. BDMC failed to meet all of these obligations, as it did not determine the suitability of the SML as a loan investment for McDowell, it made no effort to know its client, the documents that McDowell completed were materially misleading, it did not independently investigate the merits of the Project and whether it was an appropriate investment for McDowell, it did not disclose the risks of the investment to McDowell, and it failed to disclose its conflict of interest in acting for both the lender and the borrower, or its affiliation with the Fortress Defendants.

188. BDMC breached its contractual and fiduciary duties with McDowell by failing to meet any of these duties when selling the SML to her.

189. On October 5, 2012, Sorrenti and McDowell executed a Declaration of Bare Trust whereby Sorrenti agreed to hold her interest in the SML in trust as bare trustee. Under the Declaration, Sorrenti agreed to deal with the SML as directed by the beneficiary. He was not granted the power to act on his own without direction from the beneficiary, yet he proceeded to do so, in breach of contract, breach of trust, and in breach of his fiduciary duties.

190. Sorrenti woefully breached the terms of the Bare Trustee Agreement in registering the additional provisions as a charge on title, without ever advising McDowell of their existence or seeking her instructions or direction. Further, Sorrenti breached the Bare Trustee Agreement in registering provisions on title that are materially different from, and more prejudicial than, the terms of the initial SML Agreement.

191. Sorrenti is liable to McDowell and all Investors for all losses that they have suffered as a result of Sorrenti exercising his position as Bare Trustee without the beneficiaries' authorization, and in breach of his duties owed to the Investors.

192. Sorrenti, Mady Collier, Mady Guarantors and McDowell also executed a Confirmation of Lender's Interest agreement. In this agreement, Sorrenti acknowledged holding the Investors' interests in the SML in trust. He covenanted to provide McDowell with notice of any material default by Mady Collier, and "to enforce the [SML] on behalf of [McDowell] … as would a prudent lender, having regard to the quantum of the Loan and the nature of the development against which the Loan security is registered". Sorrenti breached this agreement, woefully.

193. Mady Collier never provided Sorrenti with financial statements in respect of the Collier Centre Project, although required to do so under the SML Agreement, and Sorrenti failed to require Mady Collier to fulfil any of its reporting obligations under the SML Agreement.

194. The Sorrenti Defendants also failed to perform their duties as mortgage administrator honestly and in good faith by registering standstill, postponement and subordination provisions that were inconsistent with the SML Agreement, and in failing to exercise the degree of care and skill that a prudent lending institution would exercise for its own account in administering the SML.

195. Sorrenti did not ensure that all the preconditions were met before advancing any of the SML loan proceeds to Mady Collier, in breach of his fiduciary and contractual obligations, including the duty of honest performance of contract owed to the Class.

196. The Disclosure Statement falsely represented to McDowell that the only fees and costs to be paid by Mady Collier with respect to the loan were: (i) a legal fee of $2,500 to Derek Sorrenti, (ii) a broker fee of $2,400 to Centro (BDMC), and (iii) a "referral fee" of $4,000 to Centro (Alta-Juknevicius). The Disclosure Statement did not disclose the 35% in fees that Mady Collier had committed to pay to Fortress with respect to this financing. This omission was a material omission about which all of BDMC, Galati and the Sorrenti Defendants were aware, and which they intentionally or negligently failed to disclose to McDowell.

197. The Disclosure Statements delivered to each of the Class Members was in the same form, and also made the same material omissions, of which BDMC, Galati, and the Sorrenti Defendants were aware, and intentionally or negligently failed to disclose to the Class.

198. McDowell signed the Disclosure Statement on October 2, 2012, in compliance with the instructions from BDMC that the statement had to be signed and dated at least two days before the rest of the SML documentation was signed.

199. On October 5, 2012, McDowell had a telephone call with Derek Sorrenti (or a Sorrenti Law lawyer acting under Sorrenti's direction) during which McDowell was provided with allegedly ILA about the SML. The call lasted approximately 20 minutes, during which McDowell was given a *pro forma* review of the documentation to be signed, but was not provided with any ILA about the investment.

200. When giving McDowell purportedly "independent" legal advice, Sorrenti did not ask McDowell about her personal circumstances, her risk tolerance or investment objectives, and he gave no advice to her about whether the SML was an appropriate investment in her circumstances.

201. Further, Sorrenti did not advise McDowell that there was no appraisal of the subject lands that complied with CUSPAP, that the Opinion was not reliable or accurate (or compliant with CUSPAP), or that the Opinion was not based on the current as-is value of the subject lands.

202. None of the significant risks associated with investing in the SML were reviewed with McDowell. None of the Core Misrepresentations, Misrepresentation of Value, or the Mady Collier Misrepresentations were identified as misrepresentations. None of the Sorrenti Defendants' multiple and conflicting roles, nor Olympia's role, were explained to McDowell.

203. McDowell received no explanation from Sorrenti, when he first gave her legal advice or thereafter, about how the SML might be enforced if it went into default, or how the standstill and postponement provisions in the SML Agreement would affect any remedial action available to her in the event of default.

204. After Sorrenti's purported "ILA" to McDowell on or around October 5, 2012, McDowell signed the loan documents as she was directed, and $80,000 was transferred from her Olympia RRSP to Sorrenti, in trust.

AVERSA'S INVESTMENT IN THE COLLIER CENTRE PROJECT

205. Aversa's investments in the SML is representative of the investments made by all of the Investors. The Defendants engaged in the same misconduct with all the Investors as they engaged in with Aversa.

206. Aversa is not a sophisticated investor. He is employed in the construction industry. He chose to invest a portion of his savings in the Fortress syndicated mortgage loan because of the misrepresentations that he received and relied upon from Fortress, BDMC and FFM, and the

subsequent misrepresentations that he received from the Sorrenti Defendants in respect of the SML – all of which assured him that this was a safe investment, fully secured against real property, which would deliver a return of 8% interest per year, and it was for only a few years, so his investment funds would not be tied up for a long period of time. Aversa understood that the SML qualified to be held in registered accounts, including his tax-free savings account ("TFSA").

207. In the fall 2012, Aversa learned about Fortress syndicated mortgages through an FFM registered agent marketing Fortress SMLs. The agent recommended, and Aversa attended Fortress seminars, which promoted the investments as safe and secure because they were registered against the lands, and Aversa received promotional materials about Collier Centre directly from Fortress Developments and BDMC.

208. The FFM agent recommended that Aversa make the investment in Fortress syndicated mortgages, and referred Aversa to Fortress and BDMC to invest in the SML. Tony Amendola of BDMC was Aversa's mortgage broker with respect to the SML investment.

209. On or around November 28, 2012, Aversa completed a Client Suitability Form ("KYC form") provided by FFM in the manner recommended by the FFM agent. BDMC did not conduct any KYC review with Aversa, despite acting as his mortgage broker in the transaction, nor did Sorrenti review Aversa's true risk tolerances with him at the time he provided the ILA.

210. FFM and BDMC represented to Aversa that the SML was a secure third mortgage with little or no risk, in keeping with Aversa's true risk tolerance and investment objectives. None of FFM, BDMC, nor Sorrenti reviewed the true risks associated with the SML investment in the Collier Centre Project with Aversa. No one advised Aversa that the SML was a high-risk investment that did not qualify to be held in a registered account, and that the true current value of

the land was less than $7 million. If this information had been disclosed to Aversa, he would not have invested in the SML.

211. The FFM mortgage agent advised Aversa that the Collier Centre Project was lower risk than other Fortress projects because the requisite planning and/or zoning amendments had already been approved by the City of Barrie. Moreover, the FFM agent represented to Aversa that various established entities, including the Bank of Montreal, Sobeys and the City of Barrie, had already agreed to lease the Collier Centre premises, implying that the space was in high demand and thus the Collier Centre Project was a safe investment – which it was not. The Core Misrepresentations, the Collier Centre Misrepresentations, and the Misrepresentation of Value were made to Aversa by BDMC and Fortress representatives during the seminar.

212. On October 31, 2012, Aversa received a copy of the Opinion. He also received a Mady Collier Project Fact Sheet prepared by Fortress and Mady Collier, which he relied upon in making the SML investment.

213. On November 20, 2012, FFM emailed Aversa a letter from BDMC enclosing the SML documents for Aversa to execute. The documents Aversa received are the same documents that were sent to McDowell. Shortly thereafter, the FFM agent and a notary executed the SML documents with Aversa.

214. In reliance upon (i) the oral and written representations made to him by the FFM agent, (ii) the oral and written representations by Fortress at the investment seminar and in its marketing materials (including the Core Misrepresentations, the Collier Centre Misrepresentations, and the Misrepresentation of Value), including that Mady Guarantors was providing a guarantee of the SML, and (iii) from the purportedly "independent" legal advice later provided to him by Sorrenti

Law, Aversa decided to invest in the SML in the principal amount of $15,000, which represented 0.08% of the total SML of $16,923,077 to be granted to Mady Collier. Aversa decided to hold this investment in a registered tax-free account, which was set up at Olympia. Aversa's wife, Adriana Aversa also invested $15,000, held in her TFSA.

215. Had any of the material omissions been disclosed to Aversa, or had any of the misrepresentations set out above not been made by FFM, Fortress, BDMC and the Sorrenti Defendants to Aversa, he would not have invested in the SML. In particular, Aversa would not have made this investment if he had been advised of any of:

(a) the true as-is value of the lands;

(b) the true loan to value ratio, including the $52 million construction financing loan that would rank in priority to the SML;

(c) the fact that the SML would not qualify as an investment in a registered account;

(d) the terms of a Fortress Agreement; and

(e) the actual risks associated with the SML investment, including the postponement and subordination terms.

216. The Sorrenti Defendants failed to meet their contractual and fiduciary duties owed to Aversa and the Class for the same reasons they breached these duties owed to McDowell.

217. The Investor/Lender Disclosure Statement for Brokered Transactions prepared by BDMC and the FFM agent in respect of Aversa's investment was materially misleading and failed to disclose BDMC's conflict of interest for the same reasons as the McDowell Disclosure Statement. Aversa relied upon the misrepresentations in the Disclosure Statement in making the SML investment.

218. Aversa was provided with and signed an Investment Authority – Form 9D, directed to Sorrenti Law (the "Form 9D"). Aversa relied upon the representations about the SML contained in the Form 9D in making his decision to invest in the SML. The Form 9D had the same misrepresentations and omissions as the McDowell Form 9D.

219. Like McDowell, Aversa signed a Memorandum of Understanding containing the same terms as the Memorandum of Understanding signed by McDowell. It identified BDMC as the lead mortgage broker. As with McDowell, BDMC failed to meet all of the enumerated brokers' duties.

220. BDMC breached its contract and fiduciary duties to Aversa for the same reasons it breached its duties owed to McDowell.

221. During the meeting to sign documents, Aversa had a telephone call with a Sorrenti Law lawyer acting under Sorrenti's direction during which Aversa was provided with allegedly ILA about the SML. The call lasted approximately ten minutes, during which Aversa was given a *pro forma* review of the documentation to be signed, but was not provided with any ILA about the investment.

222. Sorrenti ignored his legal obligations under the *Rules of Professional Conduct* to disclose conflicts of interest, including that he was paid by Fortress to provide ILA to Aversa about the Fortress investment.

223. Sorrenti did not ask Aversa about his personal circumstances, his risk tolerance or investment objectives, and he gave no advice to Aversa about whether the SML was an appropriate investment in Aversa's circumstances.

224. None of the significant risks associated with investing in the SML were reviewed with Aversa. None of the Core Misrepresentations, Misrepresentation of Value, or the Mady Collier Misrepresentations were identified as misrepresentations. None of the Sorrenti Defendants' multiple and conflicting roles, nor Olympia's role, were explained to Aversa. Aversa received no explanation about how the SML might be enforced if it went into default, or the effects of the anticipated standstill agreement in the SML Agreement.

225. Like McDowell and the other Class Members, Aversa believed that the Fortress Project was safe and secure, based upon the representations made to him by Fortress, FFM and the Sorrenti Defendants, all of which contained the Core Misrepresentations, the Collier Centre Misrepresentations and the Misrepresentation of Value.

226. The Disclosure Statements delivered to each of the Class Members was in the same form, and also made the same material omissions, of which BDMC, FFM, Galati, and the Sorrenti Defendants were aware, and intentionally or negligently failed to disclose to the Class.

227. The Plaintiffs were never advised by any of Galati, BDMC, FFM, or the Sorrenti Defendants that there was no valuation of the Collier Centre Project that complied with CUSPAP. They were led to believe that the Opinion was a legitimate and compliant appraisal, and that it correctly provided a current as-is valuation of the subject property at $21,840,090. BDMC, Galati and Sorrenti were all negligent in failing to identify to the Plaintiffs that the Mady Collier Project was not, then, worth close to $21,840,090.

228. Ultimately, as the mortgage administrator, Sorrenti also had an obligation to advise the Plaintiffs of the real risks associated with the SML, including the actual value and loan to equity ratio of the subject property. Sorrenti ignored his legal obligations under the *Rules of Professional*

Conduct to disclose conflicts of interest, including that he was paid by Fortress to provide ILA to the Plaintiffs about the Fortress investment, and that he had a financial interest in the investments as he was paid for administrating the SML as well.

229. The Plaintiffs relied upon their broker, BDMC, and Sorrenti as trustee and mortgage administrator to accurately report on the terms and status of the SML, and therefore they each believed that they had no recourse or actions available to them but to await the build-out of the Collier Centre Project when the SML went into default.

230. Fortress, BDMC and the Sorrenti Defendants knew or ought to have known that this SML was inconsistent with the Plaintiffs' risk profile, and that selling the investment to either of them was contrary to Fortress and BDMC's obligations under ss. 43 and 45 of the *MBLAA* and ss. 4, 12, 18, 24, 25, 26 and 27 of Regulation 188/08 and s. 10.1 of Regulation 189/08. Fortress and BDMC, nonetheless, sold the Plaintiffs the SML. All these defendants failed to provide proper advice to the Plaintiffs, in breach of their duties owed to them. In the result, the Plaintiffs have suffered the loss of their investments, including interest at the rate of 8% per year.

231. As of October 2022, none of the principal of on the SML/Collateral Charge ($16,923,077), has been repaid. Interest continues to accrue at 8% per year.

THE CAUSES OF ACTION

232. The Plaintiffs' claims asserted against some or all of the Defendants are:

(a) Fraudulent misrepresentation/deceit;

(b) Negligent misrepresentation;

(c) Negligence;

(d) Breach of fiduciary duty; and

(e) Breach of contract.

A. FRAUDULENT MISREPRESENTATION/DECEIT

233. Fortress, BDMC, and the Fortress Brokers made fraudulent misrepresentations to the Plaintiffs and the Class.

234. By soliciting investments in the SML, and acting as mortgage brokers for the Investors in respect of their SML investments Fortress, BDMC and the Fortress Brokers were in a direct and proximate relationship with the Plaintiffs and the Class, and owed them the duty of care of a reasonably competent mortgage broker, which these defendants breached by making fraudulent misrepresentations about the SML investments.

235. These defendants knowingly made the Core Misrepresentations, the Collier Centre Misrepresentations, and Misrepresentation of Value to the Investors as set out herein, upon which they knew the Investors would rely, and which included:

(a) misrepresenting that the SML was a safe and secure investment, fully secured on the Collier Centre lands, and omitting to disclose the material risks associated with the investment;

(b) misrepresenting the SML qualified as an investment that could be held in registered accounts and that the loan-to-value calculation of the Collier Centre Project property was under 100%;

(c) misrepresenting that the current "as is" value of the subject lands was as set out in the Opinions, and intentionally concealing that the Opinions were not prepared in compliance with CUSPAP, and were not current value appraisals and were not, in fact, appraisals;

(d) omitting to tell the Investors that Mady Collier would receive no more than 50% of the funds raised in the SML and that Fortress would retain approximately 35% of the funds, including to pay for an unearned profit participation;

(e) failing to disclose that 8% of the funds paid by the Investors would be used to fund an "interest reserve" and would be used to pay the first two years of interest payments due under the SMLs, and that the funds of future investors in the SMLs would be used to pay the interest thereafter, and therefore the payment of interest under the SMLs was actually a return of capital, not profits, and was structured effectively as a Ponzi scheme, and in breach of section 23 of Regulation 189/08 of the *MBLAA*;

(f) failing to disclose brokerage commissions amounting to 15% of the funds raised would be paid to various brokers, agents and referring parties, which was substantially higher than typical commissions in the mortgage industry, and much greater than the brokerage fees disclosed to the Plaintiffs and the Class;

(g) misrepresenting to Investors that they would receive ILA from the Sorrenti Defendants, when, in fact, Fortress retained the Sorrenti Defendants, and paid for this legal advice on behalf of the borrower, and the Sorrenti Defendants were in a position of conflict, given that they would earn income as the trustee and mortgage administrator;

(h) misrepresenting that advances under the SML would be based upon the "achievement and completion of certain development and construction milestones" based on reports from the cost consultant retained to work on the Collier Centre Project, when in fact the funds were immediately disbursed by Sorrenti Law;

(i) misrepresenting that the SML would not be subordinated to any other mortgage, other than construction financing totalling no more than $61.6 million;

(j) omitting to disclose to the Plaintiffs and the Class that Olympia was not authorized to carry on business in Ontario as trustee for the Fortress registered plan SML investments, and that no trust companies or financial institutions licensed to do business in Ontario would permit registered plan clients to invest in Fortress syndicated mortgages through registered accounts that they administered;

(k) misrepresenting that the SML would be repaid when it came due when these defendants knew that construction could not be completed by the date the SML came due, and still selling the SML to Class members after these facts were known; and,

(l) omitting to disclose that the registered terms of the SML would include a standstill agreement purporting to prevent the Investors from acting upon their security in the event of default or when the SML came due, unless the construction lenders consented to such action.

236. In making their decision to invest in the SML, the Investors each relied on the fraudulent misrepresentations by Fortress, BDMC, and the Fortress Brokers to their detriment. The Plaintiffs and the Class have suffered the loss of their capital and interest at the rate of 8% interest per year because of these defendants' fraudulent misrepresentations.

B. NEGLIGENT MISREPRESENTATION

237. In making their decision to invest in the SML, the Plaintiffs and the Class each relied to their detriment on the misrepresentations made by Fortress, BDMC, Galati, Spadafora, Perlov, the Fortress Brokers, and the Sorrenti Defendants. They have suffered the loss of their capital and interest at the rate of 8% interest per year, as result thereof.

a. The Mortgage Brokers

238. By soliciting investments in the SML, making representations upon which they knew the Investors would reasonably rely, and acting as mortgage brokers for the Investors in respect of their SML investments, Fortress, BDMC, Galati, Spadafora, Perlov, and the Fortress Brokers were in a direct and proximate relationship with the Plaintiffs and the Class, and owed them the duty of care of a reasonably competent mortgage broker, which these defendants breached by making the Core Misrepresentations, the Collier Centre Misrepresentations and the Misrepresentation of Value negligently.

239. In the alternative to paragraphs 233-236 above, if the representations set out in those paragraphs were not made to the Investors by Fortress, BDMC, Galati, Spadafora, Perlov, and the Fortress Brokers fraudulently, then they were made negligently by all of Fortress, BDMC, Galati, Spadafora, Perlov, and the Fortress Brokers.

240. These defendants knew, or ought reasonably to have known that these misrepresentations were untrue when they were made. These defendants knew, or ought reasonably to have known that the Investors would rely upon the misrepresentations in making their decision to invest in the SML, and the Investors did so rely, to their detriment.

b. Sorrenti Defendants

241. The Sorrenti Defendants were in a direct and proximate relationship with the Investors in respect of each of the four separate roles that they held with respect to the Collier Centre Project, *i.e.* (i) as solicitor providing legal advice; (ii) as trustee holding title to the SML on behalf of the Plaintiffs and Class, and subject to the terms of the Memorandum of Understanding; (iii) as the lawyer registering the charge on title to the Collier Centre lands to secure the SML, and (iv) as mortgage administrators.

242. The Sorrenti Defendants made the Core Misrepresentations, the Collier Centre Misrepresentations and the Misrepresentation of Value to the Plaintiffs and the Class negligently at the time they provided the ILA to the Investors.

243. The Sorrenti Defendants knew, or ought reasonably to have known that these misrepresentations were untrue when they were made, and that the admissions were material. These defendants knew, or ought reasonably to have known that the Investors would rely upon the misrepresentations in making their decision to invest in the SML, and in acquiring in the Collateral Charge rather than taking action against Mady Guarantors and the Investors did so rely, to their detriment.

244. The Sorrenti Defendants omitted to advise the Investors when the SML was in default and that they had enforcement rights against Mady Guarantors. They also omitted to warn the Investors that the Collateral Charge was a sham. These omissions were negligent misrepresentations.

C. NEGLIGENCE

245. Each of the defendants was in a proximate relationship with the Plaintiffs and the Class giving rise to a duty of care.

246. Fortress, BDMC, Galati, Spadafora, Perlov, and the Fortress Brokers owed the Plaintiffs and the Class a duty of care based on the special relationships between them, as set out above in the sections addressing fraudulent and negligent misrepresentation.

247. The Sorrenti Defendants were in a direct and proximate relationship with the Plaintiffs and the Class in respect of each of the four roles that they held with respect to the Collier Centre

Project. The Sorrenti Defendants were negligent in performing their duties in each such role, and as a result of their negligence, the Investors were injured.

248. Each of the defendants was in a proximate relationship with the Plaintiffs and the Class such that they knew, or ought reasonably to have known that their acts or omissions in respect of their roles in respect of the SML could cause injury to or damage to the Investors if they failed to take reasonable care. Their negligence did cause harm to the Investors, and was the proximate cause, or contributed to the investment losses that the Investors have suffered.

249. The particulars of the defendants' negligence is set out above, and includes the following.

a. Negligence of all Defendants

250. The defendants failed to disclose the actual as-is value of the Collier Centre lands to the Plaintiffs and the Class at the time that they invested in the SML and failed to disclose the true risks involved in the investment.

251. The defendants knew, or ought to have known, that the actual as-is value of the subject lands rendered the SML ineligible for investment in registered plans, and they did not disclose this material fact to the Investors.

b. As against Fortress, BDMC, Galati, Spadafora, Perlov and FFM

252. These defendants failed to ensure that the SML complied with all legal requirements and that proper disclosure of all material risks was made to the Investors.

253. These defendants created and disseminated the promotional materials which were inaccurate, false, deceptive, misleading, and failed to contain material information, and which were designed to convince the Class Members of the safety and high return of the SML investments,

which these defendants knew or ought to have known were untrue, the particulars of which are set out above.

254. These defendants failed to provide the Plaintiffs and the Class with truthful, clear and transparent information about the material facts, risks and fees payable related to SMLs.

255. These defendants marketed the SML to the Investors in a manner that was inaccurate, false, deceptive, misleading, which failed to contain material information, and which was designed to convince the Class Members of the safety and high return of the SML investments, which these defendants knew or ought to have known was untrue.

256. These defendants marketed the SML to the Investors as safe and secure investments when they knew the SML was a risky investment. These defendants knew and did not disclose that because there was no or insufficient security for the SML, they were not suitable for any retail investors.

257. Fortress undertook the duties of a mortgage brokerage under the *MBLAA* when this defendant knew it was not licensed as a mortgage brokerage, and BDMC and Galati allowed Fortress to fulfil mortgage broker functions, including selling investments in the SML that ought to have been performed by them.

258. Fortress introduced the Collier Centre Project investment to the Investors when only a licensed mortgage brokerage was entitled to make such introductions and BDMC (and the Fortress Brokers) allowed Fortress to do so.

259. These defendants failed to ensure the investments in the SML were appropriate for each Investor based on the Investor's sophistication, investment objectives, and risk profile, and in fact,

they failed to fulfill any of the KYC functions required of a mortgage broker before placing the Investors into the SML.

260. These defendants withheld from the Investors that approximately 35% of the principal amount advanced under the SML was used to pay for "development consultant fees" all of which were paid to Fortress and not to actual consultants with respect to the development of the Collier Centre Project.

261. These defendants withheld the fact that 50% of the development consultant fee would be paid to brokers, BDMC (in its capacity as borrower's broker) and Fortress.

262. These defendants failed to fulfill the obligations of a mortgage brokerage to ensure that the SML complied with all legal requirements and that complete and accurate disclosure of all material risks was made to the Investors. This included failing to provide Investors with all the accurate and true information and documents required by FSCO to be produced, and as enumerated in the Disclosure Statement.

263. These defendants failed to ensure the Plaintiffs and the Class obtained genuine ILA, and instead they arranged ILA for the Investors that was not truly independent, but which was designed to encourage the Investors to invest in the SML. These defendants withheld and/or concealed the potential and actual conflicts of interest amongst the entities involved in the SML, specifically the relationships between Fortress, BDMC, and the Sorrenti Defendants.

264. These defendants withheld from the Plaintiffs and the Class that the ILA from the Sorrenti Defendants was paid for by Fortress and therefore the advice was not truly independent.

265. These defendants failed to disclose to the Plaintiffs and the Class that Olympia was not authorized to carry on business in Ontario as trustee for the Fortress registered plan SML investments, and that no trust companies or financial institutions licensed to do business in Ontario would permit registered plan clients to invest in Fortress syndicated mortgages through registered accounts that they administered.

266. These defendants knew or ought to have known that Mady Collier had not disclosed information which adversely affected, or would reasonably be seen as adversely affecting the Collier Centre Project lands or Mady Collier's ability to perform its obligations as Mady Collier was obligated to do under the provisions of the SML Agreement (Articles 13 (g) and (h)).

267. These defendants failed to ensure that the SML was not subordinated to any other mortgage other than construction financing, to a maximum of $61.6 million.

268. These defendants marketed and recommended the SML to the Investors when it was an inappropriate investment for any investor because it was neither safe nor secure and, in fact, was a fraudulent scam.

269. These defendants failed to warn, or inaccurately explained, that "construction financing" references in the SML documents included all the funds needed to complete the Project, including further "mezzanine" debt.

270. Generally, these defendants failed to provide competent mortgage broker services to the Investors.

c. As against the Sorrenti Defendants

271. The Sorrenti Defendants owed the Plaintiffs and the Class a duty of care to act as a reasonably prudent real estate solicitor in providing them with ILA, and registering the charges on title to the subject lands.

272. Sorrenti owed the Plaintiffs and the Class a duty of care to act as a reasonably prudent trustee in fulfilling his role as the SML trustee, including compliance with the contractual provisions with respect to that role.

273. Sorrenti Law owed the Plaintiff and the Class a duty of care to act as a reasonably prudent mortgage administrator.

274. The Sorrenti Defendants were negligent in performing their duties in each such role, as particularized above, and also below with respect to breach of fiduciary duties. The breaches of fiduciary duty were also acts of negligence by the Sorrenti Defendants.

D. BREACH OF FIDUCIARY DUTY

275. The Plaintiffs and the Class were in a fiduciary relationship of trust and confidence with the Sorrenti Defendants, BDMC and the Fortress Brokers. These defendants had the ability to exercise discretion or the power to affect the interests of the Investors, making them vulnerable to these defendants' actions. As such these defendants were required to act honestly, in good faith, and strictly in the best interests of the Plaintiffs and the Class.

276. The Sorrenti Defendants, BDMC and the Fortress Brokers owed fiduciary duties to the Plaintiffs and the Class to:

(a) act honestly, in good faith and in their best interests;

(b) exercise the care, skill, diligence and judgment that a prudent investor would exercise in investing their funds (BDMC and the Fortress Brokers);

(c) exercise the care, skill, diligence and judgment of a reasonable solicitor in providing ILA (the Sorrenti Defendants);

(d) exercise the care, skill, diligence and judgment of a reasonable trustee (Sorrenti);

(e) exercise the care, skill, diligence and judgment of a reasonable mortgage administrator (Sorrenti Law);

(f) consider all relevant criteria about the Collier Centre Project before recommending an investment in the SML;

(g) determine the true current value of the Collier Centre property, and advise the Investors accordingly;

(h) ensure that documentation provided to the Investors accurately established the current as is value of the Collier Centre property;

(i) disseminate accurate and truthful information about the Collier Centre project; and,

(j) warn Class Members, that the SML was high risk, unsecured, and a grossly improvident bargain.

277. The Sorrenti Defendants, BDMC and the Fortress Brokers all breached the fiduciary duties that they each owed to the Plaintiffs and the Class, as particularized above with respect to the allegations of negligent misrepresentation and negligence. These defendants acted in their own self-interest, to the detriment of the Investors. They failed to disclose material facts about the SML and omitted to disclose other material facts. Their negligence, negligent misrepresentations and breach of contract were also breaches of their fiduciary duties owed to the Investors.

278. With respect to the Sorrenti Defendants' role as a Trustee and administrator on behalf of the Investors, they breached their fiduciary duties in the following respects:

(a) Sorrenti acted as a co-trustee with Olympia when he knew that Olympia was carrying on business unlawfully in Ontario;

(b) They knew the investment funds were not being used for "land acquisition costs and initial soft costs, and the costs incidental thereto" as represented, yet he took no steps to prevent such unauthorized use being made of the funds, and allowed the SML funds to be disbursed to the borrower, when the conditions to do so were not met;

(c) Sorrenti failed to obtain the necessary information and ensure that the conditions precedent were met prior to making advances to Mady Collier;

(d) They failed to ensure the SML was only subordinated to other mortgages as agreed upon in the SML Agreement;

(e) Sorrenti used a portion of Class Members' own funds, which he held in the Interest Reserve Account to pay the interest owing on the SML, rather than requiring Mady Collier to fund the Interest Reserve Account from its own resources;

(f) Sorrenti failed to disclose to the Investors that the interest payments were actually a return of capital, and not interest;

(g) Once the SML went into default, they failed to take steps to enforce the Investors' security, as they were obligated to do under the SML Agreement's terms;

(h) Once the SML went into default, they failed to properly inform Investors of the default and obtain their instructions as to what steps should be taken to enforce the Investors' rights, and instead represented to them that they had no recourse;

(i) They failed to take any steps to enforce the guarantees given by Mady Guarantors.

279. Insofar as Fortress was acting as an unlicensed mortgage broker, it, too, owed the Plaintiffs and the Class all the duties of a mortgage broker at common law and under the *MBLAA*.

280. Fortress breached its fiduciary duties, as particularized above, including:

(a) It assumed the duties of a mortgage brokerage under the *MBLAA* when it knew it was not licensed by FSCO as a mortgage brokerage;

(b) It introduced the Collier Centre Project investment to the Investors when only a licensed mortgage brokerage was entitled to make such introductions;

(c) It failed to take the steps required of a mortgage brokerage to ensure that the SML complied with all legal requirements and that proper disclosure of all material risks were made to the Investors;

(d) It failed to ensure the investments in the SML were appropriate investments for each Investor based on the investor's background and risk profile, and based upon client suitability forms accurately completed following a KYC interview with each investor;

(e) It marketed and recommended the SML as safe and secure investments, when it knew they were risky investments and unsuitable for any investors;

(f) It made the misrepresentations particularized above in marketing and selling the SML investments to the Investors;

(g) It failed to ensure the Investors obtained genuine ILA, and instead arranged for ILA that was not truly independent as it was prepackaged and paid for by Fortress, and did not warn the Investors of the risks associated with investment in the SML or the true nature of the Collier Centre Project;

(h) It utilized the services of Olympia to hold the SML investments in the Investors' registered accounts, when it knew Olympia had been turned down for a license to carry

on business by FSCO but had unlawfully decided to carry on business in Ontario as the trustee of Fortress syndicated mortgage loans;

(i) It did not disclose to the Investors that no trust company authorized to carry on business in Ontario was prepared to hold Fortress syndicated mortgage loans in registered accounts; and,

(j) It knew Mady Collier had not disclosed information which adversely affected or would be reasonably seen as adversely affecting the Collier Centre Project lands or Mady Collier's ability to perform its obligations, as Mady Collier was obligated to do under the provisions of the SML Agreement (Article 13 (g) and (h)), but nevertheless continued to solicit Investors in the SML and induce them to enter into the SML while Mady Collier was in default under the Agreement.

281. The Plaintiffs and the Class Members were entirely reliant on the skill and expertise of Fortress, BDMC, the Fortress Brokers, and the Sorrenti Defendants. The Class Members were in a wholly vulnerable position relative to these defendants.

282. Fortress, BDMC, the Fortress Brokers and the Sorrenti Defendants breached their fiduciary duties owed to the Plaintiffs and the Class, resulting in the Investors sustaining the loss of their entire investments.

E. BREACH OF CONTRACT

a. BDMC, Galati, the Fortress Brokers, Spadafora and Perlov

283. The Plaintiffs and the Class signed a Memorandum of Understanding ("MOU") with BDMC and retained BDMC as their mortgage broker, or they signed a MOU with the Fortress

Brokers for the same purpose. Where Class Members retained one of the Fortress Brokers, BDMC acted jointly with the Fortress Brokers in fulfilling the role of mortgage broker.

284. In the MOU, the mortgage brokers set out their duties owed to the Plaintiffs and the Class as including the following:

(a) Suitability of the lender;

(b) Know Your Client (KYC);

(c) Documentation Completion;

(d) Merits of the Project;

(e) Risk Disclosure; and,

(f) Conflict of interest disclosure.

285. These defendants failed to meet their contractual obligations owed to the Plaintiffs and the Class under the MOUs, and as their mortgage brokers. As set out above in detail, they:

(a) failed to make any effort to meet their KYC obligations with respect to any of the Investors;

(b) failed to disclose the risks associated with the SML investments;

(c) failed to ensure that an investment in the SMLs were an appropriate investment for each of the Investors based upon their investment objectives, sophistication, and risk tolerance;

(d) failed to ensure that the valuation of the Collier property was a current value appraisal prepared in compliance with CUSPAP; and,

(e) failed to provide the Investors with a current value appraisal prepared in compliance with CUSPAP.

286. As the principal broker of BDMC, Galati had a statutory duty under the *MBLAA* and its regulations to ensure that BDMC and its brokers and agents complied with the *Act*'s provisions. She knew of these obligations but failed to meet them.

287. Spadafora and Perlov failed to ensure that FFM and its brokers and agents complied with the *MBLAA*'s provisions. They knew of these obligations but failed to meet them, as well.

288. Galati, Spadafora and Perlov knew BDMC's and FFM's breach of contract would cause harm to the Plaintiffs and the Class. As principal broker, they did nothing to prevent those breaches from happening contrary to their statutory obligations under the *MBLAA*. As principal broker, they did nothing to develop policies for BDMC or FFM that would prevent those breaches from happening contrary to their statutory obligations.

289. Had BDMC, FFM, Spadafora, Perlov and Galati met their contractual obligations to the Investors, the Investors never would have invested in the SML, and would not have suffered any loss.

290. Because of these defendants' breaches of their contractual obligations to the Investors, the Investors have suffered the loss of their capital and interest at the rate of 8% interest per year. These defendants are therefore liable to the Investors for the whole of their investment losses.

b. As against the Sorrenti Defendants

291. The Plaintiffs and the Class retained the Sorrenti Defendants to provide them with competent ILA, and to act on their behalf on the closing of their SML investment transactions.

292. As set out above, the Sorrenti Defendants breached these retainers by failing to provide the Plaintiffs and the Class with ILA, because they were acting in a position of conflict.

293. The Sorrenti Defendants also breached these retainers by providing negligent ILA to the Plaintiffs and the Class, as particularized above. The advice was prepackaged and was identical for all investors.

294. Had the Sorrenti Defendants met their contractual obligations to the Investors, the Investors never would have invested in the SML, and would not have suffered any loss.

295. As a result of the Sorrenti Defendants breaches of their contractual obligations to the Investors, the Investors have suffered the loss of their capital and interest at the rate of 8% interest per year. The Sorrenti Defendants are therefore liable to the Plaintiffs and the Class for the whole of their investment losses.

296. The Plaintiffs and the Class also retained Sorrenti to act as trustee with respect to the SML and retained Sorrenti Law to act as their mortgage administrator.

297. Sorrenti, as trustee, breached his contract with the Investors, as set out above.

298. Sorrenti failed to fulfill his duties as trustee honestly and in good faith.

299. But for Sorrenti's breaches of contract in performing his role as trustee, none of the Plaintiffs' or the Class' investment funds would have been advanced to Mady Collier and they would have suffered no loss, and the SML would not have been subordinated to an excessive amount of construction financing. Because of Sorrenti's breaches of contract in performing his role as trustee, the Plaintiffs and the Class lost their capital and interest at the rate of 8% interest per year. Sorrenti is liable for the losses arising from his breaches of contract, including the lost opportunity to invest their funds in an alternative and appropriate investment.

300. Had Sorrenti Law fulfilled its duties honestly and in good faith, and properly advised the Plaintiffs and the Class about their rights and taken enforcement action against Mady Guarantors when the SML went into default, or taken action on behalf of the Investors to enforce the SML when it went into default, then the Investors would have recovered the full amount of their capital investment and all accrued interest from Mady Collier and Mady Guarantors, and would have suffered no loss. Sorrenti Law is therefore liable to the Plaintiffs and the Class for the whole of their investment losses arising from this breach of contract.

RELEVANT LEGISLATION

301. The Plaintiffs plead and rely upon the provisions of the following Acts and the Regulations passed thereunder:

(a) *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29;

(b) *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

(c) *Loan and Trust Corporations Act*, R.S.O. 1990, c. L-25;

(d) *Business Corporations Act*, R.S.O. 1990, c. B-16;

(e) *Trustee Act*, R.S.O. 1990, c. T-23; and

(f) *Negligence Act*, R.S.O. 1990, c. N-1.

PLACE OF TRIAL

302. The Plaintiffs propose that this action be tried at Toronto, Ontario.

August 8, 2016

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SCHEDULE "A"

PIN 58818-0185(LT)
LT81 & PT LT 82 N/S COLLIER ST. PL 2, PT MARKET BLK, ALL OF LTS 98, 99, & 100 & PT LT 97 S/S WORSLEY ST PL 2 BEING PT 1 PL 51R39175; SUBJECT TO AN EASEMENT AS IN SC 1030301; TOGETHER WITH AN EASEMENT OVER PT MULCASTER ST PL 2 BEING PT 2 PL 51R39175 AS IN SC1085039, CITY OF BARRIE

ARLENE MCDOWELL et al. Plaintiffs	-and-	FORTRESS REAL CAPITAL INC. et al. Defendants	Court File No.: CV-16-558165-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

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