Court File No. CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	WEDNESDAY, THE 19th
	)	
JUSTICE GLUSTEIN	)	DAY OF August, 2020

B E T W E E N :

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

GLOBAL LEARNING GROUP INC., GLOBAL LEARNING TRUSTS SERVICES INC. AS THE TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION, ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH, MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP, CASSELS BROCK & BLACKWELL LLP, WISE BLACKMAN LLP, EVANS & EVANS INC., and GRAHAM TURNER

Defendants

ORDER
(Motion for Certification and Settlement Approval)

THIS MOTION, made by the Plaintiffs, for an order adding Robert Kepes and Morris & Morris LLP (Morris & Morris) as defendants, certifying this proceeding as a class proceeding as against the Defendants, Morris Kepes & Winters LLP ("MKW"), Robert Kepes, and Morris & Morris, (together, the "**Settling Parties**"), appointing the Plaintiffs as representative plaintiffs, and

approving the settlement agreement between the Plaintiffs and the Settling Parties was heard this day at the court house, 130 Queen St. W., Toronto, Ontario.

ON READING the Affidavit of John Phillips, sworn August 9, 2018, the Affidavit of Lynn Wintercorn, sworn July 29, 2020, the Affidavit of Margaret L. Waddell, sworn July 29, 2020, on being advised of the consent of Robert Kepes and Morris & Morris to being added as defendants for settlement purposes, and upon being advised of the consent to this Order by the Settling Parties, and on reading the submissions of the lawyers for the Plaintiffs, and the lawyers for the Settling Parties, and the lawyers for Cassels Brock & Blackwell LLP, Fasken Martineau DuMoulin LLP and Allan Beach, James Penturn, Richard Glatt and IDI Strategies Inc., Wise Blackman LLP, Evans & Evans Inc., Robert Lewis, and Graham Turner (together, the "**Non-Settling Defendants**"),

1. **THIS COURT ORDERS** that the Third Amended Statement of Claim shall be amended in the form attached as **Schedule A** hereto, adding Robert Kepes and Morris & Morris as defendants.

2. **THIS COURT ORDERS** that this action is certified as a class proceeding under sections 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c. 6 (the *CPA*) regarding the claims asserted against the Settling Parties.

3. **THIS COURT ORDERS** that the Class is described as follows:

> All persons who participated in the Global Learning Gifting Initiative Charitable Donation program ("the Gift Program"), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the

Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lapus, Lylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak.

4. **THIS COURT ORDERS** that Lynn Wintercorn, Peter Newman, Emily Flammini and Alex Kepic are appointed as the representative plaintiffs regarding the claims asserted against the Settling Parties.

5. **THIS COURT DECLARES** that the claims asserted on behalf of the Class against the Settling Parties are negligence, negligent misrepresentation, breach of duty to warn, and/or vicarious liability.

6. **THIS COURT DECLARES** that the relief sought by the Class as against the Settling Parties is: (a) general damages and special damages; (b) declarations; and (c) punitive, aggravated and exemplary damages.

7. **THIS COURT ORDERS** that the common issues certified as against the Settling Parties are:

i. Was the Global Learning Gifting Initiative (the "Gift Program") a fraud or a sham?

ii. Did the Class members enter into enforceable contracts with Global Learning Group Inc., and if so, what are the terms of the contracts?

iii. Is the release in Direction Two of the Directions to Escrowagent Inc. enforceable in favour of the Settling Parties as against the Class Members?

iv. Is the release in the Global Learning Group Inc. Acknowledgement signed by Class Members enforceable?

v. Did the Settling Parties owe a duty of care to the Class with respect to the claims asserted against them in negligence or negligent misrepresentation?

vi. If the Settling Parties owed a duty of care to the Class with respect to the claim in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?

vii. If the Settling Parties owed a duty of care to the Class with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care?

viii. Did the Settling Parties owe the Class a duty to warn?

ix. If the Settling Parties owed the Class a duty to warn, did the Settling Parties breach the duty to warn?

x. If the Settling Parties breached the duty to warn the Class, are the Settling Parties liable to the Class for their losses arising from their participation in the Gift Program?

xi. Does the conduct of the Settling Parties justify an award of punitive, aggravated and/or exemplary damages?

8. **THIS COURT ORDERS** that notice of certification of this proceeding as a class proceeding against the Settling Parties, and notice of approval of the Settlement Agreement shall be given to the Class in accordance with the Notice Protocol attached as **Schedule B**.

9. **THIS COURT ORDERS AND DECLARES** that the opt out period for this class action has expired, and this Order is binding upon all of the Class Members and each of their respective heirs, executors, administrators and assigns, including those who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* with respect to this Order are hereby dispensed with.

10. **THIS COURT DECLARES** that notice to the Class of the hearing for approval of the Settlement Agreement made between the Plaintiffs and the Settling Parties (the "Settlement Agreement") was not required under s. 19 *CPA* and is hereby dispensed with.

11. **THIS COURT ORDERS** that the Settlement Agreement, a copy of which is attached hereto as **Schedule C**, is fair, reasonable and in the best interests of the Class and is hereby approved, and shall be implemented in accordance with its terms, except to the extent that this Order varies, or is otherwise inconsistent with those terms, in which case this Order takes precedence over the terms of the Settlement Agreement.

12. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.

13. **THIS COURT ORDERS** that the Settlement Agreement is binding upon the Settling Parties, the Plaintiffs, and the Class including those persons who are minors or mentally incapable,

and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are hereby dispensed with.

14. **THIS COURT ORDERS AND DECLARES** that, subject to the terms of the Settlement Agreement, the Class forever and absolutely release the Settling Parties, including, where applicable, each of their past, and present partners, associates, employees, servants, administrators, insurers (only insofar as the insurers are insurers of the Settling Parties and not to the extent that they are also insurers of any Non-settling Party), affiliates, heirs, executors, successors, assigns, and personal representatives, as the case may be, or any of them, from any and all manner of claims, demands, actions, suits, Québec civil law and statutory liabilities, and causes of action which have been asserted or which could have been asserted in the Action, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and professional or lawyers' fees that the Class ever had, now have, or hereafter can, shall, could, or may have against the Settling Parties, relating in any way to any to the Class' participation in the Gift Program and resulting liabilities, interest or penalties arising from any assessments or reassessments under the *Income Tax Act* (Canada), *Excise Tax Act* (Canada) or similar provincial legislation (the **"Released Claims"**).

15. **THIS COURT ORDERS AND DECLARES** that the aforementioned release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future any member of the Class in respect of the Released Claims, and that each member of the Class is forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any

other forum, directly, representatively or derivatively, asserting against the Settling Parties any claims that relate to or constitute any Released Claims, as referenced in paragraph 14, above.

16. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in this Action or that have been, or could have been, asserted by separate action by any Non-Settling Defendant or any other person or party against any of the Settling Parties, or by the Settling Parties against any Non-Settling Defendant or previously settled Defendant, shall be barred, prohibited and enjoined (unless such a claim is made in respect of a claim by a person who has validly opted out of the Action); but the Non-Settling Defendants may nonetheless pursue claims against the Settling Parties for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the proposed class proceeding commenced in Saskatchewan, being *Piett v. Global Learning Group Inc., et al.*, Court file no. Q.B.G. "590" of 2016 (the "*Piett* Action") that do not overlap with the claims asserted in this Action (both in terms of the subject matter of the claims and class members).

17. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims which were or could have been brought in the Action or than have been, or could have been, asserted by a separate action by any Non-Settling Defendant or any other person or party against any of the Settling Parties, or by the Settling Parties against any Non-Settling Defendant or previously settled Defendant, are barred, prohibited and enjoined, unless such a claim is made in respect of a claim by a person who has validly opted

out of the Action, but the Non-Settling Defendants may nonetheless pursue claims against the Settling Parties for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the proposed class proceeding commenced in Saskatchewan, being *Piett v. Global Learning Group Inc., et al.*, Court file No. Q.B.G. "590" of 2016, that do not overlap with the claims asserted in this Action (both in terms of subject matter and class members).

18. **THIS COURT ORDERS** that all claims of the Class of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of, the Settling Parties to the defendants Global Learning Group Inc., Global Learning Trust Services Inc. as Trustees of Global Learning Trust (2004), and Robert Lewis, relating to or arising from the Gift Program which could have been brought in the Action or in a separate proceeding are barred, prohibited and enjoined.

19. **THIS COURT ORDERS** that if a Non-Settling Defendant or any other person or party would have the right to make a claim for contribution and indemnity against any of the Settling Parties:

i. the Plaintiffs and/or members of the Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Settling Parties as proven at trial; and

ii. the Court shall have full authority to determine the proportionate liability at the trial or other disposition of the Action as if the Settling Parties were parties to the action and any such finding by the Court in respect of the Settling Parties' proportionate

liability shall only apply in this Action and shall not be binding upon the Settling Parties in any other proceedings.

20. **THIS COURT ORDERS** that, for greater certainty, to the extent that the Settling Parties are found to have any liability to any of the Non-Settling Defendants for contribution and indemnity arising from or related to amounts for which the Non-Settling Defendants are found liable to the Class, the Class members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Parties are found liable to the Non-Settling Defendants.

21. **THIS COURT ORDERS** that within 90 days of this Order, Robert Kepes on his own behalf and on behalf of MKW, and Morris & Morris shall provide the Plaintiffs with sworn affidavits of documents, and all Schedule "A" documents in their power, possession or control that are relevant to the matters described in the Claim, except with respect to documents that are subject to solicitor-client privilege or any other privilege, which shall be listed with specificity in Schedule "B".

22. **THIS COURT ORDERS** that the Plaintiffs shall provide to the Non-Settling Defendants a copy of all documents produced to the Plaintiffs by the Settling Parties in accordance with the Plaintiffs' production obligations as set out in the Plaintiffs' May 5, 2020 draft discovery plan and the Electronic Document Exchange Protocol at Schedule A thereto.

23. **THIS COURT ORDERS** that Robert Kepes, on his own behalf and on behalf of MKW and Morris & Morris, will attend before an official examiner in Toronto, Ontario to be examined under oath by Class Counsel and the Non-settling Defendants on a date to be agreed upon between

the Parties, but which shall take place no later than 150 days after the Court approves this settlement, and the Settling Parties have delivered their affidavits of documents and the Schedule A documents referenced therein, unless the parties to the Action agree otherwise.. Robert Kepes will answer questions regarding his knowledge about, and involvement in the matters described in the Fourth Amended Statement of Claim, or the matters described in any further amendment to the Claim. However, Robert Kepes shall not be required to answer any questions in respect of matters that are subject to solicitor-client privilege or any other privilege, unless otherwise directed to do so by order of this court. The examination for discovery of Robert Kepes shall not exceed a total of fourteen (14) hours without leave of the Court.

24. **THIS COURT ORDERS** that the Plaintiffs and Non-Settling Defendants may read into the record at trial the Settling Parties' discovery evidence as though the Settling Parties remained parties to the Action.

25. **THIS COURT ORDERS** that the Settling Parties collectively will respond to requests to admit delivered to them as follows:

- One request to admit as delivered to them by the Plaintiffs in respect of summary judgment motions brought by the Non-Settling Defendants;

- One request to admit as delivered to them by each of the Non-Settling Defendants, in respect of their summary judgment motions, and all such requests to admit shall be delivered by the same deadline, which will be established by the case management judge;

- One request to admit as delivered to them by the Plaintiffs in respect of the common issues trial; and

- One request to admit as delivered to them by each of the Non-Settling Defendants, in respect of the common issues trial, and all such requests to admit shall be delivered by the same deadline, which will be established by the case management judge.

The Settling Parties are not required to respond to any requests to admit on matters that are subject to solicitor-client privilege or any other privilege unless directed to do so by order of the Court.

26. **THIS COURT ORDERS** that, pursuant to Rule 30.1.01(8), the deemed undertaking rule shall not apply to the evidence obtained from the Settling Parties pursuant to paragraphs 23 and 25 of this Order to the extent that the evidence may be used by the Plaintiffs and the Non-Settling Defendants in any claims or cross claims made in or related to this Action or the *Piett* Action.

27. **THIS COURT ORDERS** that, if requested by the Plaintiffs or the Non-Settling Defendants, Robert Kepes will attend as a witness at the trial of this Action without the need to be served with a summons to witness, and the Plaintiffs and Non-Settling Defendants may cross-examine him, provided that Robert Kepes is given at least ten (10) days notice that his attendance is required.

28. **THIS COURT ORDERS AND DECLARES** that, should it be necessary, it has full authority to determine the proportionate liability of the Settling Parties at the trial or other disposition of the Action, whether or not the Settling Parties appear at the trial or other disposition of this proceeding, and the proportionate liability of the Settling Parties shall be determined as if the Settling Partiess are parties to the Action and any determination by the Court in respect of the

proportionate liability shall only apply in the Action and shall not be binding on the Settling Partiess in any other proceedings.

29. **THIS COURT ORDERS** that the Action shall be dismissed against the Settling Parties, with prejudice and without costs once the Settling Parties have fulfilled their obligations under this Settlement Agreement.

30. **THIS COURT ORDERS** that the time limits set out herein respecting the performance of any obligation by any Settling Party shall be subject to any modifications made pursuant to paragraphs 22, 23 and 24 of the Settlement Agreement.

31. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice B. Glustein

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:
SEP 16 2020
PER / PAR:

SCHEDULE A

SCHEDULE A

Court File No.: CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

GLOBAL LEARNING GROUP INC.,
GLOBAL LEARNING TRUST SERVICES INC. as TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION., ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH, MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP, CASSELS BROCK & BLACKWELL LLP, WISE, BLACKMAN LLP, ~~and~~ EVANS & EVANS INC., ~~and~~ GRAHAM TURNER, ROBERT KEPES and MORRIS & MORRIS LLP

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

FOURTH 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:

Issued by _____
Local registrar

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

TO: **GLOBAL LEARNING GROUP INC.**
79 Main Street North
Markham, ON L3P 1X7

AND TO: **ROBERT LEWIS**
1663 Horseshoe Lake Road
Minden, ON L0M 2K0

AND TO: **IDI STRATEGIES**
283 Danforth Avenue
Suite 384
Toronto, ON M4K 1N2

AND TO: **ESCROWAGENT INC.**
Jerome D. Sylvan
1936 Glengrove Road
Pickering, ON L1V 1X2

AND TO: **JDS CORPORATION**

283 Danforth Avenue
Suite 463
Toronto, ON M4K 1N2

AND TO: **JAMES PENTURN**
Penturn & Company LTD
Imperial House Penthouse
11 – 13 Young Street
London
W8 5EH

AND TO: **RICHARD E. GLATT**
539 Old Orchard Grove
Toronto, ON M4K 1N2

AND TO: **DENIS JOBIN**
1210 Boul. De Maisonneuve Ouest
Suite 5F
Montreal, QC H3A 0A2

AND TO: **GLOBAL LEARNING TRUSTS SERVICES INC as the Trustee of GLOBAL LEARNING TRUST (2004)**
1444 Dranoel Road
Bethany, ON L0A 1A0

AND TO: **ALLAN BEACH**
33 Harrison Road
North York, ON M2L 1V6

AND TO **FASKEN MARTINEAU DUMOULIN LLP**
333 Bay Street
Box 20
Suite 2400
Toronto, ON MH 2T6

AND TO: **MORRIS KEPES & WINTERS LLP**
390 Bay Street
Suite 1000
Toronto, ON M5H 2Y2

AND TO: **CASSELS BROCK & BLACKWELL LLP**
40 King Street West
No. 2100
Toronto, ON M5H 3C2

AND TO: **WISE BLACKMAN LLP**
2300-1155 Boul. Rene-Levesque O
Montreal, QC H3B 2J8

AND TO: **EVANS & EVANS INC**
400 Burrard Street
Suite 1610
Vancouver, BC V6C 3G2

~~AND TO:~~ ~~**MNP LLP**~~
~~330 5th Avenue SW~~
~~Suite 2000~~
~~Calgary, AB T2P 0L4~~

AND TO: **GRAHAM TURNER**
248 Riverview Boulevard
St. Catharine's, ON L2T 3M8

AND TO: **ROBERT KEPES**
390 Bay Street
Suite 1000
Toronto, ON M5H 2Y2

AND TO: **MORRIS & MORRIS LLP**
425 University Ave., Suite 203
Toronto, ON M5G 1T6

CLAIM

1. The Plaintiffs claim:

(a) ~~An order appointing a receiver of Global Learning Group Inc., ("GLGI") pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;~~

(b) an interim and interlocutory Mareva injunction, until trial or other final disposition of this proceeding, restraining any of the Gift Program Defendants (defined below) from dissipating any monies, wherever situate in the world, in their possession which directly or indirectly came from the Class Members, and freezing any bank accounts wherever situate in the world where Class Members' monies are held;

(c) an order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs on behalf of a class as defined in Paragraph 3;

(d) $500,000,000.00 for general damages and/or damages in lieu of restitution under the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Sch. A (the "Ontario *CPA*") and the similar legislation in other provinces and territories as set out in Schedule A, (hereinafter collectively referred to as the *"CPA"*);

(e) $250,000,000.00 for special damages incurred by the Plaintiffs and the Class, the particulars of which will be provided prior to the trial of common issues;

(f) Punitive, aggravated and/or exemplary damages in the sum of $50,000,000.00;

(g) against the Gift Program Defendants (defined below):

(i) a declaration that they each engaged in unfair and unconscionable practices and are in breach of ss. 14 - 17 of the Ontario *CPA,* and the like provisions in the *CPA* legislation as set out in Schedule A;

(ii) a declaration that pursuant to s. 18(15) of the Ontario *CPA,* and the like provisions in the *CPA* legislation as set out in Schedule A, it is in the interests of justice to waive the requirement for giving notice under the *CPA*; and

(iii) exemplary and punitive damages pursuant to s. 18(11) of the Ontario *CPA* and the like provisions in the *CPA* legislation as set out in Schedule A, in the amount of $800,000,000.00 or such other amount as the Court deems fit;

(h) a declaration that the Gift Program Defendants received and hold all monies paid into the Gift Program (defined below) by the Plaintiffs and the Class Members (the "cash donations") pursuant to a constructive or resulting trust, and that they knowingly received all the cash donations impressed with a constructive or resulting trust;

(i) a declaration that the Gift Program Defendants have been unjustly enriched by the amount of the cash donations;

(j) a tracing order and an accounting order against all of the Gift Program Defendants to trace the cash donations, and requiring them to account for and disgorge the cash donations;

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

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

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

(n) costs of this action ~~and the receivership~~ on a full indemnity basis, as well as the costs of all notices to the Class, and of administering the distribution of any recovery in this action, plus disbursements and applicable taxes; and

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

THE PARTIES

2. The Plaintiffs each reside in the province of Ontario. The Plaintiffs and the Class are consumers as defined under the *CPA*. The Plaintiffs and the Class were all participants in the Global Learning Gifting Initiative Charitable Donation Program (the "Gift Program") in the period between 2004-2014 (the "Class Period").

3. The Plaintiffs are the proposed representatives of a Class defined as:

> all persons who participated in Global Learning Gifting Initiative Charitable Donation program ("the Gift Program"), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lapus, Mylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak.

4. The Plaintiffs each participated in the Gift Program for one or more years. They each claimed charitable tax credits for the amount of the tax receipts issued to them by the charities participating in the Gift Program for the cash and in kind donations they made. The charitable tax credits claimed by the Plaintiffs were disallowed by Canada Revenue Agency ("CRA"), and their tax returns were each reassessed, and interest was charged on all overdue and owing taxes based upon the reassessments.

5. Based upon the representations and assurances that the Plaintiffs received from Global Learning Group Inc. ("GLGI"), Robert Lewis and the Valuators (defined below), and based upon the assurances contained in the tax opinion letter from Cassels Brock & Blackwell LLP which GLGI had posted on its webpage, the Plaintiffs filed notices of objection with CRA with respect to the reassessments, and (if received) they did not accept one or more of CRA's offer to settle the notices of objection that it extended in 2014.

6. The CRA offers have expired or been withdrawn, and are no longer available for acceptance. The Plaintiffs have therefore suffered the loss of the cash donations they made to participate in the

Gift Program, as well as suffering damages equivalent to the interest charged by CRA upon the reassessment of their tax returns.

7. The details of each Plaintiff's losses, in the amount of their disallowed cash donations and the total escrow fees they each paid, but excluding interest and penalties assessed by the CRA, are set out below. Each Plaintiff has also been assessed interest ~~and/or penalties~~ by CRA following the reassessment of their income tax returns, and has suffered a loss equivalent to the total interest ~~and penalties~~ paid or payable to CRA, in addition to loss of the amounts paid by them to participate in the Gift Program, which have been disallowed by CRA.

(a) Lynn Wintercorn's cash donations to the Gift Program in the amount of $14,100.00 were disallowed by the CRA, and she paid a total of $171.81 to Escrowagent in escrow fees.

(b) Peter Newman's cash donations to the Gift Program in the amount of $26,500.00 were disallowed by the CRA, and he paid $213.11 to Escrowagent in escrow fees.

(c) Emily Flammini's cash donations to the Gift Program in the amount of $9,100.00 were disallowed by the CRA. Ms. Flammini is uncertain as to the total amount paid in escrow fees to Escrowagent.

(d) Alex Kepic's cash donations to the Gift Program in the amount of $20,300.00 were disallowed by the CRA, and he paid a total of $42.60 to Escrowagent in escrow fees.

8. GLGI is an Ontario Corporation which carried on business from approximately 2004-2014 as the promoter of a tax shelter bearing CRA Tax shelter Identification: TS-070003. GLGI no longer

carries on business, and its business registration has been cancelled for failure to comply with the *Corporations Tax Act.*

9. Robert Lewis ("Lewis") was the sole officer and director, the principal, and the directing mind of GLGI. Lewis drew funds out of GLGI as salary, bonuses and dividends, knowing at all times that those funds originated as the cash donations made by the Plaintiffs and the Class members for participation in the Gift Program, which were supposed to be paid to bona fide charities, and not paid to GLGI, the Administrator Defendants (defined below) or otherwise. Lewis knew that the Gift Program was a sham, that as part of a conspiracy in which he participated, it was created for his own and others' personal enrichment, and that the funds he received from GLGI were therefore impressed with a constructive or resulting trust in favour of the Plaintiffs and the Class.

10. IDI Strategies Inc. (IDI) is a company owned and controlled by James Penturn, and Richard E. Glatt. These defendants had been involved with Lewis in earlier leveraged charitable giving programs. IDI contracted with GLGI to administer all the back office functions of the Gift Program, including functions that should have been performed by the Trustee of the Global Learning Trust (2004) in exchange for a lump sum fee and a percentage of the cash donations made by the Class members. In addition, Penturn and Glatt were actively involved in marketing the Gift Program, particularly by encouraging GLGI's sales agents to sell the Gift Program to the Class.

11. JDS Corporation (JDS) is a company owned and controlled by Denis Jobin. JDS contracted with GLGI and the Trustee of the Global Learning Trust (2004) to develop, maintain and host a database and register and record all of the capital beneficiaries of Global Learning Trust (2004), and the property received and distributed by the Trust in exchange for a lump sum fee and monthly fee paid to it from the cash donations made by the Class members. In addition, JDS kept databases for

the charities, prepared the assignments of software licences, and prepared tax receipts for the charities.

12. Together with IDI, Penturn and Glatt, JDS and Jobin are the "Administrator Defendants".

13. Penturn, Glatt and Jobin drew funds out of IDI and JDS as salary, bonuses and dividends payable to themselves, knowing at all times that these funds originated as the cash donations made by the Plaintiffs and the Class members, which were supposed to be paid to bona fide charities, and not paid to GLGI, and the Administrator Defendants. The Administrator Defendants knew that the Gift Program was a sham, that it was part of a conspiracy in which they participated, that it was created for their own and others' enrichment and that all the funds they received from IDI and JDS were therefore impressed with a constructive or resulting trust in favour of the Plaintiffs and the Class.

14. Escrowagent Inc. ("Escrowagent") is an Ontario corporation incorporated by~~, owned~~ and operated by Allan Beach ("Beach")~~. Escrowagent was created by Beach as part of the conspiracy that he entered into with the Administrator Defendants and Robert Lewis for their own enrichment.~~, until April 2011.

14(a). Thereafter, on or about September 24, 2010, Graham Turner ("Turner") acquired control of Escrowagent from Beach and became its sole officer and director. He continued to operate Escrowagent as the escrow agent for the Gift Program until on or about May 5, 2014, around the same time that the Gift Program ceased operations. Turner is or was a lawyer licenced in the Province of Ontario.

14(b). Turner drew funds out of Escrowagent as salary, bonuses and/or dividends payable to

himself, knowing at all times that these funds were the escrow fees paid by the Plaintiffs and the Class members for the intended purpose of covering bona fide administrative costs incurred by Escrowagent in respect of their participation in the Gift Program, including for Escrowagent to effect the legitimate and legal transfer of their cash and in kind donations to bona fide charities.

14(c) By the time that Turner became involved in the Gift Program, CRA was actively reassessing Class Members' tax returns, and had made its position known that it would be reassessing future participants who participated in the Gift Program. Turner knew or ought to have known that the Gift Program was a sham, that it was created for the enrichment of the Gift Program Defendants, that the fees charged by Escrowagent were charged for the purpose of furthering the sham, that funds that Escrowagent received from the Plaintiffs and the Class were never used for their intended purpose, and therefore that all the funds received by Escrowagent were impressed with a constructive or resulting trust in favour of the Plaintiffs and the Class.

14(d) Furthermore, Escrowagent, and Turner, as the principal of Escrowagent, knew that Escrowagent did not perform any escrow functions it was supposed to perform, and for that reason, as well the escrow fees received by Escrowagent were therefore impressed with a constructive or resulting trust in favour of the Class.

~~15. Beach, as the principal of Escrowagent, drew funds out of that company as salary, bonuses and dividends, knowing at all times that these funds originated as the cash donations made by the Plaintiffs and the Class members, which were supposed to be paid to Escrowagent to cover the bona fide administrative costs of Escrowagent in respect of their participation in the Gift Program, including it effecting the legitimate transfer of their cash and in kind donations to bona fide charities. Escrowagent, and Beach as the principal of Escrowagent, knew that the Gift Program was a sham,~~

~~that Escrowagent did not perform any functions, and that Escrowagent and Beach were participating in a conspiracy, that the Gift Program was created for their own and others' enrichment and that funds that Escrowagent received were never used for their intended purpose, that Escrowagent did not perform the escrow functions it was supposed to perform, and that the funds were therefore impressed with a constructive or resulting trust in favour of the Class.~~

15. Global Learning Trust (2004) (the "Trust") is an Ontario trust that was settled by a deed of settlement dated November 19, 2004 that was drafted by Robert Kepes ("Kepes") while he was a partner at the law firm Morris & Morris LLP ("Morris & Morris"). The settlor was Michael Morris, a Bahamian resident, and the brother of Ian Morris, a partner of the law firms Morris & Morris and then Morris Kepes & Winters LLP. Global Learning Trust Services Inc. (the "Trustee") is an Ontario corporation, and was appointed as the trustee of the Trust. Ron Knechtel was the owner, officer and director of the Trustee, but in fact the operating mind and principal of the Trustee was Robert Lewis. Knechtel took instructions from Lewis and allowed the Trustee to be used to further the conspiracy in which Lewis participated.

16. The Trustee took fees from the Trust which were derived from the cash donations made by the Plaintiffs and the Class. The Trustee knew that the Trust was part of a conspiracy effected by GLGI, Lewis, ~~Allan Beach~~, Escrowagent, and the Administrators for their personal enrichment to the detriment of the Plaintiffs and the Class, and that the funds that it received from the Trust were impressed with a constructive or resulting trust in favour of the Class.

17. Lewis, GLGI, ~~Allan Beach~~, James Penturn, Richard Glatt, Denis Jobin, Escrowagent Inc., IDI, JDS, and the Trustee are the "Gift Program Defendants". The Gift Program Defendants all participated in a conspiracy to defraud the Plaintiffs and the Class of their cash donations through the

Gift Program. The Gift Program Defendants all knew that the Gift Program was a sham whose sole purpose was their own enrichment at the expense of the Plaintiffs and the Class.

18. Morris Kepes & Winters LLP, Kepes, Morris & Morris, Cassels Brock & Blackwell LLP, ~~and~~ Fasken Martineau Dumoulin LLP, ~~and~~ Beach and Turner (together, the "Lawyers") are law firms or lawyers carrying on business in Ontario. All of the partners of Morris & Morris, Morris Kepes & Winters LLP, Cassels Brock & Blackwell LLP, and Fasken Martineau Dumoulin LLP are vicariously liable for the negligent acts or omissions and the negligent misrepresentations of members of their respective firms made during the Class Period and for the damages suffered by the Plaintiffs and the Class as a consequence of the Lawyers' participation in the Gift Program.

18(a) Kepes is a lawyer who was a partner in the law firm Morris & Morris from January 2003 to June 2011, at which time he became a partner in the law firm of Morris Kepes & Winter LLP (MKW). While a partner at both law firms, Kepes acted for GLGI, Robert Lewis and the Trust, providing them with services with respect to the formation, structuring and operations of the Gift Program, including providing advice to GLGI about responding to investigations by Canada Revenue Agency.

18(b) The Plaintiffs had no knowledge that MKW was not a continuation of Morris & Morris until they received the Response to Request to Admit of MKW dated July 19, 2018.

18(c) Kepes, while at Morris & Morris, was retained by Lewis and GLGI to draft the trust documentation pursuant to which the Trust was to grant the software licenses to the Gift Program participants.

18(d) Kepes, while at Morris & Morris, was also retained by the Trustee to provide detailed

reporting to it with respect to all Gift Program participants who applied to become beneficiaries of the Trust, and to report on the total number and value of software licenses that were granted to each Gift Program participant. Kepes drafted the notice to beneficiaries providing notice that Global Trust was assigning and transferring specific licenses identified in a schedule to the notice to the Gift Program participants. Kepes was, at all times, therefore, fully cognizant of who each Gift Program participant was, the amount of funds paid by them and the licenses the Trust transferred to the Gift Program participants.

18(e) Kepes, while at Morris & Morris, was also retained by Phoenix Learning Corporation (Phoenix), and as such had reviewed the Master License Agreement pursuant to which Phoenix obtained the software licenses.

18(f) Kepes facilitated the sale of software sublicenses between Phoenix and GLGI both at Morris & Morris and at MKW, with the funds flowing through the law firms' trust accounts, as well as the execution of the license agreements being facilitated by Kepes at both law firms.

18(g) Kepes kept a list of the licenses sold by InfoSource Inc. to Phoenix, as well as the software licenses sold to GLGI or the Trust or donated by Phoenix to the Trust. Kepes was therefore, as the lawyer for both GLGI and Phoenix, well aware that the fair market value of the software licenses was pennies, and therefore that the valuations of the software provided by the Valuators and as represented to the Plaintiffs and the Class by the Trust were grossly inflated. Kepes, as an experienced tax lawyer, ought to have known that the values ascribed to the software licenses by the Trust could not be justified and would be challenged successfully by the CRA, yet he nonetheless assisted in the creation, and ongoing operation of the Gift Program, knowing that it would cause harm to the Class.

19. Robert Kepes, Ian Morris, and Robert Winters ~~were, at all material times,~~ are lawyers and partners or counsel at the law firm Morris Kepes & Winters LLP ("MKW"). MKW holds itself out as one of Canada's largest and most integrated tax boutique law firms, focussing on, among other things tax planning (including the creation of domestic and foreign trusts) and defence of financial offences.

20. ~~MKW~~ Kepes, while at Morris & Morris, was retained by Lewis and GLGI to create the Trust and Trustee and to establish the trust structure for the Gift Program. ~~MKW~~ Kepes was negligent in creating the trust structure as the trust failed for a lack of certainty of objects, and the Gift Program structure was deficient to validly transfer title of the software licenses to the capital beneficiaries, who are the Plaintiffs and the Class.

20(a) Kepes responded to Canada Revenue Agency's July 2007 audit of the Gift Program on behalf of the Trust and GLGI in August 2007. He was, therefore, by no later than July 2007, fully aware of the fact that the Gift Program had not been properly structured and that CRA was disallowing the Class Members' claimed tax credits, yet he continued to assist GLGI and the Trust in the operation of the Gift Program, facilitate its transactions and communicate to Class Members regarding the ostensible value of the software licenses granted to the Class Members by the Trust without warning them of CRA's position or that the software license grants failed as valid grants under the Trust.

20(b) Kepes ought to have known the trust structure of the Gift Program was faulty; but he never warned the Class that the Trust he created could not make a valid gift of licenses to the Gift Program participants given its actual operating structure.

21. Beach was a lawyer and partner or counsel at the law firm Fasken Martineau Dumoulin LLP

("Faskens"). Before being retained to provide legal services to Lewis, GLGI, and the Administrator Defendants, Beach had been the lawyer for Penturn in respect of another leveraged charitable giving program, the Berkshire Funding Initiatives program. By 2004, Beach knew that CRA was disallowing the tax credits claimed by participants in the Berkshire program, and that CRA took the position that the program was all one interconnected scheme, therefore no part of the tax credits were valid.

21(a) Turner was a sole practitioner lawyer who assumed the role of counsel to GLGI and the Gift Program in 2009. Beach stopped acting as counsel to GLGI and the Gift Program in or about September 2010. Turner provided legal services to Lewis, GLGI, and the Administrator Defendants. Turner, like Penturn and Glatt, had been involved in several other charitable donation tax shelters, and was well aware, when he became involved, that the real purpose and intent of the Gift Program was to enrich the Gift Program Defendants through the circular flow of the Class members' charitable donations back to the Gift Program Defendants, as well as enriching himself through the escrow fees imposed by Escrowagent as part of the overall scheme. The Plaintiffs became aware of Turner's involvement in the Gift Program on or about June 21, 2019, upon receiving the Defence and Crossclaim of Beach and Faskens.

22. Beach and Turner ~~knew or~~ ought to have known that the Gift Program was doomed to failure and that it would never result in the Plaintiffs and the Class members receiving valid charitable tax credits in respect of their participation in the Gift Program, including for the cash donations. Nonetheless, Beach, (and Turner from 2009) prepared all the transactional documents for use by the Plaintiffs and the Class in respect of their participation in the Gift Program, when they ~~he~~ ~~knew or~~ ought reasonably to have known that the transactions would not have their intended result, but rather would only result in the enrichment of the Gift Program Defendants, and Turner, to the detriment of the Plaintiffs and the Class.

23. ~~Both~~ MKW, Kepes and Morris & Morris ~~and Beach as the lawyer at Faskens who prepared the transactional documents were~~ ~~was~~ were in a sufficiently proximate relationship to the Plaintiffs and the Class that they ~~it~~ knew or ought to have known that the Plaintiffs and the Class would be injured as a result of their negligence in the creation of the structure of the Gift Program, including the trust documents and the transactional documents such that ~~both~~ ~~and Beach/Faskens~~ they owed the Plaintiffs and the Class a duty of care, which they ~~it~~ breached.

24. ~~Both MKW, and~~ Beach as the lawyer at Faskens, and Turner (from his involvement in 2009), ~~who~~ prepared the transactional documents were ~~was~~ in a sufficiently proximate relationship to the Plaintiffs and the Class that ~~he~~ they ought to have known that the Plaintiffs and the Class would be injured as a result of ~~his~~ their negligence in the creation of the structure of the Gift Program and the transactional documents such that ~~both MKW and~~ Beach/Faskens, and Turner owed the Plaintiffs and the Class a duty of care, which they breached.

25. Beach as the lawyer at Faskens who prepared the transactional documents up until September 2010, and Turner thereafter, were ~~was~~ in a sufficiently proximate relationship to the Plaintiffs and the Class that ~~he~~ they ought to have known that the Plaintiffs and the Class would be injured as a result of ~~his~~ their negligence in the creation of the structure of the Gift Program and the transactional documents such that Beach/Faskens and Turner (from his involvement in 2009) owed the Plaintiffs and the Class a duty of care, which they breached.

26. James Rossiter was at all material times a lawyer and partner or counsel at the law firm Cassels Brock & Blackwell LLP ("Cassels"), and the author of a 2004 legal opinion regarding the Gift Program (the "Opinion"). To the knowledge of Rossiter and Cassels, the Opinion was prepared for the purpose of GLGI using it as part of its promotional materials regarding the Gift Program, and with their knowledge and consent to the Opinion being used for that purpose. The Opinion was, with the knowledge and consent of Rossiter and Cassels, posted on the GLGI website with the intent that it could be read and relied upon by the Plaintiffs and the Class, and to stand as an assurance to the Plaintiffs and the Class that the Gift Program would result in the Gift Program participants obtaining valid charitable tax credits, and an inducement for the Plaintiffs and the Class Members to participate in the Gift Program.

27. ~~EMC Partners,~~ Wise, Blackman LLP~~,~~ and Evans & Evans Inc. ~~and MNP LLP~~ (the "Valuator Defendants"), along with EMC Partners, were valuators of the software licenses utilized in the Gift Program (together, the "Valuators"). The Valuators all produced valuations of the software licenses that were not supportable, and which did not disclose that the fair market value of the licenses was actually between $0.13 - $0.26, and did not disclose that the value they ascribed to the software licenses was based upon a materially different product. The Valuators knew that their valuations

were the foundation for the Gift Program, and that without providing a valuation that was many multiples greater than the actual fair market value of the licenses, the Gift Program would fail. The Valuators knew that their valuations were disseminated to the Plaintiffs and the Class and that the Plaintiffs and the Class were relying upon those valuations in entering into the Gift Program. There was sufficient proximity between the Valuators and the Plaintiffs and the Class that the Valuators owed to the Plaintiffs and the Class a duty of care to provide a fair and accurate valuation of the software licenses, and they breached that duty of care.

28. In addition to providing a valuation of the software licenses, Wise, Blackman LLP conducted an independent review of EMC Partners' valuations of the software licenses utilized in the Gift Program and opined that EMC Partners' valuations of the software licenses were appropriate and reasonable (the "Valuation Review").

29. Wise, Blackman LLP owed the Plaintiffs and the Class a duty of care because they knew or ought to have known that accurate software license valuations were required to support the in-kind tax receipts issued by the software charity. Therefore, it was essential to the proper functioning of the Gift Program that the software license valuations be correct and justifiable, and hence the Valuation Review was a key check to ensure that the valuations were correct, and were touted as such by GLGI in its promotional materials.

30. Wise, Blackman LLP was negligent in performing the Valuation Review in that it failed to identify that the Valuators valued the wrong software, failed to consider the market for the software, the intended use of the software, and the charitable purpose attached to the pricing of the software at the time of its sale. As a result, the value ascribed to the software was grossly inflated. But for Wise, Blackman LLP's negligence in the Valuation Review, the values assigned to the software licenses

would not have been inflated and the Gift Program would not have been possible. The Plaintiffs and the Class would not have participated in the Gift Program and would not have suffered the damages claimed herein.

MARKETING THE GIFT PROGRAM

31. Members of the Class were each provided with or shown promotional materials about the Gift Program that were identical or substantially similar, including a power point presentation, videos, and information about the Gift Program posted on the GLGI website. All modifications to the promotional materials were immaterial. The promotional materials were intended to deceive the Class Members and lull them into a false sense of security that the Gift Program was a legitimate charitable enterprise that would result in charitable donations to the designated charities with the value stated in the Gift Program contract documents and that the Class would in return receive valid charitable tax receipts for which they could claim and receive charitable tax credits on their tax returns. The promotional materials were intended to dissuade Class Members from seeking independent advice about the Gift Program, and to reassure them that highly qualified legal and accounting professionals had already determined that the Gift Program would deliver on its promises.

32. The Gift Program Defendants, Faskens, ~~and~~ Turner, and Kepes ~~MKW~~ prepared, reviewed and approved the promotional materials.

33. The Gift Program Defendants, the Lawyers and the Valuators knew that the promotional materials would be disseminated to the Class. The Gift Program Defendants, the Lawyers and the Valuators intended that the Class would rely upon the representations contained in the promotional

materials, which the Class did, to their detriment.

34. With the knowledge and consent of James Rossiter and Cassels, the Opinion was posted on GLGI's website accessible to Class Members, with the intent of the Gift Program Defendants and Cassels that it would be relied upon by the Class Members in deciding whether to participate in the Gift Program, regardless of any exculpatory language in the Opinion or in the contract documents. Making the Opinion available to the Class was a key element in the deceit which the Gift Program Defendants perpetrated upon the Plaintiffs and the Class, and Cassels was negligent in allowing the GLGI and the other Gift Program Defendants to use the Opinion to further their conspiracy and fraud.

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

(a) The Gift Program Defendants had received a favourable tax opinion from a national law firm;

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

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

36. The Gift Program Defendants intended the Plaintiffs and the Class Members to receive and rely upon the Promotional Materials, and the representations contained therein to the effect that there was a charitable purpose for the Gift Program, that participation in the Gift Program was making charitable donations for the benefit of charities, for charitable purposes. The promotional materials were intended to induce the Plaintiffs and the Class Members to participate in the Gift Program. The

Plaintiffs and the Class Members did, in fact, rely upon the representations contained in Promotional Materials.

37. The Defendants knew that the promotional materials, including the Opinion and valuations, represented to the Plaintiffs and the Class Members and caused them to believe that there was a charitable purpose or intent for the Gift Program. The Defendants intended the Plaintiffs and the Class Members to receive and rely upon the promotional materials including the Opinion and the valuations, and the representations contained therein to the effect that there was a charitable purpose for the Gift Program, to induce the Plaintiffs and the Class Members to participate in the Gift Program. The Plaintiffs and the Class Members did, in fact, rely upon the representations contained in promotional materials and/or the Opinion and the valuations in deciding to participate in the Gift Program.

38. The transactions related to the Gift Program were transactions without a legitimate purpose, a fact that was not disclosed to the Class, and which was a material omission. The primary purpose of the Gift Program was to enrich the Gift Program Defendants to the detriment of the Plaintiffs and the Class. Most of the money paid by the Class Members was received by the Gift Program Defendants and not by the charities. The fact that most of the money would be paid to the Gift Program Defendants and not to charity was not disclosed to the Class. Had the Plaintiffs and the Class Members known that there was no legitimate charitable purpose to the Gift Program, they would not have participated in the Gift Program.

39. The Lawyers ought reasonably to have known, that there was no genuine charitable purpose to the Gift Program, but rather that the primary purpose of the Gift Program was to enrich the Gift Program Defendants to the detriment of the Class. They were negligent in failing to make adequate

or any inquiry and investigation into the entire operations of the Gift Program, which would have revealed its true nature to them.

40. The Lawyers failed to make reasonable inquiries and investigations prior to creating the structure for the Gift Program, or delivering the Opinion.

41. The Lawyers knew, or ought reasonably to have known, that the Class Members were relying upon the representations included in the promotional materials and upon the Opinion, and should have exercised diligence in their investigations to ensure that the representations were true and not misleading.

42. The Valuator Defendants knew or ought to have known that the valuation of the software was excessive and exaggerated given the amount paid by Phoenix to acquire the licenses, and that the inflated value they ascribed to the software licenses was only for the purpose of enriching the Gift Program Defendants, to the detriment of the Class.

43. The Valuator~~s~~ Defendants knew or ought reasonably to have known that the Class Members were relying upon their representations in the valuations in deciding to enter into the Gift Program, and to support and justify the tax credits that they claimed in respect of the donations of the software licenses. The Valuator Defendants knew or ought reasonably to have known that if their valuations of the software were not justified and reasonable, then CRA would disallow the Class Members' claimed tax credits and the Class Members would be damaged as a result thereof.

44. GLGI used the valuations and Opinion to help sell the Gift Program to Class members to the knowledge and with the consent of the Valuator Defendants.

45. GLGI prepared promotional materials about the Gift Program, with the assistance of Faskens, ~~and MKW~~ and Kepes, and the Administrator Defendants. The promotional materials contained representations about how the Gift Program worked and the alleged benefits to the participant taxpayers and charities. The promotional materials did not disclose the fact that approximately 90% of the cash donations were ultimately received by the Gift Program Defendants. The promotional materials assured the Plaintiffs and the Class that the Gift Program was a legitimate charitable enterprise, and that GLGI had obtained the opinion and valuations confirming that the participants and the charities would receive the intended benefits of the Gift Program.

46. GLGI engaged financial advisors, accountants, and other sales persons (the "distributors") to help promote the Gift Program to their clients, and paid these distributors a percentage of the cash donations as a commission. This sales force was prescribed from making any representations about the Gift Program that was not in the Gift Program promotional materials or contract documents, and the Plaintiffs and the Class did not rely on any representations about the Gift Program made by the sales force which were not otherwise contained in the promotional materials, the contract documents, the valuations, the Opinion, or other communications directly from GLGI and Robert Lewis when they decided to participate in the Gift Program.

THE GIFT PROGRAM

47. The GLGI Gift Program was a leveraged charitable donation arrangement operated by the Gift Program Defendants. The Gift Program worked as follows.

48. Each participant would complete the following documents on entering the Gift Program:

a. An information sheet setting out their personal information, proof of a prior

charitable donation, details of the cash donation and the value of the software licenses they were acquiring, confirmation of a cheque made payable to Escrowagent in a fixed amount, and details of the sales agent;

b. An application to be made a capital beneficiary of the trust for software licenses with a value in the amount requested;

c. A direction to Escrowagent to:

   i. deliver the capital beneficiary application to the trustee;

   ii. deliver to the software charity the software licenses and valuation;

   iii. deliver the charitable receipts to the participant; and

   iv. take any other steps to effect a gift of the software licenses to charity;

d. A second direction to Escrowagent to:

   i. deliver the cash donation to the cash charity;

   ii. pay part of the fee paid to Escrowagent to a legal defence fund established by GLGI;

   iii. deliver the charitable receipts to the participant; and

   iv. take any other steps to effect a gift of the software licenses to charity;

e. The Deed of Gift to the designated software charity for the software licenses to be allocated to the participant;

f. The Deed of Gift for the cash donation to the cash charity; and

g. An acknowledgement to GLGI, the charities, the Trust, the Trustee, Escrowagent,

legal, accounting and other consultants.

Together, these are the "Contract Documents".

49. The Plaintiffs and the Class executed the Contract Documents as a result of the deceit of the Gift Program Defendants. The Gift Program was a sham and a fraud and therefore no exculpatory language in any part of the Contract Documents is binding on the Plaintiffs or the Class, and the Contracts are void and unenforceable.

50. GLGI obtained valuations for the computer software licenses from the Valuators. The valuations opined that each software license had a value of many multiples of the cost that GLGI paid to acquire the software licenses. The valuations were used for the purposes of determining how many licenses would be donated to the charity receiving the licenses (the "Software Charity") and how much the tax receipt would be issued by the software charity.

51. The Gift Program worked as follows:

a. The Trust was settled by Michael Morris for USD $100.00, and the Trustee was its trustee. Lewis was an officer of the Trustee and was its de facto directing mind and principal.

b. The Trust received donations of software licenses from Phoenix Learning Corporation ("Phoenix"), a Bahamian company owned by Michael Morris, and purchased some licenses from Phoenix as well.

c. Phoenix acquired the licenses from Infosource, a (legitimate) Florida corporation, at an approximate cost of $0.13 - $0.26 per license. Phoenix was funded by money that

came directly or indirectly from GLGI, on seed capital from one or more of the Gift Program Defendants.

d. Each Class Member executed the contract documents.

e. Through the documents, the Class Members undertook the following transactions:

i. The Class Members applied to be accepted as a capital beneficiary of the Trust (which held the software licenses), and made two cash payments to Escrowagent Inc.;

ii. The Class Members directed Escrowagent to:

1. Remit the cash donation to a charity (the "Cash Charity"). Initially, the cash donations were to the Millennium Fund ("Millennium") which was established by the Gift Program Defendants. Later, other charities were enlisted to be the Cash Charity after Millennium lost its charitable status; ~~and~~
2. Pay a fee towards GLGI's legal defence fund; and
3. Once they had been approved as a capital beneficiary of the Trust, donate the software licenses granted to them by the Trust to another charity (the "Software Charity"). The identity of the Software Charity also changed over time as various charities lost their charitable status based upon their involvement in the Gift Program~~.~~;

f. The Trust did not exercise any discretion in determining who would be accepted as

capital beneficiaries, or the number of licenses that would be granted to any such capital beneficiary. All applicants were accepted. The Administrator Defendants then used a computer program to allocate to the participant sufficient software licenses to value equal the quantum specified in the Information Form, advised the Software Charity of the allocation and issued tax receipts to the participant for the charities~~.~~;

g. The Cash Charity:

i. issued tax receipts to the Class Members for the full amount of the cash donation; and

ii. paid 20% of the cash donation to GLGI, as Promoter, and 80% of the cash donation to the Software Charity~~.~~; and

h. The Software Charity:

i. received the software licenses and stockpiled them in the thousands—very few of the licenses were actually used;

ii. issued a tax receipt to the Class Members based on a value ascribed to the licenses by a Valuator—typically, the licenses would be valued at 3 times the amount of the participant's cash donation or greater; and

iii. paid amount to GLGI as Promoter, equal to 20% of the cash it received from the Cash Charity and 20% of the Valuator's assigned value of the software licenses — these payments equaled almost all of the cash received by the Software Charity.

52. Effectively, almost all the cash donations travelled in a giant circle, ending up in the hands of GLGI, who then paid the other Gift Program Defendants.

53. In the result,

(a) the Cash Charity kept virtually nothing;

(b) the Software Charities received hundreds of thousands of licenses—the vast majority of which they did not use for any purpose;

(c) Escrowagent provided no material service but took a fee; and

(d) GLGI received virtually the entirety of the Cash Donation, out of which it paid:

(i) IDI and JDS to process the paper, allocate licenses using a computer program that allocated licenses based on the amount of the cash donation, and attended to the payment of the cash to the Cash Charity, issue receipts and otherwise effect all the back office operations of the Gift Program;

(ii) The Valuators to value the software licenses and/or conduct the Valuation Review;

(iii) Barrington Associates, who served as management consultants and reported to GLGI regarding the audits of the charities for the purpose of reassuring participant Class Members;

(iv) The distributors; and

(v) employees and shareholders of GLGI, including Robert Lewis.

54. The Plaintiffs and Class Members claimed charitable tax credits for the total amount of the tax receipts issued by the Cash Charity and the Software Charity and thereby reduced their tax obligations. They received refunds or deductions equaling more than the amount of their cash donation.

55. Ultimately (usually after 2-3 years from first filing a tax return with the deductions), the charitable deductions claimed by the Plaintiff Class members were disallowed by CRA.

56. An appeal from the CRA reassessment of several Class Members for tax years 2004 and 2005 was heard by the Tax Court of Canada in *Mariano v The Queen* 2015 TCCA 244. Justice Pizzitelli found as follows:

- The taxpayers lacked the "donative intent" required under income tax law such that the cash and software licenses would be considered a gift, since they had an expectation of receiving inflated tax receipts from which they would profit, which was a benefit, and not an impoverishment;

- Each part of the Gift Program was interconnected and part of the same transaction or series of transactions, despite the structure that tried to make the cash donation and the in-kind software license donation look like two separate transactions;

- The way the Gift Program was set up meant that the taxpayers didn't own the software licenses at the time that they were signing the direction to deliver them to the designated charity. How many and what licenses would be allocated to any particular participant was determined by a computer algorithm at the time of each closing;

- The Gift Program Defendants received approximately 90% or more of the cash donations;

- The valuations of the software licenses by the Valuators were unsupportable. The fair market value of the licenses was no more than the price paid by Phoenix when it acquired them from the software developer (Infosource), i.e. between 13¢ - 26¢;.

- The Trustee did not fulfill its role, but improperly delegated its discretion to the Administrator Defendants, thereby rendering all the decisions to gift licenses to beneficiaries of the Trust ineffective. Therefore none of the Class Members were capital beneficiaries, and none of the distributions of software licenses were valid;.

- The Trust, itself, failed for lack of certainty of objects because it was impossible to define the class or administer the Trust.; and

- The transaction documents were a sham, as was the entire Gift Program.

57. The Gift Program Defendants acted in concert in all dealings in relation to the Gift Program, and at all times they knew that it was a sham, created for the sole purpose of their own enrichment.

BREACH OF CONTRACT

The Contract

58. The promotional materials set out the terms of the contract entered into by the Class with GLGI and Escrowagent. The contract documents are set out above at paragraph 48.

59. The Class Members, as participants in the Gift Program, had a direct and specific

understanding that they would receive valid charitable donation receipts that would be recognized by CRA for tax credit purposes.

60. It was an express, or in the alternative, an implied term of the contract with GLGI that all Gift Program participants would receive a valid and legitimate charitable donation receipt, and would receive the tax savings as stated in the promotional materials.

61. It was an express, or in the alternative, an implied term of the contract with Escrowagent that it would fulfill the functions of the escrow agent as set out in the directions for the purpose of fulfilling the terms of the Gift Program.

62. GLGI and Escrowagent fundamentally and materially breached the terms of their contracts with the Class Members. The Gift Program was a sham, and virtually none of the Class Members' cash donations were kept by the charitable donees, the value of the software licenses was de minimus, and the charities did not use the vast majority of the software licenses. The Class Members did not receive valid and legitimate charitable donation receipts recognized by CRA, and their charitable tax credits were disallowed. Escrowagent did not perform any of the functions that it was directed to perform, except to forward a set amount of the fee it was paid by the Plaintiffs and the Class members to GLGI for the legal defence fund.

63. The Plaintiffs and the Class Members have therefore been damaged in the amount of their cash donations, the fee paid to Escrowagent, and the interest and other penalties assessed by CRA in respect of the disallowed charitable donation tax credits, and any special damages they have incurred as a result thereof, all of which are a direct result of GLGI's breach of contract.

CONSPIRACY

64. All the Defendants, except the Lawyers and Valuator Defendants, engaged in a conspiracy to cause harm to the Class and the Plaintiffs, and for their own financial benefit.

65. The Gift Program Defendants agreed to act unlawfully, the predominant purpose of which was to cause injury to the Plaintiffs and the Class Members and which ultimately did cause injury to the Plaintiffs and the Class Members. The Defendants (other than the Lawyers and Valuator Defendants) together agreed to make the fraudulent or negligent misrepresentations about the sham Gift Program and participated in a fraud to dupe the Class Members of their cash contributions to the Gift Program.

66. Further, or in the alternative, the agreement between the Gift Program Defendants was an agreement to engage in unlawful conduct directed towards the Class and the Plaintiffs, which caused injury to the Class and the Plaintiffs, and the likelihood of the Plaintiffs and the Class suffering such injury was known to these Defendants, or should have been known to them in the circumstances.

67. The Gift Program Defendants agreed to create a scheme which deceived the Class Members into believing they would receive tax savings for participating in the Gift Program and that they were making legitimate donations to benefit genuine charities. As a result of their participation in the Gift Program, the Class suffered the loss of their donations, and the loss of their intended gifts to a charity and have been assessed interest and/or penalties by CRA. The purpose of the agreement between these Defendants was to cause the Class Members to suffer economic loss and injury while some or all of these Defendants received a corresponding financial gain. The creation of the Gift Program was a sham and fraudulent and therefore unlawful.

68. The Gift Program Defendants in creating, controlling, promoting, marketing, administering, operating, participating, and selling the Gift Program to the Class, by agreement, participated in a scheme designed to create the illusion of property being donated to charities, and caused the charitable donees to issue charitable receipts for donations which were not, in fact, beneficially transferred to the charitable donees or which were of only nominal value.

69. The object of the conspiracy was the financial benefit of the Gift Program Defendants who participated in the conspiracy. The Plaintiffs and the proposed Class Members rely on the following facts:

(i) The facts set forth in paragraphs above;

(ii) The allegations of fraud set forth in paragraphs below; and

(iii) The establishment of the Gift Program was designed to deceive the Class Members and CRA into believing that there was a charitable purpose for the Gift Program when in fact no such purpose existed. The Gift Program Defendants knew or ought to have known that CRA would conclude that the donations of the Class Members were not gifts (as defined in the *Income Tax Act*) and that the Gift Program was a sham.

70. The Gift Program Defendants knew or were wilfully blind to the fact that CRA would never allow the tax benefits of the Gift Program to be realized by the Plaintiffs and the Class Members, given the fraudulent nature of the Gift Program, and the fact that the donations under the Gift Program would not qualify as a "gift" under the *Income Tax Act*.

71. The Gift Program Defendants conspired to commit a fraud. These Defendants knew or were

wilfully blind to the fact that the Class would lose their entire investment in a scheme that they knew would not deliver the promised tax savings, while allowing these Defendants (other than the Lawyers and Valuator Defendants) to receive hundreds of millions of dollars from the fraudulent scheme.

72. As a result of the conspiracy to perpetrate the Gift Program, and promote, market, administer, and operate the tax savings plan, the Plaintiffs and proposed Class Members have suffered damages for which they seek compensation.

73. The losses suffered by the Plaintiffs and the Class are the loss of the sums they donated to the Gift Program, and the interest and penalties that have been assessed against them by CRA as a result of disallowing their claims for charitable donation tax credits, and any special damages, being out-of-pocket expenses, including professional accounting and legal fees and consulting fees, incurred as a result of CRA's reassessments.

74. The Gift Program Defendants received, directly or indirectly virtually all of the cash donations paid into the Gift Program by the Plaintiffs and the Class, and were thereby enriched, and the Plaintiffs and the Class were damaged by the loss of their cash donations, as well as CRA interest and penalties exacted on reassessment.

FRAUD AND DECEIT

Fraud

75. The Gift Program Defendants fraudulently planned, created, operated, administered, controlled, promoted, marketed and sold the Gift Program for the purpose of their own profit and defrauding the Class. The facts setting forth how the Class was defrauded of approximately $500

million dollars are set forth above.

76. The Gift Program was a sham and a fraud and the Gift Program Defendants knew that they were perpetrating the fraud against the Plaintiffs and the Class, or they were reckless with respect thereto.

77. The Gift Program Defendants knew that the Gift Program violated the *Income Tax Act* and the *CPA*, as they knew that the real purpose and intent of the Gift Program was not to benefit any charities, but to defraud the Class and the Plaintiffs of their cash donations which the Class and the Plaintiffs intended to be charitable donations.

78. The Plaintiffs and the Class Members donated money to the Gift Program, and received charitable receipts four times (or more) larger than their donation. The Gift Program Defendants knew or ought to have known, or were wilfully blind to the fact that the charitable donation receipt would not be or was not recognized by the CRA and that the Plaintiffs and the Class would be disentitled to the tax donation credit. These Defendants knew or ought to have known, or were wilfully blind to the fact that CRA would conclude that the donations made by Class Members were not gifts, for income tax purposes.

Fraudulent Misrepresentation/Deceit

79. It was a fundamental express or an implied term going to the root of the contract that the cash donations would be paid to charity as required by the direction to Escrowagent. The Gift Program Defendants purposefully omitted from the contract documents and the promotional materials the fundamental and material fact that 90% or more of the cash donation would not remain with the cash charity, but instead would be paid to them. The Gift Program Defendants intentionally withheld from

the Plaintiffs and the Class the material fact that the structure of the Gift Program and the obligations imposed upon the cash charities by these Defendants would result in the cash charities retaining virtually none of the cash donations, which would, instead end up in the hands of the Gift Program Defendants. These material omissions were intentional and excluded from the contract documents and the promotional materials solely for the purpose of deceiving the Plaintiffs and the Class members.

80. Had these material omissions been disclosed to the Plaintiffs and the Class, they would never have entered into the Gift Program.

81. The Gift Program Defendants had all been participants in the creation, marketing and administration of earlier leveraged charitable programs all of which had been disapproved by CRA and the tax courts and had failed. The Gift Program Defendants intentionally omitted from the promotional materials and the contract documents any disclosure of the fact that they knew that CRA was actively rejecting leveraged charitable donations, including those similar in nature to the Gift Program in which these Defendants had previously been involved. Rather than identifying the real risks, the Gift Program Defendants actively and with deceit created promotional materials and contract documents that assured the Plaintiffs and the Class that CRA's opposition to the Gift Program was wrong, contrary to esteemed professional opinions, and that GLGI would prevail in establishing that the charitable tax credits were permissible, when at all times the Gift Program Defendants knew that the Gift Program was destined to fail because it was a fraud and a sham transaction.

82. The Gift Program Defendants committed the tort of deceit by fraudulently misrepresenting to the Plaintiffs and the Class that they would receive from the Gift Program valid charitable tax credits

for their legitimate charitable donations of cash and software licenses with the stated value, when the Gift Program Defendants knew or ought to have known that the Class Members would not receive the tax benefits, and the charities would not receive the value of the intended donations.

NEGLIGENCE

Negligence of the Defendants

83. All of the Defendants were negligent in the performance of their functions under the Gift Program as particularized above and below.

84. The Defendants owed the Class a duty of care to create, structure, design and implement a valid and legitimate tax shelter for charitable giving that would be approved for valid charitable tax credits, which they breached.

85. Each of the Defendants was in a proximate position 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 the Gift Program could cause injury or damage to the Plaintiffs and the Class if they failed to take reasonable care.

86. The Defendants owed the Class Members a duty of care based, *inter alia*, on the special relationship between them and the members of the Class. The special relationship between the Defendants and the Class Members arose from the Defendants' knowledge that the Class Members were participating in the Gift Program on the assumption that it was properly structured and was not a sham. The Defendants had a duty to ensure that the Opinion and the valuations (including any assumptions stated therein) and the promotional materials were accurate, the Gift Program was legitimate, and none of the Gift Program documents were deceptive or misleading, and to ensure that

these documents contained all material facts relevant to the Class Members' decision to invest in the Gift Program.

87. The Gift Program Defendants negligently provided to Cassels and the Valuator Defendants factual information and assumptions about the Gift Program which they knew or ought to have known were untrue, and asked Cassels and the Valuators to base their opinions on false factual premises and assumptions.

88. All of the Defendants negligently created, reviewed, drafted, supervised, approved, and authorized the preparation and distribution of the promotional materials, the Opinion or the valuations for use in the Gift Program. They knew, or ought to have known that the Class Members would be receiving these documents, and relying upon the accuracy and completeness of the information in the documents in making the decision to invest in the Gift Program.

89. The Gift Program Defendants, Turner, Kepes and Morris & Morris, and MKW knew or ought to have known that the information contained in the promotional materials and the Opinion or valuations (including the assumptions stated therein) was inaccurate, false, deceptive, misleading, and omitted material information about the Gift Program, and yet these Defendants negligently distributed or permitted the distribution of the promotional materials, the Opinion and the valuations to the Class, or negligently authorized the distribution of these materials, and did not take steps to halt the distribution of these materials or correct the information they contained when they had the authority, capacity and means to do so.

90. Turner, Beach and Faskens ought to have known that the information contained in the promotional materials and the Opinion or valuations (including the assumptions stated therein) was

inaccurate, false, deceptive, misleading, and omitted material information about the Gift Program, and yet they negligently distributed or permitted the distribution of the promotional materials, the Opinion and the valuations to the Class, or negligently authorized the distribution of these materials, and did not take steps to halt the distribution of these materials or correct the information they contained when they had the authority, capacity and means to do so.

91. The Gift Program Defendants created, authorized, approved, promoted, marketed, administered, operated, participated in and sold the Gift Program to the Class when they knew or ought to have known that the investment in the Gift Program would likely result in Class Members not receiving the tax savings promised in the promotional materials and the Opinion, and that the trust structure of the Gift Program was ineffective and would not be followed in any event, thereby vitiating all in-kind donations;

92. Once the Defendants became aware of CRA's position on this Gift Program and other similar programs, that the tax credits would be disallowed, and became aware that the information in the promotional materials was inaccurate, false, deceptive, or misleading, they negligently failed to take any steps to contact the Class Members to advise them that these documents were inaccurate, false, deceptive, and misleading or to correct the information in the promotional materials, Opinion and the valuations.

93. The Gift Program Defendants negligently failed to deliver revised promotional materials, and Cassels negligently failed to insist that its Opinion be removed from the GLGI website, and all the Defendants negligently continued to allow the Gift Program to be sold to Class Members without adequate warnings even after becoming aware of CRA's position.

94. These Defendants had an obligation to ensure that the distributors selling the Gift Program to the Class Members understood the risk to the Class participating in the Gift Program and had a duty to ensure that the distributors were properly trained, and a duty to take steps to ensure the distributors explained the risks of investing in the program to the Class, and explained to the Class that the primary purpose of the Gift Program was the financial benefit of the Gift Program Defendants.

95. The particulars of the Defendants' negligence is:

(A) as against all Defendants:

i. they failed to ensure or make reasonable inquires or investigations to ascertain if CRA would in fact recognize the charitable donation receipts issued to and tax credits claimed by the Class Members;

ii. they created and disseminated the promotional materials including the Opinion and the valuations which were inaccurate, false, deceptive, misleading, and failed to contain material information, and which were designed to convince the Class Members of tax benefits of the Gift Program, which the Defendants knew or ought to have known would not be ultimately realized;

iii. they failed to provide to the Class Members amended and accurate documents or updated disclosure to fairly warn them of the truth of the Gift Program when those facts became known to them;

iv. they knew, or ought to have known, that the cash and in kind donations would not qualify as charitable gifts under the *Income Tax Act,* and that the

promotional materials were misleading in stating that the Gift Program had a charitable purpose when no such intent or purpose existed. The Defendants knew or ought to have known that CRA would conclude that the donations of the Class Members were not gifts as defined in the *Income Tax Act*;

v. they knew, or ought to have known, that CRA would reassess the tax returns of the Class Members, and the reassessments would be upheld on appeal rendering the Class Members liable to repay tax and interest and penalties to CRA; but failed to disclose these facts to the Class;

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

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

viii. they negligently failed to ensure the fulfilment of duties owed to the Class Members pursuant to the provisions of the *CPA*.~~;~~

(B) as against Cassels:

(i) But for the Opinion, the Gift Program would not have been launched and the Class would not have participated in the Gift Program. The Opinion was designed to induce the Class to invest in the Gift Program without disclosing to the Class all of the material risks of investing in the Gift Program, or the true facts relating to the actual operation of the Gift Program;~~.~~

(ii) Cassels knew, or ought to have known, that the Class Members receiving the Opinion would rely upon the Opinion regardless of any exculpatory language, because its primary purpose was to induce the Class Members to enter into the Gift Program without obtaining independent legal advice;

(iii) Cassels knew or ought to have known that the income tax savings represented in the promotional materials for the Gift Program not be forthcoming based upon the terms of the *Income Tax Act* and relevant case law;

(iv) Cassels prepared the Opinion on the instructions of the Gift Program Defendants knowing and intending that the only reasonable inference to be drawn from its Opinion was that the Gift Program was a legitimate charitable giving program and that the tax receipts generated by donations under the Gift Program would be accepted as charitable tax credits by CRA;

(v) Cassels and the Valuator Defendants failed to make adequate, reasonable or any inquiries or investigations into the veracity of the facts they were provided to ensure their truthfulness in light of the intended purpose of the Opinion and the valuations;

(vi) Cassels issued its Opinion without due care and consideration, knowing that the Opinion would be relied upon by the Class Members, when they knew or ought to have known that the content of the opinion was inaccurate, incomplete, untrue, and deceptive;

(vii) Cassels failed to properly investigate and consider the income tax consequences of participation in the Gift Program and were negligent in reaching the opinion that the Gift Program would result in valid tax credits for the participants in the Gift Program;

(viii) Cassels were negligent in the preparation of the Opinion, failing to have due regard to the Gift Program as a whole, and the fact that its true purpose was to enrich the Gift Program Defendants, and not the participating charities;

(ix) Cassels knew, or ought to have known, that the Opinion would serve as an inducement for the promotion and sale of the Gift Program, and that but for the Opinion, the Gift Program could not be undertaken, and yet they still failed to fully and properly investigate and accurately opine about the likely tax consequences of the Gift Program;

(x) Cassels knew, or ought to have known, that the Opinion was not accurate or reliable following:

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

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

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

and other CRA press releases and took no steps to withdraw the opinion letters or remove them from the GLGI website,

but it failed to withdraw the Opinion or correct it, and allowed GLGI to continue to post it on its website as representing a current opinion regarding the merits of the Gift Program;

(xi) Cassels failed to disclose in the Opinion all the material risks associated with the Gift Program;

(xii) Cassels prepared the Opinion based upon untested and unauthenticated assumptions and factual information about the Gift Program provided by the Gift Program Defendants which factual information and assumptions Cassels knew or ought to have known were untrue, incomplete or misleading;

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

(xiv) they issued the Opinion with the intention that it be relied upon by the Class Members in deciding whether to participate in the Gift Program and without regard to its accuracy and the reliability of the Opinion; <u>and</u>

(xv) they knew or ought to have known that the other Defendants continued to rely upon and publish the existence and content of the Opinion for the promotion and sale of the Gift Program to prospective donors and when they knew the Opinion was no longer accurate or reliable, and took no steps to withdraw the Opinion.

(C) As against Faskens, Turner, Kepes, Morris & Morris and MKW

(i) ~~MKW~~ Kepes, Morris & Morris and Faskens structured the Gift Program based upon the premise that the Cassels Opinion and the valuations would be provided to, and relied upon by the Class;

(ii) ~~MKW~~ Kepes, Morris & Morris and Faskens structured the Gift Program, including the creation and use of the Trust and the ~~creation~~ incorporation and ~~use~~ operation of Escrowagent until September 2010, Turner operated Escrowagent from then, onwards, knowing that the Trust had no certainty of objects, the Trustee would not fulfill its duties and that Escrowagent would serve no function except as the recipient of fees;~~.~~

(iii) MKW, Kepes and Morris & Morris, and Turner ~~and Faskens~~ knew or ought to have known the trust structure would fail, the Gift Program operations were not in accordance with the purported structure, and that Kepes was therefore negligent in the design and structure of the Gift Program, and ~~both MKW~~ Kepes, Morris & Morris and Turner were negligent in failing to identify the structural flaw and to correct it;

(iv) Faskens ought to have known the trust structure would fail, the Gift Program operations were not in accordance with the purported structure, and it was therefore negligent in the design and structure of the Gift Program;

(v) ~~they~~ Kepes, Morris & Morris and Faskens created a trust structure for the Gift Program that was bound to fail for uncertainty of object;

(vi) ~~they~~ Kepes, Morris & Morris, and Faskens failed to ensure that the Gift Program was not a sham before establishing its form, documentation and function;

(vii.1) Turner failed to ensure that the Gift Program was not a sham before assuming control of Escrowagent and providing ongoing advice and legal services to GLGI;

(vii) Kepes, Morris & Morris, and Faskens created a structure for the Gift Program that was bound to result in CRA denying the Class' claimed tax credits;

(viii) Turner, Kepes, Morris & Morris, and Faskens prepared and approved the promotional materials ~~knowing~~ but ought to have known that they were false and misleading and that the Class would be relying on the contents of the promotional materials in deciding whether to participate in the Gift Program; and

(ix) Turner, Kepes, Morris & Morris, and Faskens knew the primary purpose of the Gift Program was to enrich the Gift Program Defendants, ~~including Escrowagent and Beach,~~ and it was not for charitable purposes, but prepared the contract documents and promotional materials to give the outward appearance of being for a legitimate charitable purpose when they ~~knew or~~ ought to have known there was none.

(D) As against the Valuator Defendants

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

(ii) they failed to properly investigate and consider the true value of the software licenses in the context of the nature of the licenses and in light of the price which Phoenix paid to the arm's length third party vendor to acquire the licenses in the Gift Program;

(iii) they were negligent in the preparation of the valuations and/or the Valuation Review;

(iv) they knew, or ought to have known, that the valuations were an inducement for the promotion and sale of the Gift Program, and that but for these valuations and the Valuation Review, the Gift Program could not be undertaken, and yet they still failed to fully and properly investigate and accurately opine about the valuation of the software;

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

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

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

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

yet they did not withdraw or amend their opinions or warn the Class Members that their opinions on value and/or the reasonableness of the values were wrong and could not be relied upon;

(vi) they prepared the valuations and/or the Valuation Review based upon false assumptions and factual information about the Gift Program provided by the Gift Program Defendants which factual information and assumptions they knew or ought to have known were untrue and they failed to undertake reasonable investigations to confirm the validity and truthfulness of the factual assumptions and information;

(vii) they failed to withdraw their valuations and/or the Valuation Review when by December 6, 2007 they knew or ought to have known the contents of the valuations were inaccurate, incomplete, untrue and deceptive;

(viii) they issued the valuations and/or the Valuation Review with the express intention that these valuations would be relied upon by all or some of the Gift Program Defendants when they knew or ought to have known that these Defendants would rely upon and publish the existence of the valuations in promoting the Gift Program, and in turn the Class Members would rely upon the valuations;

(ix) they issued the valuations and/or Valuation Review with the intention that these valuations be relied upon by the other Defendants, without due care and

consideration, when they knew or ought to have known that the other Defendants would rely upon the accuracy and reliability of these ~~letters~~ opinions in promoting the Gift Program, and in turn the Class Members would rely upon the valuations;

(x) they issued the valuations with the intention that these valuations be relied upon by the Class Members, without due care and consideration, when they knew or ought to have known that the Class Members would rely upon the accuracy and reliability of these letters in deciding whether to participate in the Gift Program, and claim the charitable tax credits for the donations of the software licenses;

(xi) they failed to notify the Gift Program Defendants, prospective donors to the Gift Program and Class Members that their valuations and the Valuation Review were no longer accurate or reliable when they knew or ought reasonably to have known they were wrong; and

(xii) they knew or ought to have known that the other Defendants continued to publish the existence and content of the valuations for the promotion and sale of the Gift Program to prospective donors and despite their knowledge that the valuations were no longer accurate or reliable.

96. The Defendants were aware or ought to have been aware that the promotional materials, the valuations and the Opinion provided to the Class Members were inaccurate, false, deceptive, misleading, and failed to contain material statements or information.

97. Cassels and the Valuator Defendants were negligent in the issuance of the Opinion ~~and~~, the valuations, and the Valuation Review, the issuance of which was a necessary prerequisite for the

existence of the Gift Program by the Gift Program Defendants. Accordingly, Cassels' and Valuator Defendants' issuance of the Opinion, ~~and~~ the valuations, and the Valuation Review was the proximate cause of damages to all Class Members.

98. Cassels and the Valuator Defendants owed a duty of care to those whom they intended to, or knew or ought to have known would, rely upon the existence and/or the accuracy and reliability of the content of the Opinion and the valuations they issued, i.e. the Class.

99. The Lawyers had a duty to warn the Gift Program Defendants and the Class Members, and to make full disclosure to them as to the facts and circumstances set out above and failed to do so. Particularly, the Lawyers failed to notify the other Defendants and the Class Members that the Cassels Opinion was no longer accurate or reliable, and they knew that CRA was denying the claimed tax credits, and the courts were upholding CRA's position on reassessment.

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

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

Negligent Misrepresentations

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

103. At all times GLGI and Lewis were in a relationship of proximity with the Plaintiffs and the Class such that they owed them a duty of care. The proximate relationship arose from GLGI and Lewis either communicating directly with the Plaintiffs and the Class about the Gift Program, or through their designated agents, with the intent that the Plaintiffs and the Class would rely upon their representations.

104. At all times GLGI and Lewis owed a duty of care to the Plaintiffs and the Class members. In particular, they owed the Plaintiffs and the Class members the duty to be truthful about the true nature of the Gift Program, not to withhold material information about how the Gift Program operated, and not to provide the Plaintiffs and the Class with false information about the validity of the Gift Program and the value of the software licenses. GLGI and Lewis breached that duty of care.

105. The promotional materials created and disseminated by GLGI and signed by Lewis contained false representations about the nature of the Gift Program, and the likelihood that GLGI and the taxpayers would prevail in any reassessments by CRA. Particularly, the promotional materials omitted material facts regarding the true nature of the Gift Program in that virtually all of the cash paid into the Gift Program was paid out to the Gift Program Defendants and not to a charity, and that the true value of the software licenses was *de minimus*.

106. GLGI and Lewis failed to disclose to the Class that the primary purpose of the Gift Program was the financial benefit of the Gift Program Defendants, and that most of the money paid by Class Members under the Gift Program was to be received by these Defendants and not the charities.

107. GLGI and Lewis knew or ought reasonably to have known that the promotional materials contained false information and omitted material facts about the true nature of the Gift Program, and were negligent in disseminating the promotional materials to the Plaintiffs and the Class. The intended purpose of the promotional materials was to induce the Plaintiffs and the Class members to participate in the Gift Program, based upon their reliance on the facts contained therein.

108. The Plaintiffs and the Class members did rely upon the promotional materials in entering into the Gift Program, to their detriment. They were damaged as a result thereof, losing their cash donation and being reassessed by CRA including interest and penalty charges.

109. But for the negligent misrepresentations of GLGI and Lewis in the promotional materials, the Plaintiffs and the Class would not have participated in the Gift Program, and they would not have suffered the corresponding losses.

110. In 2014, CRA began extending offers to settle notices of objection filed by Class Members. GLGI and Lewis actively discouraged the Plaintiffs and the Class Members from accepting the CRA offers, assuring them that it was actively pursuing a more favourable outcome than the CRA offer through test case tax appeals of certain Class Members' reassessments, and that it was confident that GLGI and the test case Class members would prevail.

111. These assurances were false, to the knowledge of GLGI and Lewis, and they were negligent in making the assurances to the Plaintiffs and the Class, and in encouraging them to reject the CRA

offers. GLGI and Lewis knew that the test cases were bound to fail based upon prior court decisions rendered in respect of similar leveraged charitable giving programs, and based upon their knowledge that the Gift Program was a sham created to enrich Lewis and the other Gift Program Defendants. GLGI and Lewis made the negligent representations about the likelihood of the success of the test case tax appeals with the intent that the Plaintiffs and the Class members would rely upon those representations, and decline the CRA offers, and knowing that the Plaintiffs and the Class members would be damaged thereby.

112. The Plaintiffs and Class members did rely upon the misrepresentations of GLGI and Lewis to their detriment, and were damaged as a result thereof to the extent that they would have substantially reduced their tax debts had they accepted the CRA offers.

RETURN OF THE CASH DONATIONS AND RESCISSION

113. The Gift Program is a consumer transaction, governed and regulated by the provisions of the *CPA*. The Plaintiffs and the Class members are therefore entitled to the protections and relief accorded to consumers who have been the victim of unfair or unconscionable practices.

114. The Gift Program Defendants owed duties to the Class to comply with the *CPA* and are liable to the Class for false, misleading, deceptive representations, and unfair practices, and their unconscionable conduct. The Class claims damages in lieu of rescission for the breaches of these Defendants' statutory duties.

115. The promotional materials, the contract documents and the marketing and sale of the Gift Program were unconscionable and unfair trade practices in breach of the *CPA*.

116. The Plaintiffs and the Class seek rescission of the contract in respect of the Gift Program on

the ground that the Gift Program Defendants have engaged in unfair and unconscionable practices in breach of the provisions of ss. 17 and 18 of the Ontario *CPA* (for Ontario residents) and breaches of the similar legislation in the provinces and territories for Class members who at the time of the advance of monies resided in other provinces and territories of Canada.

117. The Plaintiffs and the Class also seek rescission of their contracts and the return of the cash donations, and escrow fees paid on the basis that there has been a fraud, a mistake, or that there were material misrepresentations by the other parties to the contracts with the Class.

118. In view of the fraud that has been perpetrated upon the Class, the deceit of the Gift Program Defendants, the sham transaction, and the unfair, unconscionable and misleading practices of the Gift Program Defendants, it is in the interests of justice to waive the notice provisions under s. 18 of the Ontario *CPA*, and any similar notice provisions established under similar legislation in the other provinces and territories.

119. In view of the fraud that has been perpetrated upon the Class, the deceit of the Gift Program Defendants, the sham transaction, and the unfair, unconscionable and misleading practices of the Gift Program Defendants, it is in the interests of justice that the Class be awarded exemplary and punitive damages pursuant to s. 18 of the Ontario *CPA* and similar legislation in other provinces and territories, and at common law.

RESTITUTION, UNJUST ENRICHMENT, CONSTRUCTIVE TRUST

Unjust Enrichment

120. The acts, omissions, and misconduct of the Gift Program Defendants as set out herein were designed to induce the Plaintiffs and the Class Members to invest in the Gift Program. Directly or indirectly, the Gift Program Defendants have received some or all of the cash donations.

121. The Gift Program was a sham and a fraud, and the Plaintiffs and Class Members' donations were not received by legitimate charities, and the Plaintiffs and the Class Members will not receive the tax benefits promised. Consequently, the following has occurred:

i. ~~these~~ the Gift Program Defendants and Turner have been unjustly enriched;

ii. the Plaintiffs and Class Members have suffered a corresponding deprivation; and

iii. there is no juristic reason for this enrichment.

122. Even if the Class did not rely upon the promotional materials, Opinion and valuations, the Gift Program Defendants and Turner have obtained the cash donations and escrow fees directly or indirectly from the Class as the entire Gift Program was a sham. The Class received no benefit from the Gift Program. There is no juristic reason for the Gift Program Defendants' and Turner's betterment. Accordingly, the Class claims damages on the basis of unjust enrichment from the Gift Program Defendants and Turner.

Knowing Receipt

123. The cash donations are held by the Gift Program Defendants pursuant to a constructive trust, as they are the proceeds of their deceit and fraud.

124. The Gift Program Defendants created, designed, administered, supervised, operated and approved the Gift Program, and authorized the preparation and distribution of promotional materials, and the Opinions and valuations which they knew, or ought to have known, were inaccurate, false, and misleading, and for the sole purpose of enriching themselves.

125. In these circumstances, the Gift Program Defendants should be compelled to disgorge all the funds which they received, directly or indirectly, from the Gift Program.

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

127. The Class is entitled to a tracing order to determine the present location of cash donations, and they are entitled to an order for restitution of those funds to them.

128. The Plaintiffs plead and rely on the legal doctrine of knowing receipt as against the Gift Program Defendants and Turner. These Defendants participated in the creation, administration, marketing, sale, operation and supervision of the Gift Program. They each had actual or constructive knowledge of, or were willfully blind to the fact that the Gift Program was a fraud and a sham created for the single purpose of enriching these Defendants. All the fees, payments, distributions or other sums received by the Gift Program Defendants and Turner were received by them with the knowledge that the Gift Program was a fraud and a sham and that all the cash donations were wrongfully taken from the Plaintiffs and the Class and therefore are impressed with a trust in favour of the Plaintiffs and the Class, and accordingly all such funds should be repaid to the Class by the

Gift Program Defendants.

DAMAGES

129. As a result of the conspiracy, breach of contract, negligence, fraud, fraudulent misrepresentations, breaches of the *CPA*, and knowing receipt, the Plaintiffs and the Class Members have suffered the following damages and losses:

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

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

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

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

PUNITIVE AND EXEMPLARY DAMAGES

130. The conduct of all of the Defendants is such as to justify an award of punitive and exemplary damages. The Defendants' conduct has been a breach of the duty of good faith and separate actionable wrongs, including separate breaches of the provisions of the *CPA* (for Ontario residents) and other similar legislation in the provinces and territories for Class Members who at the time of the investment resided in other provinces and territories of Canada. The Defendants breached their obligations to the Plaintiffs and Class Members because of their desire to maximize their own profits

and financial gain, causing them to suppress accurate and truthful information to the Plaintiffs and Class Members, with that regard to the damages and injuries they would cause the Class to suffer if they participated in the Gift Program. The Defendants have behaved with arrogance and high-handedness, have shown a callous disregard and complete lack of care for the Plaintiffs and Class Members and the rights of the Plaintiffs and Class Members, as well as abusing the Canadian charitable giving community, and ought to be punished and deterred from future misconduct. The Defendants conduct was sufficiently harsh, vindictive, reprehensible, and malicious, so as to justify an award of punitive, exemplary, and aggravated damages. The Defendants were, or ought to have been, aware of the probable consequences of their conduct and the damage such conduct would cause to the Plaintiffs and Class Members.

131. The Defendants continue to be major participants in Canadian businesses. These Defendants have considerable assets. An award of $50 million for punitive and exemplary damages is justified and required to punish the Defendants and deter their inappropriate conduct in the future.

ONTARIO IS THE PROPER FORUM

132. The Plaintiffs are all residents of Ontario, and the Class Members are residents of Ontario and other parts of Canada, or were residents of Canada when investing in the Gift Program.

133. The Plaintiffs and Class Members were provided with the promotional materials and Opinion and valuations which were authored in Ontario. The transactions were negotiated and documents were signed in Canada, and relate to a Canadian tax shelter, and involve claims made in respect of Canadian charitable tax credits.

134. The Plaintiffs and Class Members participated in Canadian currency in the Gift Program,

which was promoted as a tax shelter duly registered under Canadian law.

135. The Defendants promoted the Gift Program throughout Canada, including Ontario, and accepted funds that were collected from the Plaintiffs and the Class members in Canada by Canadian entities which held themselves out as offering a tax shelter that was in compliance with the Canadian tax regime. All of the Defendants carried on business in Ontario at all relevant times.

136. GLGI and the other defendants including the Lawyers and Valuators are residents of and/or carry on business in Ontario.

137. In these circumstances, there is a real and substantial connection between this claim and the Province of Ontario, entitling the Plaintiffs and Class Members to bring this action in Ontario. Ontario is the most convenient forum for the trial of the action and any foreign defendants are necessary and proper parties to this action.

~~**RECEIVERSHIP**~~

~~137. GLGI is no longer carrying on business. Its business registration has been cancelled for failure to pay taxes. There is a cost award made against it by the Tax Court which remains unpaid, as well as other outstanding debts owed by GLGI to other creditors, including a judgment in favour of the Ministry of Finance in excess of $3.5 million.~~

138. ~~It is in the interests of justice, and just and convenient that the court appoint a receiver over the business and affairs of GLGI so that the receiver can collect the debts and obligations owing to GLGI, pursue the causes of action accruing to its benefit, and respond to these proceedings, including making documentary production in this action, for the ultimate benefit of the Plaintiffs, the Class and GLGI's other creditors~~.

SERVICE OUTSIDE ONTARIO

139. With respect to service of this claim outside of Ontario, the

140. Plaintiffs plead and rely upon the following Rules:

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

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

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

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

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

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

141. The Plaintiffs propose that this action be tried at Toronto.

Date of issue: September 28, 2017

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Lawyers for the Plaintiffs

Schedule A

Consumer Protection Statutes

	Jurisdiction	**Legislation**	**Provisions**
1	Alberta	*Fair Trading Act* R.S.A. 2000 C. F-2	s.6, 7
2	British Columbia	*Business Practices and Consumer Protection Act* S.B.C. 2004 c.2	s. 4, 5, 8, 10, 171, 172
3	Manitoba	*Business Practices Act* C.C.S.M. c. B120	s. 2, 5, 23
4	Newfoundland and Labrador	*Consumer Protection and Business Practices Act* S.N.L. 2009, c. C-31.1	s. 7, 8, 9, 10
5	Ontario	*Consumer Protection Act, 2002* S.O. 2002, c.30	s.14, 15, 17, 18
6	P.E.I.	*Business Practices Act* R.S.P.E.I. 2007 c.17	s. 2, 3, 4
7	Quebec	*Consumer Protection Act* R.S.Q., c. P-40.1	Articles 219, 228, 229, 239, 272
8	Saskatchewan	*Consumer Protection Act* R.S.S. 1996, c. C-30.1	s.5, 6, 7, 14, 16

LYNN WINTERCORN et al. -and- GLOBAL LEARNING GROUP INC. et al.
Plaintiffs Defendants

Court File No. CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

FOURTH ~~THIRD~~ AMENDED STATEMENT OF CLAIM

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Class Counsel

SCHEDULE B

SCHEDULE B

Court File No.: CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

GLOBAL LEARNING GROUP INC.,
GLOBAL LEARNING TRUST SERVICES INC. as TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION., ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH, MORRIS KEPES & WINTERS LLP,
FASKEN MARTINEAU DUMOULIN LLP, CASSELS BROCK & BLACKWELL LLP, WISE, BLACKMAN LLP, EVANS & EVANS INC. and GRAHAM TURNER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

PLAINTIFFS' CERTIFICATION and SETTLEMENT APPROVAL NOTICE PLAN (MORRIS KEPES WINTERS LLP, ROBERT KEPES, and MORRIS, MORRIS LLP)

The plaintiffs' certification and settlement approval notice plan pursuant to ss. 17 and 19 of the *Class Proceedings Act, 1992* is set out below.

1. There are approximately 40,000 individuals who participated in the Gift Program a total of 68,846 times. Of the participants, approximately 200 are excluded from the Class Definition because they were sales agents or "fundraisers" for the Gift Program, or are otherwise excluded from the Class definition.

2. The opt out period has expired. The individuals who have opted out of the Class Action have been removed from the master class member list maintained by CA2, the notice administrator.

3. As part of their settlement with the Class, Denis Jobin and JDS Corporation have produced databases containing the names and last known contact information, including mailing addresses and in some cases, email addresses, for participants in the Gift Program from 2004 – 2010. These databases have been be de-duplicated, and the names of any known individuals who are excluded from the Class have been deleted. The database has been purged of any email addresses associated with persons who are excluded from the Class. The identities and last known contact information of approximately 37,000 Class Members has been obtained from the databases produced by Denis Jobin and JDS Corporation.

4. Pursuant to an order of the court, the non-parties Ryan Mitchell and Farber Tax Solutions have produced further databases with additional names and last known contact information, including mailing addresses and in some cases, email addresses, for participants in the Gift Program, including from 2011 – 2013.

5. These additional Class member names and contact information will be incorporated into the master class member list maintained by CA2.

6. The master class member list now contains the names and last known contact information for virtually all of the Class, with the exception of any Class members who only participated in the Gift Program in 2014. The number of Class members who only participated in 2014 is not known, and is expected to be very few, as the Gift Program stopped operating in January 2014.

7. A Short Form Notice of Certification and Settlement Approval will then be emailed, and where no valid email exists, mailed to those participants listed in the master class member list by CA2.

8. The Notices will be translated into French. Both French and English Short Form Notices will be mailed and/or emailed to addresses in Quebec and New Brunswick.

9. Class Counsel has a dedicated page on its website for this class action, on which is posted current information and key documents about this class action. The Short Form Notice and Long Form Notice of Certification and Settlement Approval will be posted on this

webpage, in both official languages, along with a narrative explaining about the status of the class action, and an explanation about the status of the overlapping Saskatchewan action, *Piett v GLGI et al*. The URL www.glgiclassaction.com redirects to this webpage.

10. CA2 has a dedicated webpage in respect of this class action, on which is posted current information and key documents about this class action. The Short Form Notice and Long Form Notice of Certification and Settlement Approval will be posted on this webpage, in both official languages. CA2 also has an email address and toll-free number available for Class Members to contact them by directly with any questions regarding the Notice.

11. Class Counsel's website includes a confidential portal through which Class Members can send messages directly to Class Counsel. Class Members can also email Class Counsel directly. Class Counsel also has a toll-free number available for Class Members to contact them by telephone. Class Counsel has, and will continue to promptly return all communications from Class members, and will provide copies of the Notices or other court documents to any Class Members who request hard copies.

12. Class Counsel will publish a national press release in English and in French advising of the certification of the action as against the Settling Defendants, and advising of the settlement with the Settling Defendants, which will include contact information for both Class Counsel and the Notice Administrator.

13. Class Counsel will post the short-form Notice to their LinkedIn and Twitter accounts.

SCHEDULE C

SCHEDULE C

SETTLEMENT AGREEMENT

BETWEEN:

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

(Plaintiffs)

- and –

MORRIS KEPES WINTERS LLP, ROBERT KEPES, AND MORRIS & MORRIS LLP

(Settling Parties)

The parties hereto agree to settle the Plaintiffs' claims against the Defendant, Morris Kepes Winters LLP ("MKW"), and the Proposed Added Defendants, Robert Kepes and Morris & Morris LLP ("Morris & Morris"), (together, the "Settling Parties"), on the following basis, subject to the approval of the Ontario Superior Court of Justice (the "Court"):

1. The terms "Morris Kepes Winters LLP", "Morris & Morris LLP", and "Robert Kepes", are defined to include, where applicable, each of their past and present and partners, associates, employees, servants, administrators, affiliates, heirs, executors, successors, assigns, trustees, personal representatives, and insurers, including the Lawyers' Professional Indemnity Company(only insofar as the insurers are insurers of the Settling Parties and not to the extent that they are also insurers of any Non-settling Party) in regards to the claims against the Settling Defendants only, as the case may be, or any of them.

2. The Settling Parties agree to pay to the Plaintiffs one million four hundred fifty thousand dollars ($1,450,000.00), inclusive of legal fees, disbursements, HST, interest, and notice and administrative expenses (the "Settlement Fund").

3. The Settlement Fund shall be paid to Waddell Phillips Professional Corporation, in trust, within 30 days of execution of this Settlement Agreement, to be held in a separate and interest-bearing account pending Court approval of this Settlement Agreement, and such further order of the Court as the case may be.

4. The Action shall be certified as a class proceeding as against the Settling Parties, on consent and without costs, on the following basis, and in the form of the order attached hereto as **Schedule A**, or as otherwise approved by the Court:

   a. The common issues to be certified as against the Settling Parties will be:

      i. Was the Global Learning Gifting Initiative (the "Gift Program") a fraud or a sham?

ii. Did the class members enter into enforceable contracts with Global Learning Group Inc., and if so, what are the terms of the contracts?

iii. Is the release in Direction Two of the Directions to Escrowagent Inc. enforceable in favour of the Settling Parties as against the class members?

iv. Is the release in the Global Learning Group Inc. Acknowledgement signed by Class members enforceable?

v. Did the Settling Parties owe a duty of care to the Class with respect to the claims asserted against them in negligence or negligent misrepresentation?

vi. If the Settling Parties owed a duty of care to the Class with respect to the claim in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?

vii. If the Settling Parties owed a duty of care to the Class with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care?

viii. Did the Settling Parties owe the Class a duty to warn?

ix. If the Settling Parties owed the Class a duty to warn, did the Settling Parties breach the duty to warn?

x. If the Settling Parties breached the duty to warn the Class, are the ettling Parties liable to the Class for their losses arising from their participation in the Gift Program?

xi. Does the conduct of the Settling Parties justify an award of punitive, aggravated and/or exemplary damages?

b. The Class will be defined as "all persons who participated in the Global Learning Gifting Initiative Charitable Donation program ("the Gift Program"), exclusive of the Defendants, their family members, employees agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lapus, Lylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak."

c. Notice of certification of the Action as against the Settling Parties and notice of approval of this Settlement Agreement will be in accordance with the Notice Protocol in Schedule A.

5. Robert Kepes, on his own behalf and on behalf of MKW and Morris & Morris, will attend before an official examiner in Toronto, Ontario to be examined under oath by Class Counsel and the Non-settling Defendants on a date to be agreed upon between the Parties, but which shall take place no later than 150 days after the Court approves this settlement, and the Settling Parties have delivered their affidavits of documents and the Schedule A documents referenced therein, unless the parties to the Action agree otherwise. Robert Kepes will attend to answer questions regarding his knowledge about, and involvement in the matters described in the Fourth Amended Statement of Claim (the "Claim") to be approved by the Court as part of this settlement, or the matters described in any further amendment to the Claim. However, Robert Kepes shall not be required to provide answers in respect of matters that are subject to solicitor-client privilege or any other privilege unless directed to do so by order of the Court. The examination for discovery of Robert Kepes shall not exceed a total of 14 hours without leave of the court.

6. The Plaintiffs will be entitled to read into the trial record any of the evidence of the Settling Parties given on the examination under oath as though the Settling Parties remained defendants in the Action.

7. Robert Kepes on his own behalf and on behalf of MKW, and Morris & Morris will, in accordance with the order of the Court approving this settlement, and by no later than 90 days following the Court's order approving this settlement, produce to Class Counsel sworn affidavits of documents and all Schedule "A" documents in their power, possession or control that are relevant to the matters described in the Claim, except with respect to documents that are subject to solicitor-client privilege or other privileges, which shall be listed with specificity in Schedule B to the affidavits of documents. Any communications between the Settling Parties and any of the Non-Settling Defendants in this Action, or with any other persons shall be produced in their original format, in either electronic or hard copy format, except with respect to communications that are subject to solicitor-client privilege or other privileges.

8. The Non-Settling Defendants shall be entitled to receive from the Plaintiffs, at the expense of the Non-Settling Defendants, a copy of all documents produced to the Plaint' s by the Settling Parties.

9. The Court will retain a supervisory role over the discovery process and the Settling Parties in respect thereto.

10. The Action will be dismissed as against the Settling Parties, with prejudice, and on consent and without costs once the Settling Parties have fulfilled their obligations under this Settlement Agreement (the "Dismissal Order").

11. The Dismissal Order will include a full and final release by the Class in favour of the Settling Parties.

12. If Robert Kepes provides evidence to the Plaintiffs that is intentionally false or materially misleading, the Plaintiffs may bring a motion on notice to the Settling Parties to set aside this Agreement and the Dismissal Order, and, if granted, the Plaintiffs' claims asserted against the Settling Parties in the Claim shall be continued as though this Settlement Agreement and the Dismissal Order had not been made, and the Plaintiffs will return the Settlement Funds of $1,450,000.00 to the Settling Parties, less the costs of providing notice to the Class of the certification and settlement approval, and less the costs of any notice to be provided to the Class of the Settlement Agreement being set aside, and the Settling Parties agree that they will be barred from asserting a defence based upon the expiry of any limitation period.

13. Bar Order: The Plaintiffs and the Settling Parties agree that the Dismissal Order shall contain a bar order which shall include the following provisions:

    (a) all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Released Claims which were or could have been brought in this Action or that have been, or could have been, asserted by a separate action by any Non-Settling Defendant or by any other person or party against any of the Settling Parties, or by the Settling Parties against any Non-Settling Defendant or previously settled Defendant, shall be barred, prohibited and enjoined (unless such a claim is made in respect of a claim by a person who has validly opted out of the Action), but the Non-Settling Defendants may nonetheless pursue claims against the Settling Parties for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the proposed class proceeding commenced in Saskatchewan, being *Piett v. Global Learning Group Inc., et al.*, Court file No. Q.B.G. "590" of 2016, that do not overlap with the claims asserted in this Action (both in terms of subject matter and class members);

    (b) all claims of the Class of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of, the Settling Parties to the defendants Global Learning Group Inc., Global Learning Trust Services Inc. as Trustees of Global Learning Trust (2004), and Robert Lewis, relating to or arising from the Gift Progra which could have been brought in the Action or in a separate proceeding are barred, prohibited and enjoined;

    (c) if a Non-Settling Defendant or any other person or party would have the right to make a claim for contribution and indemnity against any of the Settling Parties:

(i) the Plaintiffs and/or members of the Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Settling Parties as proven at trial; and

(ii) the Court shall have full authority to determine the proportionate liability at the trial or other disposition of the Action as if the Settling Parties were parties to the action and any such finding by the Court in respect of the Settling Parties' proportionate liability shall only apply in this Action and shall not be binding upon the Settling Parties in any other proceedings.

14. For greater certainty, to the extent that the Settling Parties are found to have any liability to any of the Non-Settling Defendants for contribution and indemnity arising from or related to amounts for which the Non-Settling Defendants are found liable to the Class, the Class members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Parties are found liable to the Non-Settling Defendants.

15. For greater certainty, the Plaintiffs hereby agree to indemnify the Settling Parties and hold them absolutely harmless in the event that there is a finding that the Settling Parties are liable to pay any amounts to any Non-Settling Defendant pursuant to any claims brought against them by any Non-Settling Defendant for contribution and indemnity in this Action;

16. The Settling Parties collectively will respond to a maximum of four requests to admit delivered to them as follows:

- One request to admit as delivered to them by the Plaintiffs in respect of summary judgment motions brought by the Non-Settling Defendants;
- One request to admit as delivered to them by the Non-Settling Defendants collectively, in respect of their summary judgment motions;
- One request to admit as delivered to them by the Plaintiffs in respect of the common issues trial; and
- One request to admit as delivered to them by the Non-Settling Defendants collectively, in respect of the common issues trial;

The Settling Parties are not required to respond to any requests to admit on matters that are subject to solicitor-client privilege or any other privilege unless directed to do so by order of the Court.

17. Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Class members against any person other than the Settling Parties.

18. The Plaintiffs will seek Court approval of this Agreement and an Order certifying this Action as against the Settling Parties, and then dismissing the certified Action as against the Settling Parties with prejudice and on consent and without costs, and the consent Dismissal Order shall include the Bar Order terms set out above.

19. In the event the Court does not approve this Settlement Agreement or grant the Order including the Bar Order terms, then this Settlement Agreement shall be at an end, and all parties shall be returned to the position they were in immediately before executing this Agreement, including the immediate return of the Settlement Funds of $1,450,000.00, with accumulated interest, to the Settling Parties.

20. The Plaintiffs hereby acknowledge that this Agreement does not constitute an admission whatsoever of liability on the part of any of the Settling Parties and that no liability shall be imputed to the Settling Parties as a result of entering into this Settlement Agreement.

21. The Settling Parties represent and warrant that they have had a reasonable opportunity to review and consider this Agreement prior to executing it, have obtained independent legal advice in respect thereto and understand the significance of this Agreement, including their obligations and rights hereunder, and are under no incapacity of any nature at the time that it was executed and explained to them. The Settling Parties acknowledge that Class Counsel have not provided them with legal advice.

22. In the event that a Settling Party is prevented, delayed, or otherwise unable to perform its obligations under this Agreement due to acts of God, pandemic, epidemic, or spread of disease, including the current COVID-19 outbreak, or any other cause beyond its control constituting a *force majeure* event, that party shall not be liable for damages resulting from such failure to perform its obligations, nor shall such inability to perform constitute grounds to void the settlement set out in this Agreement.

23. In the event that a Settling Party is prevented, delayed, or otherwise unable to perform its obligations for the reasons identified in the preceding paragraph, the Settling Parties hereby agree that they shall endeavour to agree upon a modified schedule for the performances of any outstanding obligations under this Agreement.

24. In the absence of an agreement between the Settling Parties as contemplated in the preceding paragraph, the Settling Parties hereby agree that the Court shall have jurisdiction to impose a timetable for the completion of any outstanding obligations under this Agreement.

This Agreement may be executed either by original signature, or electronically, including by PDF signature attached to an e-mail, or by facsimile signature, and may be executed

by the parties in one or more counterparts, each of which when so executed and delivered, shall be an original and such counterparts shall together constitute one and the same instrument, notwithstanding their date of actual execution.

Dated this 26th day of May, 2020

Robert Kepes

Morris Kepes Winters LLP

Morris & Morris LLP

Lynn Wintercorn, Peter Newman,
Emily Flammini and Alex Kepic
By their lawyers,
Waddell Phillips Professional Corporation
and Klein Schonblum LLP

Settlement Agreement

Schedule A

Schedule A

Court File No. CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	_____, THE _____
	)	
JUSTICE GLUSTEIN	)	DAY OF _____, 2020

BETWEEN:

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

GLOBAL LEARNING GROUP INC., GLOBAL LEARNING TRUSTS SERVICES INC. AS THE TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION, ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH, MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP, CASSELS BROCK & BLACKWELL LLP, WISE BLACKMAN LLP, EVANS & EVANS INC., and GRAHAM TURNER

Defendants

ORDER

(Motion for Certification and Settlement Approval)

THIS MOTION, made by the Plaintiffs, for an order adding Robert Kepes and Morris & Morris LLP (Morris & Morris) as defendants, certifying this proceeding as a class proceeding as against the Defendants, Morris Kepes & Winters LLP ("MKW"), Robert Kepes, and Morris & Morris, (together, the **"Settling Parties"**), appointing the Plaintiffs as representative plaintiffs, and

approving the settlement agreement between the Plaintiffs and the Settling Parties was heard this day at the court house, 130 Queen St. W., Toronto, Ontario.

ON READING the notice of motion for certification, dated August 14, 2018, the affidavit of John Phillips, sworn August 9, 2018, the affidavit of Lynn Wintercorn, sworn August 13, 2018, the affidavit of Peter Newman, sworn August 13, 2018, the affidavit of Emily Flammini, sworn August 10, 2018, the affidavit of Alex Kepic, sworn August 10, 2018, the supplementary notice of motion for settlement approval, the supplementary affidavit of John Phillips sworn [TBD], on being advised of the consent of Robert Kepes and Morris & Morris to being added as defendants for settlement purposes, and upon being advised of the consent of Cassels Brock & Blackwell LLP, Fasken Martineau DuMoulin LLP and Allan Beach, James Penturn, Richard Glatt and IDI Strategies Inc., Wise Blackman LLP, Evans & Evans Inc., Robert Lewis, and Graham Turner (together, the "**Non-Settling Defendants**"), and on hearing the submissions of the lawyers for the Plaintiffs and the lawyers for MKW, Robert Kepes, and Morris & Morris,

1. **THIS COURT ORDERS** that the Third Amended Statement of Claim shall be amended in the form attached as **Schedule A** hereto, adding Robert Kepes and Morris & Morris as defendants.

2. **THIS COURT ORDERS** that this action is certified as a class proceeding under sections 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c. 6 (the ***CPA***) regarding the claims asserted against the Settling Parties.

3. **THIS COURT ORDERS** that the Class is described as follows:

> All persons who participated in the Global Learning Gifting Initiative Charitable Donation program ("the Gift Program"), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lapus, Lylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak. (the **"Class"**).

4. **THIS COURT ORDERS** that Lynn Wintercorn, Peter Newman, Emily Flammini and Alex Kepic are appointed as the representative plaintiffs regarding the claims asserted against the Settling Parties.

5. **THIS COURT DECLARES** that the claims asserted on behalf of the Class against the Settling Parties are negligence, negligent misrepresentation, breach of duty to warn, and/or vicarious liability.

6. **THIS COURT DECLARES** that the relief sought by the Class as against the Settling Parties is: (a) general damages and special damages; (b) declarations; and (c) punitive, aggravated and exemplary damages.

7. **THIS COURT ORDERS** that the common issues certified as against the Settling Parties are:

(1) Was the Global Learning Gifting Initiative (the "Gift Program") a fraud or a sham?

(2) Did the Class members enter into enforceable contracts with Global Learning Group Inc., and if so, what are the terms of the contracts?

(3) Is the release in Direction Two of the Directions to Escrowagent Inc. enforceable in favour of the Settling Parties as against the Class members?

(4) Is the release in the Global Learning Group Inc. Acknowledgement signed by Class Members enforceable?

(5) Did the Settling Parties owe a duty of care to the Class with respect to the claims asserted against them in negligence or negligent misrepresentation?

(6) If the Settling Parties owed a duty of care to the Class with respect to the claim in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?

(7) If the Settling Parties owed a duty of care to the Class with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care?

(8) Did the Settling Parties owe the Class a duty to warn?

(9) If the Settling Parties owed the Class a duty to warn, did the Settling Parties breach the duty to warn?

(10) If the Settling Parties breached the duty to warn the Class, are the Settling Parties liable to the Class for their losses arising from their participation in the Gift Program?

(11) Does the conduct of the Settling Parties justify an award of punitive, aggravated and/or exemplary damages?

8. **THIS COURT ORDERS** that notice of certification of this proceeding as a class proceeding against the Settling Defendants, and notice of approval of the Settlement Agreement shall be given to the Class in accordance with the Notice Protocol attached as **Schedule B**.

9. **THIS COURT ORDERS AND DECLARES** that the opt out period for this class action has expired, and this Order is binding upon all of the Class Members and each of their respective heirs, executors, administrators and assigns, including those who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* with respect to this Order are hereby disposed of.

10. **THIS COURT DECLARES** that notice to the Class of the hearing for approval of the Settlement Agreement made between the Plaintiffs and the Settling Parties (the **"Settlement Agreement"**) was not required under s. 19 *CPA* and is hereby dispensed with.

11. **THIS COURT ORDERS** that the Settlement Agreement, a copy of which is attached hereto as **Schedule C**, is fair, reasonable and in the best interests of the Class and is hereby approved, and shall be implemented in accordance with its terms, except to the extent that this Order varies those terms, in which case this Order takes precedence over the terms of the Settlement Agreement, as amended.

12. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.

13. **THIS COURT ORDERS** that the Settlement Agreement is binding upon the Settling Parties, the Plaintiffs, and the Class including those persons who are minors or mentally incapable,

and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are hereby disposed of.

14. **THIS COURT ORDERS AND DECLARES** that, subject to the terms of the Settlement Agreement, the Class forever and absolutely release the Settling Parties, including, where applicable, each of their past, and present partners, associates, employees, servants, administrators, insurers (only insofar as the insurers are insurers of the Settling Parties and not to the extent that they are also insurers of any Non-settling Party), affiliates, heirs, executors, successors, assigns, and personal representatives, as the case may be, or any of them, from any and all manner of claims, demands, actions, suits, Québec civil law and statutory liabilities, and causes of action which have been asserted or which could have been asserted in the Action, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and professional or lawyers' fees that the Class ever had, now have, or hereafter can, shall, could, or may have against the Settling Parties, relating in any way to any to the Class' participation in the Gift Program and resulting liabilities, interest or penalties arising from any assessments or reassessments under the *Income Tax Act* (Canada), *Excise Tax Act* (Canada) or similar provincial legislation (the **"Released Claims"**).

15. **THIS COURT ORDERS AND DECLARES** that the aforementioned release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future any member of the Class in respect of the Released Claims, and that each member of the Class is forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any

other forum, directly, representatively or derivatively, asserting against the Settling Parties any claims that relate to or constitute any Released Claims, as referenced in paragraph 14, above.

16. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in this Action or that have been, or could have been, asserted by separate action by any Non-Settling Defendant or any other person or party against any of the Settling Parties, or by the Settling Parties against any Non-Settling Defendant or previously settled Defendant, shall be barred, prohibited and enjoined (unless such a claim is made in respect of a claim by a person who has validly opted out of the Action); but the Non-Settling Defendants may nonetheless pursue claims against the Settling Parties for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the proposed class proceeding commenced in Saskatchewan, being *Piett v. Global Learning Group Inc., et al.*, Court file no. Q.B.G. "590" of 2016 (the "*Piett* Action") that do not overlap with the claims asserted in this Action (both in terms of the subject matter of the claims and class members).

17. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Gift Program which were or could have been brought in the Action or in a separate proceeding by any Non-Settling Defendant or any other person or party against any of the Settling Parties, or by the Settling Parties against any Non-Settling Defendant are barred, prohibited and enjoined, unless such a claim is made in respect of a claim by a person who has validly opted out of the Action, or is made by the Non-Settling Defendants for

contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the *Piett* Action that do not overlap with this Action (both in terms of subject matter and class members).

18. **THIS COURT ORDERS** that within 90 days of this Order, the Settling Parties shall each provide the Plaintiffs with a sworn affidavit of documents, and all Schedule "A" documents in their power, possession or control that are relevant to the matters described in the Claim, except with respect to documents that are subject to solicitor-client privilege or any other privilege, which shall be listed with specificity in Schedule "B".

19. **THIS COURT ORDERS** that the Plaintiffs shall provide to the Non-Settling Defendants, at the expense of the Non-Settling Defendants, a copy of all documents produced to the Plaintiffs by the Settling Parties.

20. **THIS COURT ORDERS** that Robert Kepes, on his own behalf and on behalf of MKW and Morris & Morris, will attend before an official examiner in Toronto, Ontario to be examined under oath by Class Counsel and the Non-settling Defendants on a date to be agreed upon between the Parties, but which shall take place no later than 150 days after the Court approves this settlement, and the Settling Parties have delivered their affidavits of documents and the Schedule A documents referenced therein, unless the parties agree otherwise, and the Plaintiffs and Non-Settling Defendants may read into the record at trial any such discovery evidence as though the Settling Parties remained parties to the Action. However, Robert Kepes shall not be required to answer any questions in respect of matters that are subject to solicitor-client privilege or any other privilege, unless otherwise directed to do so by order of this court.

21. **THIS COURT ORDERS** the Settling Parties collectively will respond to a maximum of four requests to admit delivered to them as follows:

- One request to admit as delivered to them by the Plaintiffs in respect of summary judgment motions brought by the Non-Settling Defendants;
- One request to admit as delivered to them by the Non-Settling Defendants collectively, in respect of their summary judgment motions;
- One request to admit as delivered to them by the Plaintiffs in respect of the common issues trial; and
- One request to admit as delivered to them by the Non-Settling Defendants collectively, in respect of the common issues trial.

The Settling Parties are not required to respond to any requests to admit on matters that are subject to solicitor-client privilege or any other privilege unless directed to do so by order of the Court.

22. **THIS COURT ORDERS** that, pursuant to Rule 30.1.01(8), the deemed undertaking rule shall not apply to the evidence obtained from the Settling Parties pursuant to paragraphs 19, 20 and 21 of this Order to the extent that the evidence may be used by the Plaintiffs and the Non-Settling Defendants in any claims or cross claims made in or related to this Action or the *Piett* Action.

23. **THIS COURT ORDERS** that, if requested by the Plaintiffs or the Non-Settling Defendants, Robert Kepes will attend as a witness at the trial of this Action without the need to be served with a summons to witness, and the Plaintiffs and Non-Settling Defendants may cross-examine him, provided that Robert Kepes is given at least ten (10) days notice that his attendance is required.

24. **THIS COURT ORDERS AND DECLARES** that, should it be necessary, it has full authority to determine the proportionate liability of the Settling Parties at the trial or other disposition of the Action, whether or not the Settling Parties appear at the trial or other disposition of this proceeding, and the proportionate liability of the Settling Parties shall be determined as if the Settling Partiess are parties to the Action and any determination by the Court in respect of the proportionate liability shall only apply in the Action and shall not be binding on the Settling Partiess in any other proceedings.

25. **THIS COURT ORDERS** that the Action shall be dismissed against the Settling Parties, with prejudice and without costs upon the court being notified by the Plaintiffs that the Settling Defendants have completed their documentary production and examinations for discovery required by this order, including answering any undertakings or court-ordered refusals arising therefrom.

26. **THIS COURT ORDERS** that the time limits set out herein respecting the performance of any obligation by any Settling Party shall be subject to any modifications made pursuant to paragraphs 22, 23 and 24 of the Settlement Agreement.

27. **THIS COURT ORDERS** that there shall be no costs of this motion.

_____

The Honourable Justice B. Glustein

Amend Claim,
Certification, and Settlement Approval Order
Schedule A

Order – Schedule A

Court File No.: CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

GLOBAL LEARNING GROUP INC.,
GLOBAL LEARNING TRUST SERVICES INC. as TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION., ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH, MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP, CASSELS BROCK & BLACKWELL LLP, WISE, BLACKMAN LLP, ~~and~~ EVANS & EVANS INC., ~~and~~ GRAHAM TURNER, ROBERT KEPES and MORRIS & MORRIS LLP

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

FOURTH 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:

Issued by _____
Local registrar

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

TO: **GLOBAL LEARNING GROUP INC.**
79 Main Street North
Markham, ON L3P 1X7

AND TO: **ROBERT LEWIS**
1663 Horseshoe Lake Road
Minden, ON L0M 2K0

AND TO: **IDI STRATEGIES**
283 Danforth Avenue
Suite 384
Toronto, ON M4K 1N2

AND TO: **ESCROWAGENT INC.**
Jerome D. Sylvan
1936 Glengrove Road
Pickering, ON L1V 1X2

AND TO: **JDS CORPORATION**
283 Danforth Avenue
Suite 463
Toronto, ON M4K 1N2

AND TO: **JAMES PENTURN**
Penturn & Company LTD
Imperial House Penthouse
11 – 13 Young Street
London
W8 5EH

AND TO: **RICHARD E. GLATT**
539 Old Orchard Grove
Toronto, ON M4K 1N2

AND TO: **DENIS JOBIN**
1210 Boul. De Maisonneuve Ouest
Suite 5F
Montreal, QC H3A 0A2

AND TO: **GLOBAL LEARNING TRUSTS SERVICES INC as the Trustee of GLOBAL LEARNING TRUST (2004)**
1444 Dranoel Road
Bethany, ON L0A 1A0

AND TO: **ALLAN BEACH**
33 Harrison Road
North York, ON M2L 1V6

AND TO **FASKEN MARTINEAU DUMOULIN LLP**
333 Bay Street
Box 20
Suite 2400
Toronto, ON MH 2T6

AND TO: **MORRIS KEPES & WINTERS LLP**
390 Bay Street
Suite 1000
Toronto, ON M5H 2Y2

AND TO: **CASSELS BROCK & BLACKWELL LLP**
40 King Street West
No. 2100
Toronto, ON M5H 3C2

AND TO: **WISE BLACKMAN LLP**
2300-1155 Boul. Rene-Levesque O
Montreal, QC H3B 2J8

AND TO: **EVANS & EVANS INC**
400 Burrard Street
Suite 1610
Vancouver, BC V6C 3G2

~~AND TO:~~ ~~**MNP LLP**~~
~~330 5th Avenue SW~~
~~Suite 2000~~
~~Calgary, AB T2P 0L4~~

AND TO: **GRAHAM TURNER**
248 Riverview Boulevard
St. Catharine's, ON L2T 3M8

AND TO: **ROBERT KEPES**
390 Bay Street
Suite 1000
Toronto, ON M5H 2Y2

AND TO: **MORRIS & MORRIS LLP**
425 University Ave., Suite 203
Toronto, ON M5G 1T6

CLAIM

1. The Plaintiffs claim:

(a) ~~An order appointing a receiver of Global Learning Group Inc., ("GLGI") pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;~~

(b) an interim and interlocutory Mareva injunction, until trial or other final disposition of this proceeding, restraining any of the Gift Program Defendants (defined below) from dissipating any monies, wherever situate in the world, in their possession which directly or indirectly came from the Class Members, and freezing any bank accounts wherever situate in the world where Class Members' monies are held;

(c) an order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs on behalf of a class as defined in Paragraph 3;

(d) $500,000,000.00 for general damages and/or damages in lieu of restitution under the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Sch. A (the "Ontario *CPA*") and the similar legislation in other provinces and territories as set out in Schedule A, (hereinafter collectively referred to as the *"CPA"*);

(e) $250,000,000.00 for special damages incurred by the Plaintiffs and the Class, the particulars of which will be provided prior to the trial of common issues;

(f) Punitive, aggravated and/or exemplary damages in the sum of $50,000,000.00;

(g) against the Gift Program Defendants (defined below):

(i) a declaration that they each engaged in unfair and unconscionable practices and are in breach of ss. 14 - 17 of the Ontario *CPA,* and the like provisions in the *CPA* legislation as set out in Schedule A;

(ii) a declaration that pursuant to s. 18(15) of the Ontario *CPA,* and the like provisions in the *CPA* legislation as set out in Schedule A, it is in the interests of justice to waive the requirement for giving notice under the *CPA*; and

(iii) exemplary and punitive damages pursuant to s. 18(11) of the Ontario *CPA* and the like provisions in the *CPA* legislation as set out in Schedule A, in the amount of $800,000,000.00 or such other amount as the Court deems fit;

(h) a declaration that the Gift Program Defendants received and hold all monies paid into the Gift Program (defined below) by the Plaintiffs and the Class Members (the "cash donations") pursuant to a constructive

or resulting trust, and that they knowingly received all the cash donations impressed with a constructive or resulting trust;

(i) a declaration that the Gift Program Defendants have been unjustly enriched by the amount of the cash donations;

(j) a tracing order and an accounting order against all of the Gift Program Defendants to trace the cash donations, and requiring them to account for and disgorge the cash donations;

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

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

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

(n) costs of this action ~~and the receivership~~ on a full indemnity basis, as well as the costs of all notices to the Class, and of administering the distribution of any recovery in this action, plus disbursements and applicable taxes; and

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

THE PARTIES

2. The Plaintiffs each reside in the province of Ontario. The Plaintiffs and the Class are consumers as defined under the *CPA*. The Plaintiffs and the Class were all participants in the Global Learning Gifting Initiative Charitable Donation Program (the "Gift Program") in the period between 2004-2014 (the "Class Period").

3. The Plaintiffs are the proposed representatives of a Class defined as:

> all persons who participated in Global Learning Gifting Initiative Charitable Donation program ("the Gift Program"), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lapus, Mylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak.

4. The Plaintiffs each participated in the Gift Program for one or more years. They each claimed charitable tax credits for the amount of the tax receipts issued to them by the charities participating in the Gift Program for the cash and in kind donations they made.

The charitable tax credits claimed by the Plaintiffs were disallowed by Canada Revenue Agency ("CRA"), and their tax returns were each reassessed, and interest was charged on all overdue and owing taxes based upon the reassessments.

5. Based upon the representations and assurances that the Plaintiffs received from Global Learning Group Inc. ("GLGI"), Robert Lewis and the Valuators (defined below), and based upon the assurances contained in the tax opinion letter from Cassels Brock & Blackwell LLP which GLGI had posted on its webpage, the Plaintiffs filed notices of objection with CRA with respect to the reassessments, and (if received) they did not accept one or more of CRA's offer to settle the notices of objection that it extended in 2014.

6. The CRA offers have expired or been withdrawn, and are no longer available for acceptance. The Plaintiffs have therefore suffered the loss of the cash donations they made to participate in the Gift Program, as well as suffering damages equivalent to the interest charged by CRA upon the reassessment of their tax returns.

7. The details of each Plaintiff's losses, in the amount of their disallowed cash donations and the total escrow fees they each paid, but excluding interest and penalties assessed by the CRA, are set out below. Each Plaintiff has also been assessed interest ~~and/or penalties~~ by CRA following the reassessment of their income tax returns, and has suffered a loss equivalent to the total interest ~~and penalties~~ paid or payable to CRA, in addition to loss of the amounts paid by them to participate in the Gift Program, which have been disallowed by CRA.

(a) Lynn Wintercorn's cash donations to the Gift Program in the amount of $14,100.00 were disallowed by the CRA, and she paid a total of $171.81 to

Escrowagent in escrow fees.

(b) Peter Newman's cash donations to the Gift Program in the amount of $26,500.00 were disallowed by the CRA, and he paid $213.11 to Escrowagent in escrow fees.

(c) Emily Flammini's cash donations to the Gift Program in the amount of $9,100.00 were disallowed by the CRA. Ms. Flammini is uncertain as to the total amount paid in escrow fees to Escrowagent.

(d) Alex Kepic's cash donations to the Gift Program in the amount of $20,300.00 were disallowed by the CRA, and he paid a total of $42.60 to Escrowagent in escrow fees.

8. GLGI is an Ontario Corporation which carried on business from approximately 2004-2014 as the promoter of a tax shelter bearing CRA Tax shelter Identification: TS-070003. GLGI no longer carries on business, and its business registration has been cancelled for failure to comply with the *Corporations Tax Act.*

9. Robert Lewis ("Lewis") was the sole officer and director, the principal, and the directing mind of GLGI. Lewis drew funds out of GLGI as salary, bonuses and dividends, knowing at all times that those funds originated as the cash donations made by the Plaintiffs and the Class members for participation in the Gift Program, which were supposed to be paid to bona fide charities, and not paid to GLGI, the Administrator Defendants (defined below) or otherwise. Lewis knew that the Gift Program was a sham, that as part of a conspiracy in which he participated, it was created for his own and others'

personal enrichment, and that the funds he received from GLGI were therefore impressed with a constructive or resulting trust in favour of the Plaintiffs and the Class.

10. IDI Strategies Inc. (IDI) is a company owned and controlled by James Penturn, and Richard E. Glatt. These defendants had been involved with Lewis in earlier leveraged charitable giving programs. IDI contracted with GLGI to administer all the back office functions of the Gift Program, including functions that should have been performed by the Trustee of the Global Learning Trust (2004) in exchange for a lump sum fee and a percentage of the cash donations made by the Class members. In addition, Penturn and Glatt were actively involved in marketing the Gift Program, particularly by encouraging GLGI's sales agents to sell the Gift Program to the Class.

11. JDS Corporation (JDS) is a company owned and controlled by Denis Jobin. JDS contracted with GLGI and the Trustee of the Global Learning Trust (2004) to develop, maintain and host a database and register and record all of the capital beneficiaries of Global Learning Trust (2004), and the property received and distributed by the Trust in exchange for a lump sum fee and monthly fee paid to it from the cash donations made by the Class members. In addition, JDS kept databases for the charities, prepared the assignments of software licences, and prepared tax receipts for the charities.

12. Together with IDI, Penturn and Glatt, JDS and Jobin are the "Administrator Defendants".

13. Penturn, Glatt and Jobin drew funds out of IDI and JDS as salary, bonuses and dividends payable to themselves, knowing at all times that these funds originated as the cash donations made by the Plaintiffs and the Class members, which were supposed to be

paid to bona fide charities, and not paid to GLGI, and the Administrator Defendants. The Administrator Defendants knew that the Gift Program was a sham, that it was part of a conspiracy in which they participated, that it was created for their own and others' enrichment and that all the funds they received from IDI and JDS were therefore impressed with a constructive or resulting trust in favour of the Plaintiffs and the Class.

14. Escrowagent Inc. ("Escrowagent") is an Ontario corporation incorporated by~~, owned~~ and operated by Allan Beach ("Beach")~~. Escrowagent was created by Beach as part of the conspiracy that he entered into with the Administrator Defendants and Robert Lewis for their own enrichment.~~, until April 2011.

14(a) Thereafter, on or about September 24, 2010, Graham Turner ("Turner") acquired control of Escrowagent from Beach and became its sole officer and director. He continued to operate Escrowagent as the escrow agent for the Gift Program until on or about May 5, 2014, around the same time that the Gift Program ceased operations. Turner is or was a lawyer licenced in the Province of Ontario.

14(b) Turner drew funds out of Escrowagent as salary, bonuses and/or dividends payable to himself, knowing at all times that these funds were the escrow fees paid by the Plaintiffs and the Class members for the intended purpose of covering bona fide administrative costs incurred by Escrowagent in respect of their participation in the Gift Program, including for Escrowagent to effect the legitimate and legal transfer of their cash and in kind donations to bona fide charities.

14(c) By the time that Turner became involved in the Gift Program, CRA was actively reassessing Class Members' tax returns, and had made its position known that it would be

reassessing future participants who participated in the Gift Program. Turner knew or ought to have known that the Gift Program was a sham, that it was created for the enrichment of the Gift Program Defendants, that the fees charged by Escrowagent were charged for the purpose of furthering the sham, that funds that Escrowagent received from the Plaintiffs and the Class were never used for their intended purpose, and therefore that all the funds received by Escrowagent were impressed with a constructive or resulting trust in favour of the Plaintiffs and the Class.

14(d) Furthermore, Escrowagent, and Turner, as the principal of Escrowagent, knew that Escrowagent did not perform any escrow functions it was supposed to perform, and for that reason, as well the escrow fees received by Escrowagent were therefore impressed with a constructive or resulting trust in favour of the Class.

~~15. Beach, as the principal of Escrowagent, drew funds out of that company as salary, bonuses and dividends, knowing at all times that these funds originated as the cash donations made by the Plaintiffs and the Class members, which were supposed to be paid to Escrowagent to cover the bona fide administrative costs of Escrowagent in respect of their participation in the Gift Program, including it effecting the legitimate transfer of their cash and in kind donations to bona fide charities. Escrowagent, and Beach as the principal of Escrowagent, knew that the Gift Program was a sham, that Escrowagent did not perform any functions, and that Escrowagent and Beach were participating in a conspiracy, that the Gift Program was created for their own and others' enrichment and that funds that Escrowagent received were never used for their intended purpose, that Escrowagent did not perform the escrow functions it was supposed to perform, and that the funds were therefore impressed with a constructive or resulting trust in favour of the Class.~~

15. Global Learning Trust (2004) (the "Trust") is an Ontario trust that was settled by a deed of settlement dated November 19, 2004 that was drafted by Robert Kepes ("Kepes") while he was a partner at the law firm Morris & Morris LLP ("Morris & Morris"). The settlor was Michael Morris, a Bahamian resident, and the brother of Ian Morris, a partner of the law firms Morris & Morris and then Morris Kepes & Winters LLP. Global Learning Trust Services Inc. (the "Trustee") is an Ontario corporation, and was appointed as the trustee of the Trust. Ron Knechtel was the owner, officer and director of the Trustee, but in fact the operating mind and principal of the Trustee was Robert Lewis. Knechtel took instructions from Lewis and allowed the Trustee to be used to further the conspiracy in which Lewis participated.

16. The Trustee took fees from the Trust which were derived from the cash donations made by the Plaintiffs and the Class. The Trustee knew that the Trust was part of a conspiracy effected by GLGI, Lewis, ~~Allan Beach~~, Escrowagent, and the Administrators for their personal enrichment to the detriment of the Plaintiffs and the Class, and that the funds that it received from the Trust were impressed with a constructive or resulting trust in favour of the Class.

17. Lewis, GLGI, ~~Allan Beach~~, James Penturn, Richard Glatt, Denis Jobin, Escrowagent Inc., IDI, JDS, and the Trustee are the "Gift Program Defendants". The Gift Program Defendants all participated in a conspiracy to defraud the Plaintiffs and the Class of their cash donations through the Gift Program. The Gift Program Defendants all knew that the Gift Program was a sham whose sole purpose was their own enrichment at the expense of the Plaintiffs and the Class.

18. Morris Kepes & Winters LLP, Kepes, Morris & Morris, Cassels Brock & Blackwell LLP, ~~and~~ Fasken Martineau Dumoulin LLP, ~~and~~ Beach and Turner (together, the "Lawyers") are law firms or lawyers carrying on business in Ontario. All of the partners of Morris & Morris, Morris Kepes & Winters LLP, Cassels Brock & Blackwell LLP, and Fasken Martineau Dumoulin LLP are vicariously liable for the negligent acts or omissions and the negligent misrepresentations of members of their respective firms made during the Class Period and for the damages suffered by the Plaintiffs and the Class as a consequence of the Lawyers' participation in the Gift Program.

18(a) Kepes is a lawyer who was a partner in the law firm Morris & Morris from January 2003 to June 2011, at which time he became a partner in the law firm of Morris Kepes & Winter LLP (MKW). While a partner at both law firms, Kepes acted for GLGI, Robert Lewis and the Trust, providing them with services with respect to the formation, structuring and operations of the Gift Program, including providing advice to GLGI about responding to investigations by Canada Revenue Agency.

18(b) The Plaintiffs had no knowledge that MKW was not a continuation of Morris & Morris until they received the Response to Request to Admit of MKW dated July 19, 2018.

18(c) Kepes, while at Morris & Morris, was retained by Lewis and GLGI to draft the trust documentation pursuant to which the Trust was to grant the software licenses to the Gift Program participants.

18(d) Kepes, while at Morris & Morris, was also retained by the Trustee to provide detailed reporting to it with respect to all Gift Program participants who applied to become beneficiaries of the Trust, and to report on the total number and value of software licenses

that were granted to each Gift Program participant. Kepes drafted the notice to beneficiaries providing notice that Global Trust was assigning and transferring specific licenses identified in a schedule to the notice to the Gift Program participants. Kepes was, at all times, therefore, fully cognizant of who each Gift Program participant was, the amount of funds paid by them and the licenses the Trust transferred to the Gift Program participants.

18(e) Kepes, while at Morris & Morris, was also retained by Phoenix Learning Corporation (Phoenix), and as such had reviewed the Master License Agreement pursuant to which Phoenix obtained the software licenses.

18(f) Kepes facilitated the sale of software sublicenses between Phoenix and GLGI both at Morris & Morris and at MKW, with the funds flowing through the law firms' trust accounts, as well as the execution of the license agreements being facilitated by Kepes at both law firms.

18(g) Kepes kept a list of the licenses sold by InfoSource Inc. to Phoenix, as well as the software licenses sold to GLGI or the Trust or donated by Phoenix to the Trust. Kepes was therefore, as the lawyer for both GLGI and Phoenix, well aware that the fair market value of the software licenses was pennies, and therefore that the valuations of the software provided by the Valuators and as represented to the Plaintiffs and the Class by the Trust were grossly inflated. Kepes, as an experienced tax lawyer, ought to have known that the values ascribed to the software licenses by the Trust could not be justified and would be challenged successfully by the CRA, yet he nonetheless assisted in the creation, and ongoing operation of the Gift Program, knowing that it would cause harm to the Class.

19. Robert Kepes, Ian Morris, and Robert Winters ~~were, at all material times,~~ are lawyers and partners or counsel at the law firm Morris Kepes & Winters LLP ("MKW"). MKW holds itself out as one of Canada's largest and most integrated tax boutique law firms, focussing on, among other things tax planning (including the creation of domestic and foreign trusts) and defence of financial offences.

20. ~~MKW~~ Kepes, while at Morris & Morris, was retained by Lewis and GLGI to create the Trust and Trustee and to establish the trust structure for the Gift Program. ~~MKW~~ Kepes was negligent in creating the trust structure as the trust failed for a lack of certainty of objects, and the Gift Program structure was deficient to validly transfer title of the software licenses to the capital beneficiaries, who are the Plaintiffs and the Class.

20(a) Kepes responded to Canada Revenue Agency's July 2007 audit of the Gift Program on behalf of the Trust and GLGI in August 2007. He was, therefore, by no later than July 2007, fully aware of the fact that the Gift Program had not been properly structured and that CRA was disallowing the Class Members' claimed tax credits, yet he continued to assist GLGI and the Trust in the operation of the Gift Program, facilitate its transactions and communicate to Class Members regarding the ostensible value of the software licenses granted to the Class Members by the Trust without warning them of CRA's position or that the software license grants failed as valid grants under the Trust.

20(b) Kepes ought to have known the trust structure of the Gift Program was faulty; but he never warned the Class that the Trust he created could not make a valid gift of licenses to the Gift Program participants given its actual operating structure.

21. Beach was a lawyer and partner or counsel at the law firm Fasken Martineau

Dumoulin LLP ("Faskens"). Before being retained to provide legal services to Lewis, GLGI, and the Administrator Defendants, Beach had been the lawyer for Penturn in respect of another leveraged charitable giving program, the Berkshire Funding Initiatives program. By 2004, Beach knew that CRA was disallowing the tax credits claimed by participants in the Berkshire program, and that CRA took the position that the program was all one interconnected scheme, therefore no part of the tax credits were valid.

21(a) Turner was a sole practitioner lawyer who assumed the role of counsel to GLGI and the Gift Program in 2009. Beach stopped acting as counsel to GLGI and the Gift Program in or about September 2010. Turner provided legal services to Lewis, GLGI, and the Administrator Defendants. Turner, like Penturn and Glatt, had been involved in several other charitable donation tax shelters, and was well aware, when he became involved, that the real purpose and intent of the Gift Program was to enrich the Gift Program Defendants through the circular flow of the Class members' charitable donations back to the Gift Program Defendants, as well as enriching himself through the escrow fees imposed by Escrowagent as part of the overall scheme. The Plaintiffs became aware of Turner's involvement in the Gift Program on or about June 21, 2019, upon receiving the Defence and Crossclaim of Beach and Faskens.

22. Beach and Turner ~~knew or~~ ought to have known that the Gift Program was doomed to failure and that it would never result in the Plaintiffs and the Class members receiving valid charitable tax credits in respect of their participation in the Gift Program, including for the cash donations. Nonetheless, Beach, (and Turner from 2009) prepared all the transactional documents for use by the Plaintiffs and the Class in respect of their participation in the Gift Program, when they ~~he~~ ~~knew or~~ ought reasonably to have known that the transactions would not have their intended result, but rather would only result in the enrichment of the Gift Program Defendants, and Turner, to the detriment of the Plaintiffs and the Class.

23. ~~Both~~ MKW, Kepes and Morris & Morris ~~and Beach as the lawyer at Faskens who prepared the transactional documents were~~ ~~was~~ were in a sufficiently proximate relationship to the Plaintiffs and the Class that they ~~it~~ knew or ought to have known that the Plaintiffs and the Class would be injured as a result of their negligence in the creation of the structure of the Gift Program, including the trust documents and the transactional documents such that ~~both and Beach/Faskens~~ they owed the Plaintiffs and the Class a duty of care, which they ~~it~~ breached.

24. ~~Both MKW, and~~ Beach as the lawyer at Faskens, and Turner (from his involvement in 2009) ~~who~~ prepared the transactional documents were ~~was~~ in a sufficiently proximate relationship to the Plaintiffs and the Class that ~~he~~ they ought to have known that the Plaintiffs and the Class would be injured as a result of ~~his~~ their negligence in the creation of the structure of the Gift Program and the transactional documents such that ~~both MKW and~~ Beach/Faskens, and Turner owed the Plaintiffs and the Class a duty of care, which they breached.

25. Beach as the lawyer at Faskens who prepared the transactional documents up until September 2010, and Turner thereafter, were ~~was~~ in a sufficiently proximate relationship to the Plaintiffs and the Class that ~~he~~ they ought to have known that the Plaintiffs and the Class would be injured as a result of ~~his~~ their negligence in the creation of the structure of the Gift Program and the transactional documents such that Beach/Faskens and Turner (from his involvement in 2009) owed the Plaintiffs and the Class a duty of care, which they breached.

26. James Rossiter was at all material times a lawyer and partner or counsel at the law firm Cassels Brock & Blackwell LLP ("Cassels"), and the author of a 2004 legal opinion regarding the Gift Program (the "Opinion"). To the knowledge of Rossiter and Cassels, the Opinion was prepared for the purpose of GLGI using it as part of its promotional materials regarding the Gift Program, and with their knowledge and consent to the Opinion being used for that purpose. The Opinion was, with the knowledge and consent of Rossiter and Cassels, posted on the GLGI website with the intent that it could be read and relied upon by the Plaintiffs and the Class, and to stand as an assurance to the Plaintiffs and the Class that the Gift Program would result in the Gift Program participants obtaining valid charitable tax credits, and an inducement for the Plaintiffs and the Class Members to participate in the Gift Program.

27. ~~EMC Partners,~~ Wise, Blackman LLP~~,~~ and Evans & Evans Inc. ~~and MNP LLP~~ (the "Valuator Defendants"), along with EMC Partners, were valuators of the software licenses utilized in the Gift Program (together, the "Valuators"). The Valuators all produced valuations of the software licenses that were not supportable, and which did not disclose that the fair market value of the licenses was actually between $0.13 - $0.26, and did not

disclose that the value they ascribed to the software licenses was based upon a materially different product. The Valuators knew that their valuations were the foundation for the Gift Program, and that without providing a valuation that was many multiples greater than the actual fair market value of the licenses, the Gift Program would fail. The Valuators knew that their valuations were disseminated to the Plaintiffs and the Class and that the Plaintiffs and the Class were relying upon those valuations in entering into the Gift Program. There was sufficient proximity between the Valuators and the Plaintiffs and the Class that the Valuators owed to the Plaintiffs and the Class a duty of care to provide a fair and accurate valuation of the software licenses, and they breached that duty of care.

28. In addition to providing a valuation of the software licenses, Wise, Blackman LLP conducted an independent review of EMC Partners' valuations of the software licenses utilized in the Gift Program and opined that EMC Partners' valuations of the software licenses were appropriate and reasonable (the "Valuation Review").

29. Wise, Blackman LLP owed the Plaintiffs and the Class a duty of care because they knew or ought to have known that accurate software license valuations were required to support the in-kind tax receipts issued by the software charity. Therefore, it was essential to the proper functioning of the Gift Program that the software license valuations be correct and justifiable, and hence the Valuation Review was a key check to ensure that the valuations were correct, and were touted as such by GLGI in its promotional materials.

30. Wise, Blackman LLP was negligent in performing the Valuation Review in that it failed to identify that the Valuators valued the wrong software, failed to consider the market for the software, the intended use of the software, and the charitable purpose attached to

the pricing of the software at the time of its sale. As a result, the value ascribed to the software was grossly inflated. But for Wise, Blackman LLP's negligence in the Valuation Review, the values assigned to the software licenses would not have been inflated and the Gift Program would not have been possible. The Plaintiffs and the Class would not have participated in the Gift Program and would not have suffered the damages claimed herein.

MARKETING THE GIFT PROGRAM

31. Members of the Class were each provided with or shown promotional materials about the Gift Program that were identical or substantially similar, including a power point presentation, videos, and information about the Gift Program posted on the GLGI website. All modifications to the promotional materials were immaterial. The promotional materials were intended to deceive the Class Members and lull them into a false sense of security that the Gift Program was a legitimate charitable enterprise that would result in charitable donations to the designated charities with the value stated in the Gift Program contract documents and that the Class would in return receive valid charitable tax receipts for which they could claim and receive charitable tax credits on their tax returns. The promotional materials were intended to dissuade Class Members from seeking independent advice about the Gift Program, and to reassure them that highly qualified legal and accounting professionals had already determined that the Gift Program would deliver on its promises.

32. The Gift Program Defendants, Faskens, ~~and~~ Turner, and Kepes ~~MKW~~ prepared, reviewed and approved the promotional materials.

33. The Gift Program Defendants, the Lawyers and the Valuators knew that the promotional materials would be disseminated to the Class. The Gift Program Defendants,

the Lawyers and the Valuators intended that the Class would rely upon the representations contained in the promotional materials, which the Class did, to their detriment.

34. With the knowledge and consent of James Rossiter and Cassels, the Opinion was posted on GLGI's website accessible to Class Members, with the intent of the Gift Program Defendants and Cassels that it would be relied upon by the Class Members in deciding whether to participate in the Gift Program, regardless of any exculpatory language in the Opinion or in the contract documents. Making the Opinion available to the Class was a key element in the deceit which the Gift Program Defendants perpetrated upon the Plaintiffs and the Class, and Cassels was negligent in allowing the GLGI and the other Gift Program Defendants to use the Opinion to further their conspiracy and fraud.

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

(a) The Gift Program Defendants had received a favourable tax opinion from a national law firm;

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

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

36. The Gift Program Defendants intended the Plaintiffs and the Class Members to receive and rely upon the Promotional Materials, and the representations contained therein to the effect that there was a charitable purpose for the Gift Program, that participation in the Gift Program was making charitable donations for the benefit of charities, for charitable

purposes. The promotional materials were intended to induce the Plaintiffs and the Class Members to participate in the Gift Program. The Plaintiffs and the Class Members did, in fact, rely upon the representations contained in Promotional Materials.

37. The Defendants knew that the promotional materials, including the Opinion and valuations, represented to the Plaintiffs and the Class Members and caused them to believe that there was a charitable purpose or intent for the Gift Program. The Defendants intended the Plaintiffs and the Class Members to receive and rely upon the promotional materials including the Opinion and the valuations, and the representations contained therein to the effect that there was a charitable purpose for the Gift Program, to induce the Plaintiffs and the Class Members to participate in the Gift Program. The Plaintiffs and the Class Members did, in fact, rely upon the representations contained in promotional materials and/or the Opinion and the valuations in deciding to participate in the Gift Program.

38. The transactions related to the Gift Program were transactions without a legitimate purpose, a fact that was not disclosed to the Class, and which was a material omission. The primary purpose of the Gift Program was to enrich the Gift Program Defendants to the detriment of the Plaintiffs and the Class. Most of the money paid by the Class Members was received by the Gift Program Defendants and not by the charities. The fact that most of the money would be paid to the Gift Program Defendants and not to charity was not disclosed to the Class. Had the Plaintiffs and the Class Members known that there was no legitimate charitable purpose to the Gift Program, they would not have participated in the Gift Program.

39. The Lawyers ought reasonably to have known, that there was no genuine charitable purpose to the Gift Program, but rather that the primary purpose of the Gift Program was to enrich the Gift Program Defendants to the detriment of the Class. They were negligent in failing to make adequate or any inquiry and investigation into the entire operations of the Gift Program, which would have revealed its true nature to them.

40. The Lawyers failed to make reasonable inquiries and investigations prior to creating the structure for the Gift Program, or delivering the Opinion.

41. The Lawyers knew, or ought reasonably to have known, that the Class Members were relying upon the representations included in the promotional materials and upon the Opinion, and should have exercised diligence in their investigations to ensure that the representations were true and not misleading.

42. The Valuator Defendants knew or ought to have known that the valuation of the software was excessive and exaggerated given the amount paid by Phoenix to acquire the licenses, and that the inflated value they ascribed to the software licenses was only for the purpose of enriching the Gift Program Defendants, to the detriment of the Class.

43. The Valuators Defendants knew or ought reasonably to have known that the Class Members were relying upon their representations in the valuations in deciding to enter into the Gift Program, and to support and justify the tax credits that they claimed in respect of the donations of the software licenses. The Valuator Defendants knew or ought reasonably to have known that if their valuations of the software were not justified and reasonable, then CRA would disallow the Class Members' claimed tax credits and the Class Members would be damaged as a result thereof.

44. GLGI used the valuations and Opinion to help sell the Gift Program to Class members to the knowledge and with the consent of the Valuator Defendants.

45. GLGI prepared promotional materials about the Gift Program, with the assistance of Faskens, ~~and MKW~~ and Kepes, and the Administrator Defendants. The promotional materials contained representations about how the Gift Program worked and the alleged benefits to the participant taxpayers and charities. The promotional materials did not disclose the fact that approximately 90% of the cash donations were ultimately received by the Gift Program Defendants. The promotional materials assured the Plaintiffs and the Class that the Gift Program was a legitimate charitable enterprise, and that GLGI had obtained the opinion and valuations confirming that the participants and the charities would receive the intended benefits of the Gift Program.

46. GLGI engaged financial advisors, accountants, and other sales persons (the "distributors") to help promote the Gift Program to their clients, and paid these distributors a percentage of the cash donations as a commission. This sales force was prescribed from making any representations about the Gift Program that was not in the Gift Program promotional materials or contract documents, and the Plaintiffs and the Class did not rely on any representations about the Gift Program made by the sales force which were not otherwise contained in the promotional materials, the contract documents, the valuations, the Opinion, or other communications directly from GLGI and Robert Lewis when they decided to participate in the Gift Program.

THE GIFT PROGRAM

47. The GLGI Gift Program was a leveraged charitable donation arrangement operated by the Gift Program Defendants. The Gift Program worked as follows.

48. Each participant would complete the following documents on entering the Gift Program:

a. An information sheet setting out their personal information, proof of a prior charitable donation, details of the cash donation and the value of the software licenses they were acquiring, confirmation of a cheque made payable to Escrowagent in a fixed amount, and details of the sales agent;

b. An application to be made a capital beneficiary of the trust for software licenses with a value in the amount requested;

c. A direction to Escrowagent to:

   i. deliver the capital beneficiary application to the trustee;

   ii. deliver to the software charity the software licenses and valuation;

   iii. deliver the charitable receipts to the participant; and

   iv. take any other steps to effect a gift of the software licenses to charity;

d. A second direction to Escrowagent to:

   i. deliver the cash donation to the cash charity;

   ii. pay part of the fee paid to Escrowagent to a legal defence fund established by GLGI;

   iii. deliver the charitable receipts to the participant; and

iv. take any other steps to effect a gift of the software licenses to charity;

e. The Deed of Gift to the designated software charity for the software licenses to be allocated to the participant;

f. The Deed of Gift for the cash donation to the cash charity; and

g. An acknowledgement to GLGI, the charities, the Trust, the Trustee, Escrowagent, legal, accounting and other consultants.

Together, these are the "Contract Documents".

49. The Plaintiffs and the Class executed the Contract Documents as a result of the deceit of the Gift Program Defendants. The Gift Program was a sham and a fraud and therefore no exculpatory language in any part of the Contract Documents is binding on the Plaintiffs or the Class, and the Contracts are void and unenforceable.

50. GLGI obtained valuations for the computer software licenses from the Valuators. The valuations opined that each software license had a value of many multiples of the cost that GLGI paid to acquire the software licenses. The valuations were used for the purposes of determining how many licenses would be donated to the charity receiving the licenses (the "Software Charity") and how much the tax receipt would be issued by the software charity.

51. The Gift Program worked as follows:

a. The Trust was settled by Michael Morris for USD $100.00, and the Trustee was its trustee. Lewis was an officer of the Trustee and was its de facto

directing mind and principal.

b. The Trust received donations of software licenses from Phoenix Learning Corporation ("Phoenix"), a Bahamian company owned by Michael Morris, and purchased some licenses from Phoenix as well.

c. Phoenix acquired the licenses from Infosource, a (legitimate) Florida corporation, at an approximate cost of $0.13 - $0.26 per license. Phoenix was funded by money that came directly or indirectly from GLGI, on seed capital from one or more of the Gift Program Defendants.

d. Each Class Member executed the contract documents.

e. Through the documents, the Class Members undertook the following transactions:

   i. The Class Members applied to be accepted as a capital beneficiary of the Trust (which held the software licenses), and made two cash payments to Escrowagent Inc.;

   ii. The Class Members directed Escrowagent to:

      1. Remit the cash donation to a charity (the "Cash Charity"). Initially, the cash donations were to the Millennium Fund ("Millennium") which was established by the Gift Program Defendants. Later, other charities were enlisted to be the Cash Charity after Millennium lost its charitable status; ~~and~~

2. Pay a fee towards GLGI's legal defence fund; and
3. Once they had been approved as a capital beneficiary of the Trust, donate the software licenses granted to them by the Trust to another charity (the "Software Charity"). The identity of the Software Charity also changed over time as various charities lost their charitable status based upon their involvement in the Gift Program~~.~~;

f. The Trust did not exercise any discretion in determining who would be accepted as capital beneficiaries, or the number of licenses that would be granted to any such capital beneficiary. All applicants were accepted. The Administrator Defendants then used a computer program to allocate to the participant sufficient software licenses to value equal the quantum specified in the Information Form, advised the Software Charity of the allocation and issued tax receipts to the participant for the charities~~.~~;

g. The Cash Charity:

i. issued tax receipts to the Class Members for the full amount of the cash donation; and

ii. paid 20% of the cash donation to GLGI, as Promoter, and 80% of the cash donation to the Software Charity~~.~~; and

h. The Software Charity:

i. received the software licenses and stockpiled them in the

thousands—very few of the licenses were actually used;

ii. issued a tax receipt to the Class Members based on a value ascribed to the licenses by a Valuator—typically, the licenses would be valued at 3 times the amount of the participant's cash donation or greater; and

iii. paid amount to GLGI as Promoter, equal to 20% of the cash it received from the Cash Charity and 20% of the Valuator's assigned value of the software licenses — these payments equaled almost all of the cash received by the Software Charity.

52. Effectively, almost all the cash donations travelled in a giant circle, ending up in the hands of GLGI, who then paid the other Gift Program Defendants.

53. In the result,

(a) the Cash Charity kept virtually nothing;

(b) the Software Charities received hundreds of thousands of licenses—the vast majority of which they did not use for any purpose;

(c) Escrowagent provided no material service but took a fee; and

(d) GLGI received virtually the entirety of the Cash Donation, out of which it paid:

(i) IDI and JDS to process the paper, allocate licenses using a computer program that allocated licenses based on the amount of the cash donation, and attended to the payment of the cash to the Cash

Charity, issue receipts and otherwise effect all the back office operations of the Gift Program;

(ii) The Valuators to value the software licenses and/or conduct the Valuation Review;

(iii) Barrington Associates, who served as management consultants and reported to GLGI regarding the audits of the charities for the purpose of reassuring participant Class Members;

(iv) The distributors; and

(v) employees and shareholders of GLGI, including Robert Lewis.

54. The Plaintiffs and Class Members claimed charitable tax credits for the total amount of the tax receipts issued by the Cash Charity and the Software Charity and thereby reduced their tax obligations. They received refunds or deductions equaling more than the amount of their cash donation.

55. Ultimately (usually after 2-3 years from first filing a tax return with the deductions), the charitable deductions claimed by the Plaintiff Class members were disallowed by CRA.

56. An appeal from the CRA reassessment of several Class Members for tax years 2004 and 2005 was heard by the Tax Court of Canada in *Mariano v The Queen* 2015 TCCA 244. Justice Pizzitelli found as follows:

- The taxpayers lacked the "donative intent" required under income tax law such that the cash and software licenses would be considered a gift, since

they had an expectation of receiving inflated tax receipts from which they would profit, which was a benefit, and not an impoverishment;

- Each part of the Gift Program was interconnected and part of the same transaction or series of transactions, despite the structure that tried to make the cash donation and the in-kind software license donation look like two separate transactions;

- The way the Gift Program was set up meant that the taxpayers didn't own the software licenses at the time that they were signing the direction to deliver them to the designated charity. How many and what licenses would be allocated to any particular participant was determined by a computer algorithm at the time of each closing;

- The Gift Program Defendants received approximately 90% or more of the cash donations;

- The valuations of the software licenses by the Valuators were unsupportable. The fair market value of the licenses was no more than the price paid by Phoenix when it acquired them from the software developer (Infosource), i.e. between 13¢ - 26¢;

- The Trustee did not fulfill its role, but improperly delegated its discretion to the Administrator Defendants, thereby rendering all the decisions to gift licenses to beneficiaries of the Trust ineffective. Therefore none of the Class

Members were capital beneficiaries, and none of the distributions of software licenses were valid;.

- The Trust, itself, failed for lack of certainty of objects because it was impossible to define the class or administer the Trust.; and

- The transaction documents were a sham, as was the entire Gift Program.

57. The Gift Program Defendants acted in concert in all dealings in relation to the Gift Program, and at all times they knew that it was a sham, created for the sole purpose of their own enrichment.

BREACH OF CONTRACT

The Contract

58. The promotional materials set out the terms of the contract entered into by the Class with GLGI and Escrowagent. The contract documents are set out above at paragraph 48.

59. The Class Members, as participants in the Gift Program, had a direct and specific understanding that they would receive valid charitable donation receipts that would be recognized by CRA for tax credit purposes.

60. It was an express, or in the alternative, an implied term of the contract with GLGI that all Gift Program participants would receive a valid and legitimate charitable donation receipt, and would receive the tax savings as stated in the promotional materials.

61. It was an express, or in the alternative, an implied term of the contract with

Escrowagent that it would fulfill the functions of the escrow agent as set out in the directions for the purpose of fulfilling the terms of the Gift Program.

62. GLGI and Escrowagent fundamentally and materially breached the terms of their contracts with the Class Members. The Gift Program was a sham, and virtually none of the Class Members' cash donations were kept by the charitable donees, the value of the software licenses was de minimus, and the charities did not use the vast majority of the software licenses. The Class Members did not receive valid and legitimate charitable donation receipts recognized by CRA, and their charitable tax credits were disallowed. Escrowagent did not perform any of the functions that it was directed to perform, except to forward a set amount of the fee it was paid by the Plaintiffs and the Class members to GLGI for the legal defence fund.

63. The Plaintiffs and the Class Members have therefore been damaged in the amount of their cash donations, the fee paid to Escrowagent, and the interest and other penalties assessed by CRA in respect of the disallowed charitable donation tax credits, and any special damages they have incurred as a result thereof, all of which are a direct result of GLGI's breach of contract.

CONSPIRACY

64. All the Defendants, except the Lawyers and Valuator Defendants, engaged in a conspiracy to cause harm to the Class and the Plaintiffs, and for their own financial benefit.

65. The Gift Program Defendants agreed to act unlawfully, the predominant purpose of which was to cause injury to the Plaintiffs and the Class Members and which ultimately did

cause injury to the Plaintiffs and the Class Members. The Defendants (other than the Lawyers and Valuator Defendants) together agreed to make the fraudulent or negligent misrepresentations about the sham Gift Program and participated in a fraud to dupe the Class Members of their cash contributions to the Gift Program.

66. Further, or in the alternative, the agreement between the Gift Program Defendants was an agreement to engage in unlawful conduct directed towards the Class and the Plaintiffs, which caused injury to the Class and the Plaintiffs, and the likelihood of the Plaintiffs and the Class suffering such injury was known to these Defendants, or should have been known to them in the circumstances.

67. The Gift Program Defendants agreed to create a scheme which deceived the Class Members into believing they would receive tax savings for participating in the Gift Program and that they were making legitimate donations to benefit genuine charities. As a result of their participation in the Gift Program, the Class suffered the loss of their donations, and the loss of their intended gifts to a charity and have been assessed interest and/or penalties by CRA. The purpose of the agreement between these Defendants was to cause the Class Members to suffer economic loss and injury while some or all of these Defendants received a corresponding financial gain. The creation of the Gift Program was a sham and fraudulent and therefore unlawful.

68. The Gift Program Defendants in creating, controlling, promoting, marketing, administering, operating, participating, and selling the Gift Program to the Class, by agreement, participated in a scheme designed to create the illusion of property being donated to charities, and caused the charitable donees to issue charitable receipts for

donations which were not, in fact, beneficially transferred to the charitable donees or which were of only nominal value.

69. The object of the conspiracy was the financial benefit of the Gift Program Defendants who participated in the conspiracy. The Plaintiffs and the proposed Class Members rely on the following facts:

(i) The facts set forth in paragraphs above;

(ii) The allegations of fraud set forth in paragraphs below; and

(iii) The establishment of the Gift Program was designed to deceive the Class Members and CRA into believing that there was a charitable purpose for the Gift Program when in fact no such purpose existed. The Gift Program Defendants knew or ought to have known that CRA would conclude that the donations of the Class Members were not gifts (as defined in the *Income Tax Act*) and that the Gift Program was a sham.

70. The Gift Program Defendants knew or were wilfully blind to the fact that CRA would never allow the tax benefits of the Gift Program to be realized by the Plaintiffs and the Class Members, given the fraudulent nature of the Gift Program, and the fact that the donations under the Gift Program would not qualify as a "gift" under the *Income Tax Act*.

71. The Gift Program Defendants conspired to commit a fraud. These Defendants knew or were wilfully blind to the fact that the Class would lose their entire investment in a scheme that they knew would not deliver the promised tax savings, while allowing these Defendants (other than the Lawyers and Valuator Defendants) to receive hundreds of millions of dollars from the fraudulent scheme.

72. As a result of the conspiracy to perpetrate the Gift Program, and promote, market, administer, and operate the tax savings plan, the Plaintiffs and proposed Class Members have suffered damages for which they seek compensation.

73. The losses suffered by the Plaintiffs and the Class are the loss of the sums they donated to the Gift Program, and the interest and penalties that have been assessed against them by CRA as a result of disallowing their claims for charitable donation tax credits, and any special damages, being out-of-pocket expenses, including professional accounting and legal fees and consulting fees, incurred as a result of CRA's reassessments.

74. The Gift Program Defendants received, directly or indirectly virtually all of the cash donations paid into the Gift Program by the Plaintiffs and the Class, and were thereby enriched, and the Plaintiffs and the Class were damaged by the loss of their cash donations, as well as CRA interest and penalties exacted on reassessment.

FRAUD AND DECEIT

Fraud

75. The Gift Program Defendants fraudulently planned, created, operated, administered, controlled, promoted, marketed and sold the Gift Program for the purpose of their own profit and defrauding the Class. The facts setting forth how the Class was defrauded of approximately $500 million dollars are set forth above.

76. The Gift Program was a sham and a fraud and the Gift Program Defendants knew that they were perpetrating the fraud against the Plaintiffs and the Class, or they were

reckless with respect thereto.

77. The Gift Program Defendants knew that the Gift Program violated the *Income Tax Act* and the *CPA*, as they knew that the real purpose and intent of the Gift Program was not to benefit any charities, but to defraud the Class and the Plaintiffs of their cash donations which the Class and the Plaintiffs intended to be charitable donations.

78. The Plaintiffs and the Class Members donated money to the Gift Program, and received charitable receipts four times (or more) larger than their donation. The Gift Program Defendants knew or ought to have known, or were wilfully blind to the fact that the charitable donation receipt would not be or was not recognized by the CRA and that the Plaintiffs and the Class would be disentitled to the tax donation credit. These Defendants knew or ought to have known, or were wilfully blind to the fact that CRA would conclude that the donations made by Class Members were not gifts, for income tax purposes.

Fraudulent Misrepresentation/Deceit

79. It was a fundamental express or an implied term going to the root of the contract that the cash donations would be paid to charity as required by the direction to Escrowagent. The Gift Program Defendants purposefully omitted from the contract documents and the promotional materials the fundamental and material fact that 90% or more of the cash donation would not remain with the cash charity, but instead would be paid to them. The Gift Program Defendants intentionally withheld from the Plaintiffs and the Class the material fact that the structure of the Gift Program and the obligations imposed upon the cash charities by these Defendants would result in the cash charities retaining virtually none of the cash donations, which would, instead end up in the hands of the Gift

Program Defendants. These material omissions were intentional and excluded from the contract documents and the promotional materials solely for the purpose of deceiving the Plaintiffs and the Class members.

80. Had these material omissions been disclosed to the Plaintiffs and the Class, they would never have entered into the Gift Program.

81. The Gift Program Defendants had all been participants in the creation, marketing and administration of earlier leveraged charitable programs all of which had been disapproved by CRA and the tax courts and had failed. The Gift Program Defendants intentionally omitted from the promotional materials and the contract documents any disclosure of the fact that they knew that CRA was actively rejecting leveraged charitable donations, including those similar in nature to the Gift Program in which these Defendants had previously been involved. Rather than identifying the real risks, the Gift Program Defendants actively and with deceit created promotional materials and contract documents that assured the Plaintiffs and the Class that CRA's opposition to the Gift Program was wrong, contrary to esteemed professional opinions, and that GLGI would prevail in establishing that the charitable tax credits were permissible, when at all times the Gift Program Defendants knew that the Gift Program was destined to fail because it was a fraud and a sham transaction.

82. The Gift Program Defendants committed the tort of deceit by fraudulently misrepresenting to the Plaintiffs and the Class that they would receive from the Gift Program valid charitable tax credits for their legitimate charitable donations of cash and software licenses with the stated value, when the Gift Program Defendants knew or ought

to have known that the Class Members would not receive the tax benefits, and the charities would not receive the value of the intended donations.

NEGLIGENCE

Negligence of the Defendants

83. All of the Defendants were negligent in the performance of their functions under the Gift Program as particularized above and below.

84. The Defendants owed the Class a duty of care to create, structure, design and implement a valid and legitimate tax shelter for charitable giving that would be approved for valid charitable tax credits, which they breached.

85. Each of the Defendants was in a proximate position 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 the Gift Program could cause injury or damage to the Plaintiffs and the Class if they failed to take reasonable care.

86. The Defendants owed the Class Members a duty of care based, *inter alia*, on the special relationship between them and the members of the Class. The special relationship between the Defendants and the Class Members arose from the Defendants' knowledge that the Class Members were participating in the Gift Program on the assumption that it was properly structured and was not a sham. The Defendants had a duty to ensure that the Opinion and the valuations (including any assumptions stated therein) and the promotional materials were accurate, the Gift Program was legitimate, and none of the Gift Program documents were deceptive or misleading, and to ensure that these documents contained

all material facts relevant to the Class Members' decision to invest in the Gift Program.

87. The Gift Program Defendants negligently provided to Cassels and the Valuator Defendants factual information and assumptions about the Gift Program which they knew or ought to have known were untrue, and asked Cassels and the Valuators to base their opinions on false factual premises and assumptions.

88. All of the Defendants negligently created, reviewed, drafted, supervised, approved, and authorized the preparation and distribution of the promotional materials, the Opinion or the valuations for use in the Gift Program. They knew, or ought to have known that the Class Members would be receiving these documents, and relying upon the accuracy and completeness of the information in the documents in making the decision to invest in the Gift Program.

89. The Gift Program Defendants, Turner, Kepes and Morris & Morris, and MKW knew or ought to have known that the information contained in the promotional materials and the Opinion or valuations (including the assumptions stated therein) was inaccurate, false, deceptive, misleading, and omitted material information about the Gift Program, and yet these Defendants negligently distributed or permitted the distribution of the promotional materials, the Opinion and the valuations to the Class, or negligently authorized the distribution of these materials, and did not take steps to halt the distribution of these materials or correct the information they contained when they had the authority, capacity and means to do so.

90. Turner, Beach and Faskens ought to have known that the information contained in the promotional materials and the Opinion or valuations (including the assumptions stated

therein) was inaccurate, false, deceptive, misleading, and omitted material information about the Gift Program, and yet they negligently distributed or permitted the distribution of the promotional materials, the Opinion and the valuations to the Class, or negligently authorized the distribution of these materials, and did not take steps to halt the distribution of these materials or correct the information they contained when they had the authority, capacity and means to do so.

91. The Gift Program Defendants created, authorized, approved, promoted, marketed, administered, operated, participated in and sold the Gift Program to the Class when they knew or ought to have known that the investment in the Gift Program would likely result in Class Members not receiving the tax savings promised in the promotional materials and the Opinion, and that the trust structure of the Gift Program was ineffective and would not be followed in any event, thereby vitiating all in-kind donations;

92. Once the Defendants became aware of CRA's position on this Gift Program and other similar programs, that the tax credits would be disallowed, and became aware that the information in the promotional materials was inaccurate, false, deceptive, or misleading, they negligently failed to take any steps to contact the Class Members to advise them that these documents were inaccurate, false, deceptive, and misleading or to correct the information in the promotional materials, Opinion and the valuations.

93. The Gift Program Defendants negligently failed to deliver revised promotional materials, and Cassels negligently failed to insist that its Opinion be removed from the GLGI website, and all the Defendants negligently continued to allow the Gift Program to be sold to Class Members without adequate warnings even after becoming aware of CRA's

position.

94. These Defendants had an obligation to ensure that the distributors selling the Gift Program to the Class Members understood the risk to the Class participating in the Gift Program and had a duty to ensure that the distributors were properly trained, and a duty to take steps to ensure the distributors explained the risks of investing in the program to the Class, and explained to the Class that the primary purpose of the Gift Program was the financial benefit of the Gift Program Defendants.

95. The particulars of the Defendants' negligence is:

(A) as against all Defendants:

i. they failed to ensure or make reasonable inquires or investigations to ascertain if CRA would in fact recognize the charitable donation receipts issued to and tax credits claimed by the Class Members;

ii. they created and disseminated the promotional materials including the Opinion and the valuations which were inaccurate, false, deceptive, misleading, and failed to contain material information, and which were designed to convince the Class Members of tax benefits of the Gift Program, which the Defendants knew or ought to have known would not be ultimately realized;

iii. they failed to provide to the Class Members amended and accurate documents or updated disclosure to fairly warn them of the truth of the Gift Program when those facts became known to them;

iv. they knew, or ought to have known, that the cash and in kind donations would not qualify as charitable gifts under the *Income Tax Act,* and that the promotional materials were misleading in stating that the Gift Program had a charitable purpose when no such intent or purpose existed. The Defendants knew or ought to have known that CRA would conclude that the donations of the Class Members were not gifts as defined in the *Income Tax Act*;

v. they knew, or ought to have known, that CRA would reassess the tax returns of the Class Members, and the reassessments would be upheld on appeal rendering the Class Members liable to repay tax and interest and penalties to CRA; but failed to disclose these facts to the Class;

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

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

viii. they negligently failed to ensure the fulfilment of duties owed to the Class Members pursuant to the provisions of the *CPA*.;

(B) as against Cassels:

(i) But for the Opinion, the Gift Program would not have been launched and the Class would not have participated in the Gift Program. The Opinion was designed to induce the Class to invest in the Gift Program without disclosing to the Class all of the material risks of investing in the Gift Program, or the true facts relating to the actual operation of the Gift Program;

(ii) Cassels knew, or ought to have known, that the Class Members receiving the Opinion would rely upon the Opinion regardless of any exculpatory language, because its primary purpose was to induce the Class Members to enter into the Gift Program without obtaining independent legal advice;

(iii) Cassels knew or ought to have known that the income tax savings represented in the promotional materials for the Gift Program not be forthcoming based upon the terms of the *Income Tax Act* and relevant case law;

(iv) Cassels prepared the Opinion on the instructions of the Gift Program Defendants knowing and intending that the only reasonable inference to be drawn from its Opinion was that the Gift Program was a legitimate charitable giving program and that the tax receipts generated by donations under the Gift Program would be accepted as charitable tax credits by CRA;

(v) Cassels and the Valuator Defendants failed to make adequate, reasonable or any inquiries or investigations into the veracity of the facts they were provided to ensure their truthfulness in light of the intended purpose of the Opinion and the valuations;

(vi) Cassels issued its Opinion without due care and consideration, knowing that the Opinion would be relied upon by the Class Members, when they knew or ought to have known that the content of the opinion was inaccurate, incomplete, untrue, and deceptive;

(vii) Cassels failed to properly investigate and consider the income tax consequences of participation in the Gift Program and were negligent in reaching the opinion that the Gift Program would result in valid tax credits for the participants in the Gift Program;

(viii) Cassels were negligent in the preparation of the Opinion, failing to have due regard to the Gift Program as a whole, and the fact that its true purpose was to enrich the Gift Program Defendants, and not the participating charities;

(ix) Cassels knew, or ought to have known, that the Opinion would serve as an inducement for the promotion and sale of the Gift Program, and that but for the Opinion, the Gift Program could not be undertaken, and yet they still failed to fully and properly investigate and accurately opine about the likely tax consequences of the Gift Program;

(x) Cassels knew, or ought to have known, that the Opinion was not accurate or reliable following:

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

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

(c) the CRA issuance of Taxpayer Alerts in November 2005 and October 2006 and other CRA alerts and press releases between 2003 and 2009 and other CRA press releases and took no steps to withdraw the opinion letters or remove them from the GLGI website,

but it failed to withdraw the Opinion or correct it, and allowed GLGI to continue to post it on its website as representing a current opinion regarding the merits of the Gift Program;

(xi) Cassels failed to disclose in the Opinion all the material risks associated with the Gift Program;

(xii) Cassels prepared the Opinion based upon untested and unauthenticated assumptions and factual information about the Gift Program provided by the Gift Program Defendants which factual information and assumptions Cassels knew or ought to have known were untrue, incomplete or misleading;

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

(xiv) they issued the Opinion with the intention that it be relied upon by the Class Members in deciding whether to participate in the Gift Program and without regard to its accuracy and the reliability of the Opinion; and

(xv) they knew or ought to have known that the other Defendants continued to rely upon and publish the existence and content of the Opinion for the promotion and sale of the Gift Program to prospective donors and when they knew the Opinion was no longer accurate or reliable, and took no steps to withdraw the Opinion.

(C) As against Faskens, Turner, Kepes, Morris & Morris and MKW

(i) ~~MKW~~ Kepes, Morris & Morris and Faskens structured the Gift Program based upon the premise that the Cassels Opinion and the valuations would be provided to, and relied upon by the Class;

(ii) ~~MKW~~ Kepes, Morris & Morris and Faskens structured the Gift Program, including the creation and use of the Trust and the ~~creation~~ incorporation and ~~use~~ operation of Escrowagent until September 2010, Turner operated

Escrowagent from then, onwards, knowing that the Trust had no certainty of objects, the Trustee would not fulfill its duties and that Escrowagent would serve no function except as the recipient of fees;~~.~~

(iii) MKW, Kepes and Morris & Morris, and Turner ~~and Faskens~~ knew or ought to have known the trust structure would fail, the Gift Program operations were not in accordance with the purported structure, and that Kepes was therefore negligent in the design and structure of the Gift Program, and ~~both~~ ~~MKW~~ Kepes, Morris & Morris and Turner were negligent in failing to identify the structural flaw and to correct it;

(iv) Faskens ought to have known the trust structure would fail, the Gift Program operations were not in accordance with the purported structure, and it was therefore negligent in the design and structure of the Gift Program;

(v) ~~they~~ Kepes, Morris & Morris and Faskens created a trust structure for the Gift Program that was bound to fail for uncertainty of object;

(vi) ~~they~~ Kepes, Morris & Morris, and Faskens failed to ensure that the Gift Program was not a sham before establishing its form, documentation and function;

(vii.1) Turner failed to ensure that the Gift Program was not a sham before assuming control of Escrowagent and providing ongoing advice and legal services to GLGI;

(vii) Kepes, Morris & Morris, and Faskens created a structure for the Gift Program that was bound to result in CRA denying the Class' claimed tax credits;

(viii) Turner, Kepes, Morris & Morris, and Faskens prepared and approved the promotional materials ~~knowing~~ but ought to have known that they were false and misleading and that the Class would be relying on the contents of the promotional materials in deciding whether to participate in the Gift Program; and

(ix) Turner, Kepes, Morris & Morris, and Faskens knew the primary purpose of the Gift Program was to enrich the Gift Program Defendants, ~~including Escrowagent and Beach,~~ and it was not for charitable purposes, but prepared the contract documents and promotional materials to give the outward appearance of being for a legitimate charitable purpose when they ~~knew or~~ ought to have known there was none.

(D) As against the Valuator Defendants

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

(ii) they failed to properly investigate and consider the true value of the software licenses in the context of the nature of the licenses and in light of the price

which Phoenix paid to the arm's length third party vendor to acquire the licenses in the Gift Program;

(iii) they were negligent in the preparation of the valuations and/or the Valuation Review;

(iv) they knew, or ought to have known, that the valuations were an inducement for the promotion and sale of the Gift Program, and that but for these valuations and the Valuation Review, the Gift Program could not be undertaken, and yet they still failed to fully and properly investigate and accurately opine about the valuation of the software;

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

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

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

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

yet they did not withdraw or amend their opinions or warn the Class Members that their opinions on value and/or the reasonableness of the values were wrong and could not be relied upon;

(vi) they prepared the valuations and/or the Valuation Review based upon false assumptions and factual information about the Gift Program provided by the Gift Program Defendants which factual information and assumptions they knew or ought to have known were untrue and they failed to undertake reasonable investigations to confirm the validity and truthfulness of the factual assumptions and information;

(vii) they failed to withdraw their valuations and/or the Valuation Review when by December 6, 2007 they knew or ought to have known the contents of the valuations were inaccurate, incomplete, untrue and deceptive;

(viii) they issued the valuations and/or the Valuation Review with the express intention that these valuations would be relied upon by all or some of the Gift Program Defendants when they knew or ought to have known that these Defendants would rely upon and publish the existence of the valuations in promoting the Gift Program, and in turn the Class Members would rely upon the valuations;

(ix) they issued the valuations and/or Valuation Review with the intention that these valuations be relied upon by the other Defendants, without due care and consideration, when they knew or ought to have known that the other Defendants would rely upon the accuracy and reliability of these ~~letters~~ opinions in promoting the Gift Program, and in turn the Class Members would rely upon the valuations;

(x) they issued the valuations with the intention that these valuations be relied upon by the Class Members, without due care and consideration, when they knew or ought to have known that the Class Members would rely upon the accuracy and reliability of these letters in deciding whether to participate in the Gift Program, and claim the charitable tax credits for the donations of the software licenses;

(xi) they failed to notify the Gift Program Defendants, prospective donors to the Gift Program and Class Members that their valuations and the Valuation Review were no longer accurate or reliable when they knew or ought reasonably to have known they were wrong; and

(xii) they knew or ought to have known that the other Defendants continued to publish the existence and content of the valuations for the promotion and sale of the Gift Program to prospective donors and despite their knowledge that the valuations were no longer accurate or reliable.

96. The Defendants were aware or ought to have been aware that the promotional materials, the valuations and the Opinion provided to the Class Members were inaccurate, false, deceptive, misleading, and failed to contain material statements or information.

97. Cassels and the Valuator Defendants were negligent in the issuance of the Opinion ~~and~~, the valuations, and the Valuation Review, the issuance of which was a necessary prerequisite for the existence of the Gift Program by the Gift Program Defendants. Accordingly, Cassels' and Valuator Defendants' issuance of the Opinion, ~~and~~ the valuations, and the Valuation Review was the proximate cause of damages to all Class

Members.

98. Cassels and the Valuator Defendants owed a duty of care to those whom they intended to, or knew or ought to have known would, rely upon the existence and/or the accuracy and reliability of the content of the Opinion and the valuations they issued, i.e. the Class.

99. The Lawyers had a duty to warn the Gift Program Defendants and the Class Members, and to make full disclosure to them as to the facts and circumstances set out above and failed to do so. Particularly, the Lawyers failed to notify the other Defendants and the Class Members that the Cassels Opinion was no longer accurate or reliable, and they knew that CRA was denying the claimed tax credits, and the courts were upholding CRA's position on reassessment.

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

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

Negligent Misrepresentations

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

103. At all times GLGI and Lewis were in a relationship of proximity with the Plaintiffs and the Class such that they owed them a duty of care. The proximate relationship arose from GLGI and Lewis either communicating directly with the Plaintiffs and the Class about the Gift Program, or through their designated agents, with the intent that the Plaintiffs and the Class would rely upon their representations.

104. At all times GLGI and Lewis owed a duty of care to the Plaintiffs and the Class members. In particular, they owed the Plaintiffs and the Class members the duty to be truthful about the true nature of the Gift Program, not to withhold material information about how the Gift Program operated, and not to provide the Plaintiffs and the Class with false information about the validity of the Gift Program and the value of the software licenses. GLGI and Lewis breached that duty of care.

105. The promotional materials created and disseminated by GLGI and signed by Lewis contained false representations about the nature of the Gift Program, and the likelihood that GLGI and the taxpayers would prevail in any reassessments by CRA. Particularly, the promotional materials omitted material facts regarding the true nature of the Gift Program in that virtually all of the cash paid into the Gift Program was paid out to the Gift Program

Defendants and not to a charity, and that the true value of the software licenses was *de minimus*.

106. GLGI and Lewis failed to disclose to the Class that the primary purpose of the Gift Program was the financial benefit of the Gift Program Defendants, and that most of the money paid by Class Members under the Gift Program was to be received by these Defendants and not the charities.

107. GLGI and Lewis knew or ought reasonably to have known that the promotional materials contained false information and omitted material facts about the true nature of the Gift Program, and were negligent in disseminating the promotional materials to the Plaintiffs and the Class. The intended purpose of the promotional materials was to induce the Plaintiffs and the Class members to participate in the Gift Program, based upon their reliance on the facts contained therein.

108. The Plaintiffs and the Class members did rely upon the promotional materials in entering into the Gift Program, to their detriment. They were damaged as a result thereof, losing their cash donation and being reassessed by CRA including interest and penalty charges.

109. But for the negligent misrepresentations of GLGI and Lewis in the promotional materials, the Plaintiffs and the Class would not have participated in the Gift Program, and they would not have suffered the corresponding losses.

110. In 2014, CRA began extending offers to settle notices of objection filed by Class Members. GLGI and Lewis actively discouraged the Plaintiffs and the Class Members from

accepting the CRA offers, assuring them that it was actively pursuing a more favourable outcome than the CRA offer through test case tax appeals of certain Class Members' reassessments, and that it was confident that GLGI and the test case Class members would prevail.

111. These assurances were false, to the knowledge of GLGI and Lewis, and they were negligent in making the assurances to the Plaintiffs and the Class, and in encouraging them to reject the CRA offers. GLGI and Lewis knew that the test cases were bound to fail based upon prior court decisions rendered in respect of similar leveraged charitable giving programs, and based upon their knowledge that the Gift Program was a sham created to enrich Lewis and the other Gift Program Defendants. GLGI and Lewis made the negligent representations about the likelihood of the success of the test case tax appeals with the intent that the Plaintiffs and the Class members would rely upon those representations, and decline the CRA offers, and knowing that the Plaintiffs and the Class members would be damaged thereby.

112. The Plaintiffs and Class members did rely upon the misrepresentations of GLGI and Lewis to their detriment, and were damaged as a result thereof to the extent that they would have substantially reduced their tax debts had they accepted the CRA offers.

RETURN OF THE CASH DONATIONS AND RESCISSION

113. The Gift Program is a consumer transaction, governed and regulated by the provisions of the *CPA*. The Plaintiffs and the Class members are therefore entitled to the protections and relief accorded to consumers who have been the victim of unfair or unconscionable practices.

114. The Gift Program Defendants owed duties to the Class to comply with the *CPA* and are liable to the Class for false, misleading, deceptive representations, and unfair practices, and their unconscionable conduct. The Class claims damages in lieu of rescission for the breaches of these Defendants' statutory duties.

115. The promotional materials, the contract documents and the marketing and sale of the Gift Program were unconscionable and unfair trade practices in breach of the *CPA*.

116. The Plaintiffs and the Class seek rescission of the contract in respect of the Gift Program on the ground that the Gift Program Defendants have engaged in unfair and unconscionable practices in breach of the provisions of ss. 17 and 18 of the Ontario *CPA* (for Ontario residents) and breaches of the similar legislation in the provinces and territories for Class members who at the time of the advance of monies resided in other provinces and territories of Canada.

117. The Plaintiffs and the Class also seek rescission of their contracts and the return of the cash donations, and escrow fees paid on the basis that there has been a fraud, a mistake, or that there were material misrepresentations by the other parties to the contracts with the Class.

118. In view of the fraud that has been perpetrated upon the Class, the deceit of the Gift Program Defendants, the sham transaction, and the unfair, unconscionable and misleading practices of the Gift Program Defendants, it is in the interests of justice to waive the notice provisions under s. 18 of the Ontario *CPA*, and any similar notice provisions established under similar legislation in the other provinces and territories.

119. In view of the fraud that has been perpetrated upon the Class, the deceit of the Gift Program Defendants, the sham transaction, and the unfair, unconscionable and misleading practices of the Gift Program Defendants, it is in the interests of justice that the Class be awarded exemplary and punitive damages pursuant to s. 18 of the Ontario *CPA* and similar legislation in other provinces and territories, and at common law.

RESTITUTION, UNJUST ENRICHMENT, CONSTRUCTIVE TRUST

Unjust Enrichment

120. The acts, omissions, and misconduct of the Gift Program Defendants as set out herein were designed to induce the Plaintiffs and the Class Members to invest in the Gift Program. Directly or indirectly, the Gift Program Defendants have received some or all of the cash donations.

121. The Gift Program was a sham and a fraud, and the Plaintiffs and Class Members' donations were not received by legitimate charities, and the Plaintiffs and the Class Members will not receive the tax benefits promised. Consequently, the following has occurred:

i. ~~these~~ the Gift Program Defendants and Turner have been unjustly enriched;

ii. the Plaintiffs and Class Members have suffered a corresponding deprivation; and

iii. there is no juristic reason for this enrichment.

122. Even if the Class did not rely upon the promotional materials, Opinion and valuations, the Gift Program Defendants and Turner have obtained the cash donations and escrow fees directly or indirectly from the Class as the entire Gift Program was a sham. The Class received no benefit from the Gift Program. There is no juristic reason for the Gift Program Defendants' and Turner's betterment. Accordingly, the Class claims damages on the basis of unjust enrichment from the Gift Program Defendants and Turner.

Knowing Receipt

123. The cash donations are held by the Gift Program Defendants pursuant to a constructive trust, as they are the proceeds of their deceit and fraud.

124. The Gift Program Defendants created, designed, administered, supervised, operated and approved the Gift Program, and authorized the preparation and distribution of promotional materials, and the Opinions and valuations which they knew, or ought to have known, were inaccurate, false, and misleading, and for the sole purpose of enriching themselves.

125. In these circumstances, the Gift Program Defendants should be compelled to disgorge all the funds which they received, directly or indirectly, from the Gift Program.

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

127. The Class is entitled to a tracing order to determine the present location of cash

donations, and they are entitled to an order for restitution of those funds to them.

128. The Plaintiffs plead and rely on the legal doctrine of knowing receipt as against the Gift Program Defendants and Turner. These Defendants participated in the creation, administration, marketing, sale, operation and supervision of the Gift Program. They each had actual or constructive knowledge of, or were willfully blind to the fact that the Gift Program was a fraud and a sham created for the single purpose of enriching these Defendants. All the fees, payments, distributions or other sums received by the Gift Program Defendants and Turner were received by them with the knowledge that the Gift Program was a fraud and a sham and that all the cash donations were wrongfully taken from the Plaintiffs and the Class and therefore are impressed with a trust in favour of the Plaintiffs and the Class, and accordingly all such funds should be repaid to the Class by the Gift Program Defendants.

DAMAGES

129. As a result of the conspiracy, breach of contract, negligence, fraud, fraudulent misrepresentations, breaches of the *CPA*, and knowing receipt, the Plaintiffs and the Class Members have suffered the following damages and losses:

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

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

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

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

PUNITIVE AND EXEMPLARY DAMAGES

130. The conduct of all of the Defendants is such as to justify an award of punitive and exemplary damages. The Defendants' conduct has been a breach of the duty of good faith and separate actionable wrongs, including separate breaches of the provisions of the *CPA* (for Ontario residents) and other similar legislation in the provinces and territories for Class Members who at the time of the investment resided in other provinces and territories of Canada. The Defendants breached their obligations to the Plaintiffs and Class Members because of their desire to maximize their own profits and financial gain, causing them to suppress accurate and truthful information to the Plaintiffs and Class Members, with that regard to the damages and injuries they would cause the Class to suffer if they participated in the Gift Program. The Defendants have behaved with arrogance and high-handedness, have shown a callous disregard and complete lack of care for the Plaintiffs and Class Members and the rights of the Plaintiffs and Class Members, as well as abusing the Canadian charitable giving community, and ought to be punished and deterred from future misconduct. The Defendants conduct was sufficiently harsh, vindictive, reprehensible, and malicious, so as to justify an award of punitive, exemplary, and aggravated damages. The Defendants were, or ought to have been, aware of the probable consequences of their conduct and the damage such conduct would cause to the Plaintiffs and Class Members.

131. The Defendants continue to be major participants in Canadian businesses. These Defendants have considerable assets. An award of $50 million for punitive and exemplary damages is justified and required to punish the Defendants and deter their inappropriate conduct in the future.

ONTARIO IS THE PROPER FORUM

132. The Plaintiffs are all residents of Ontario, and the Class Members are residents of Ontario and other parts of Canada, or were residents of Canada when investing in the Gift Program.

133. The Plaintiffs and Class Members were provided with the promotional materials and Opinion and valuations which were authored in Ontario. The transactions were negotiated and documents were signed in Canada, and relate to a Canadian tax shelter, and involve claims made in respect of Canadian charitable tax credits.

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

135. The Defendants promoted the Gift Program throughout Canada, including Ontario, and accepted funds that were collected from the Plaintiffs and the Class members in Canada by Canadian entities which held themselves out as offering a tax shelter that was in compliance with the Canadian tax regime. All of the Defendants carried on business in Ontario at all relevant times.

136. GLGI and the other defendants including the Lawyers and Valuators are residents of and/or carry on business in Ontario.

137. In these circumstances, there is a real and substantial connection between this claim and the Province of Ontario, entitling the Plaintiffs and Class Members to bring this action in Ontario. Ontario is the most convenient forum for the trial of the action and any foreign defendants are necessary and proper parties to this action.

~~**RECEIVERSHIP**~~

~~137. GLGI is no longer carrying on business. Its business registration has been cancelled for failure to pay taxes. There is a cost award made against it by the Tax Court which remains unpaid, as well as other outstanding debts owed by GLGI to other creditors, including a judgment in favour of the Ministry of Finance in excess of $3.5 million.~~

138. ~~It is in the interests of justice, and just and convenient that the court appoint a receiver over the business and affairs of GLGI so that the receiver can collect the debts and obligations owing to GLGI, pursue the causes of action accruing to its benefit, and respond to these proceedings, including making documentary production in this action, for the ultimate benefit of the Plaintiffs, the Class and GLGI's other creditors~~.

SERVICE OUTSIDE ONTARIO

139. With respect to service of this claim outside of Ontario, the

140. Plaintiffs plead and rely upon the following Rules:

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

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

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

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

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

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

141. The Plaintiffs propose that this action be tried at Toronto.

Date of issue: September 28, 2017

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Schedule A

Consumer Protection Statutes

	Jurisdiction	Legislation	Provisions
1	Alberta	*Fair Trading Act* R.S.A. 2000 C. F-2	s.6, 7
2	British Columbia	*Business Practices and Consumer Protection Act* S.B.C. 2004 c.2	s. 4, 5, 8, 10, 171, 172
3	Manitoba	*Business Practices Act* C.C.S.M. c. B120	s. 2, 5, 23
4	Newfoundland and Labrador	*Consumer Protection and Business Practices Act* S.N.L. 2009, c. C-31.1	s. 7, 8, 9, 10
5	Ontario	*Consumer Protection Act, 2002* S.O. 2002, c.30	s.14, 15, 17, 18
6	P.E.I.	*Business Practices Act* R.S.P.E.I. 2007 c.17	s. 2, 3, 4
7	Quebec	*Consumer Protection Act* R.S.Q., c. P-40.1	Articles 219, 228, 229, 239, 272
8	Saskatchewan	*Consumer Protection Act* R.S.S. 1996, c. C-30.1	s.5, 6, 7, 14, 16

LYNN WINTERCORN, et al.
Plaintiffs

-and-

GLOBAL LEARNING GROUP INC., et al.
Defendants

Court File No. CV-17-584138-00CL
Commercial List Court File No.: CV-17-584138-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

FOURTH ~~THIRD~~ AMENDED STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

Amend Claim,
Certification, and Settlement Approval Order
Schedule B

Order – Schedule B

Court File No.: CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

GLOBAL LEARNING GROUP INC.,
GLOBAL LEARNING TRUST SERVICES INC. as TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION., ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH, MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP, CASSELS BROCK & BLACKWELL LLP, WISE, BLACKMAN LLP, EVANS & EVANS INC. and GRAHAM TURNER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

PLAINTIFFS' CERTIFICATION and SETTLEMENT APPROVAL NOTICE PLAN (MORRIS KEPES WINTERS LLP, ROBERT KEPES, and MORRIS, MORRIS LLP)

The plaintiffs' certification and settlement approval notice plan pursuant to ss. 17 and 19 of the *Class Proceedings Act, 1992* is set out below.

1. There are approximately 40,000 individuals who participated in the Gift Program a total of 68,846 times. Of the participants, approximately 200 are excluded from the Class Definition because they were sales agents or "fundraisers" for the Gift Program, or are otherwise excluded from the Class definition.

2. The opt out period has expired. The individuals who have opted out of the Class Action have been removed from the master class member list maintained by CA2, the notice administrator.

3. As part of their settlement with the Class, Denis Jobin and JDS Corporation have produced databases containing the names and last known contact information, including mailing addresses and in some cases, email addresses, for participants in the Gift

Program from 2004 – 2010. These databases have been be de-duplicated, and the names of any known individuals who are excluded from the Class have been deleted. The database has been purged of any email addresses associated with persons who are excluded from the Class. The identities and last known contact information of approximately 37,000 Class Members has been obtained from the databases produced by Denis Jobin and JDS Corporation.

4. Pursuant to an order of the court, the non-parties Ryan Mitchell and Farber Tax Solutions have produced further databases with additional names and last known contact information, including mailing addresses and in some cases, email addresses, for participants in the Gift Program, including from 2011 – 2013.

5. These additional Class member names and contact information will be incorporated into the master class member list maintained by CA2.

6. The master class member list now contains the names and last known contact information for virtually all of the Class, with the exception of any Class members who only participated in the Gift Program in 2014. The number of Class members who only participated in 2014 is not know, and is expected to be very few, as the Gift Program stopped operating in January 2014.

7. A Short Form Notice of Certification and Settlement Approval will then be emailed, and where no valid email exists, mailed to those participants listed in the master class member list by CA2.

8. The Notices will be translated into French. Both French and English Short Form Notices will be mailed and/or emailed to addresses in Quebec and New Brunswick.

9. Class Counsel has a dedicated page on its website for this class action, on which is posted current information and key documents about this class action. The Short Form Notice and Long Form Notice of Certification and Settlement Approval will be posted on this webpage, in both official languages, along with a narrative explaining about the status of the class action, and an explanation about the status of the overlapping Saskatchewan action, *Piett v GLGI et al*. The URL www.glgiclassaction.com redirects to this webpage.

10. CA2 has a dedicated webpage in respect of this class action, on which is posted current information and key documents about this class action. The Short Form Notice and Long Form Notice of Certification and Settlement Approval will be posted on this webpage, in both official languages. CA2 also has an email address and toll-free number available for Class Members to contact them by directly with any questions regarding the Notice.

11. Class Counsel's website includes a confidential portal through which Class Members can send messages directly to Class Counsel. Class Members can also email Class Counsel directly. Class Counsel also has a toll-free number available for Class Members to contact them by telephone. Class Counsel has, and will continue to promptly return all communications from Class members, and will provide copies of the Notices or other court documents to any Class Members who request hard copies.

12. Class Counsel will publish a national press release in English and in French advising of the certification of the action as against the Settling Defendants, and advising of the settlement with the Settling Defendants, which will include contact information for both Class Counsel and the Notice Administrator.

13. Class Counsel will post the short-form Notice to their LinkedIn and Twitter accounts.

LYNN WINTERCORN, et al.
Plaintiffs

-and-

GLOBAL LEARNING GROUP INC., et al.
Defendants
Court File No. CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

ORDER
CERTIFICATION AND SETTLEMENT APPROVAL
(KEPES SETTLEMENT)

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Class Counsel

LYNN WINTERCORN et al. -and- GLOBAL LEARNING GROUP INC. et al.

Plaintiffs Defendants

Court File No. CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

ORDER
(Motion For Certification and Settlement Approval)

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