

CV-20-00648572-00CP

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:



SHANNON DAVIDSON

Plaintiff

- and -

GRANT THORNTON LIMITED, in its capacity as Receiver and Manager of
STABLEVIEW ASSET MANAGEMENT INC., STABLEVIEW YIELD AND GROWTH
FUND, STABLEVIEW PROGRESSIVE GROWTH FUND, STABLEVIEW INSIGHT FUND
LP, STABLEVIEW INSIGHT FUND GP INC., and COLIN T. FISHER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

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

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

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

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

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

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

Date: *Sept. 30/20*

Issued by *[Signature]*
Local registrar

Toronto Courthouse
393 University Avenue
Toronto, ON M5G 1E6

[Signature]

TO: **COLIN T. FISHER**
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Lawyers for the Defendant, Colin T. Fisher

AND TO: **GRANT THORNTON LLP in its capacity as Receiver and Manager of Stableview Asset Management Inc., Stableview Yield & Growth Fund, Stableview Progressive Growth Fund, Stableview Insight Fund LP and Stableview Insight Fund GP Inc.**

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Lawyers for the Defendant Receiver

CLAIM

1. The Plaintiff claims on her own behalf and on behalf of the proposed Class Members:
 - (a) An Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, and appointing Shannon Davidson as representative plaintiff for the Class;
 - (b) Special and general damages in the amount of \$20,000,000 or such other amount as determined by this Court;
 - (c) A declaration that Colin T. Fisher (Fisher) is in knowing receipt of trust funds belonging to the Plaintiff and the Class, which were paid to him by Stableview Asset Management Inc., Stableview Yield & Growth Fund, Stableview Progressive Growth Fund, Stableview Insight Fund LP and/or Stableview Insight Fund GP Inc. (together, the Stableview Group) as fees, bonuses, dividends or other forms of remuneration, but were unearned by him;
 - (d) An accounting of all fees, bonuses, dividends or other forms of remuneration paid by any of the Stableview Group to Fisher, and an order for disgorgement and restitution thereof to the Plaintiff and the Class;
 - (e) An accounting of all fees or other forms of remuneration paid by any of the Funds (defined below) to Stableview Asset Management Inc. (Stableview) and an order for disgorgement and restitution thereof by Stableview to the Plaintiff and the Class;
 - (f) A declaration that Stableview acted in breach of trust, in a conflict of interest, in breach of its fiduciary duty owed to the Plaintiff and to the Class, and in breach of its contracts with the Plaintiff and the Class;
 - (g) A declaration that Stableview and Fisher made negligent misrepresentations in the offering memoranda of the Stableview Insight Fund LP, within the meaning

- of the *Securities Act*, RSO 1990 c S 5 and the equivalent provisions contained in the securities laws of the other provinces of Canada;
- (h) A declaration that Stableview and Fisher made negligent misrepresentations in the Portfolio Management Agreements & Investment Policy Statements in respect of the Separately Managed Accounts, and that Stableview and Fisher contravened restrictions set out in the Pooled Fund Regulation for the Stableview Progressive Growth Fund, and the Pooled Fund Regulation for the Stableview Yield and Growth Fund, and that they are liable to the Plaintiff and to the Class pursuant to section 130.1 of the *Securities Act*, RSO 1990 c S 5 (and the equivalent provisions contained in the securities laws of the other provinces of Canada) and at common law;
 - (i) A declaration that all fees received by Stableview from any of the Funds during the period between January 1, 2016 and June 9, 2020 were unearned, and that Stableview Asset Management Inc. has been unjustly enriched by the amounts of the fees so received, and an order for the restitution thereof to the Class;
 - (j) Damages for loss of investment opportunity by the Plaintiff and the Class in an amount to be determined by the court;
 - (k) An Order directing a reference or such other directions as may be necessary to determine any issues not determined at the trial of the common issues;
 - (l) Pre-judgment interest at the rate of return that would have been achieved by a prudently managed growth-based managed investment account in the period between January 1, 2016 and the date of judgment, or alternatively in accordance with *Courts of Justice Act*, RSO 1990, c C 43;

- (m) Post-judgement interest at the rate of return that would have been achieved by a prudently managed growth-based managed investment account, or alternatively in accordance with *Courts of Justice Act*, RSO 1990, c C 43
- (n) The costs of all notices to the Class and the costs of administration of the distribution of any recovery to the Plaintiff and the Class;
- (o) Costs of this action, and applicable taxes on costs; and
- (p) Such further and other relief as the case may require and this Honorable Court deems just.

GLOSSARY

2. In addition to the terms defined in s 1(1) of the *Securities Act*, RSO 1990 c S 5, and elsewhere herein, the following terms used throughout this Statement of Claim have the meanings indicated below:

“20% Leverage Constraint” – refers to leverage restrictions on the Progressive Fund and the Yield Fund limiting them to a maximum leverage of 20% of the Pooled Funds’ net asset value.

“30% Liquidity Constraint” – refers to the Insight Fund being subject to the following liquidity constraint: “the Partnership may not place more than 30% of its portfolio, as measured in costs, in private equity or other illiquid securities”

“Breach of Investment Parameters” – refers to the fact that Fisher and Stableview breached the Funds’ investment parameters by causing them to become significantly over-concentrated in debentures of Clarocity.

“Conflict of Interest” – refers to the fact that Stableview was in a conflict of interest by virtue of its receipt of undisclosed compensation under consulting agreements with Clarocity.

“Clarocity” – refers to an Alberta Company that uses (or used) technology to provide customers with appraisal services in the housing market. Clarocity provided its customers with real-time access to certified appraisal reports from a database of proactively maintained residential property evaluations prepared by licensed appraisers across the United States

“Distribution Period” – refers to the period of time from July 18, 2014 to March 24, 2020

“Diversification Requirement” – refers to requirements in the Funds’ governing documents stating that the Funds would “invest primarily in a diversified group of securities in both public and private companies which are deemed to represent solid return on equity for as minimal risk as possible for the given return”.

“Funds” – refers to the Progressive Fund, the Yield Fund, and the Insight Fund, collectively.

“IFM” – refers to the investment fund manager, a registration that Stableview holds with the Commission.

“iLookabout” – refers to iLookabout Corp., also a company in the business of real estate valuation.

“iLookabout Transaction” – refers to the sale of Clarocity’s assets to iLookabout by the Clarocity Receiver.

“Insight Fund” – refers to the Stableview Insight Fund LP; distributed to high net-worth clients outside of Stableview’s separately management account client base.

“Insight Fund GP” – refers to Stableview Insight Fund GP Inc., general partner of the Insight Fund.

“Investment Parameters” – refers to, collectively, the Diversification Requirement, the 30% liquidity constraint, and the 20% Leverage Constraint.

“IPS” – refers to the Investment Policy Statement.

“Laurentian” – refers to Laurentian Bank Securities, the custodian for the investment funds managed by Stableview.

“Laurentian Fund Statements” – refers to the monthly account statements prepared for the investment funds by Laurentian.

“PMA” – refers to Portfolio Management Agreements for Stableview clients.

“Pooled Funds” – refers to the Progressive Fund and the Yield Fund.

“SGGG” – refers to the SGGG Fund Services Inc., which provided a number of services to Stableview, including performing unitholder record keeping and fund administration.

“SGGG Reports” – refers to periodic NAV reports prepared by SGGG.

“SMA” – refers to the separately managed client accounts of Stableview.

“Valuation Deficiency” – refers to the fact that there was inadequate support for the valuation of illiquid investments, including the Clarocity debentures, held by the Funds.

THE CLASS

3. The Plaintiff brings this claim on her own behalf and on behalf of a Class defined as:

All persons who were invested in any of: (i) the Stableview Progressive Growth Fund; (ii) the Stableview Yield & Growth Fund; or (iii) the Stableview Insight Fund LP from January 1, 2016 to March 24, 2020 and who remained invested in any of these Funds as at March 24, 2020, exclusive of the past and present parents, subsidiaries, affiliates, executive or management level employees, agents, or legal representative of the Stableview Group, or Colin T. Fisher, his legal representatives, heirs, successors or assigns. (the "Class")

4. There are approximately 109 Class Members.

5. The Class Members all invested in one or more of the Stableview Progressive Growth Fund, the Stableview Yield & Growth Fund and/or the Stableview Insight Fund LP (together, the Funds) managed by Stableview. In making their investments, the Class Members relied upon representations in Portfolio Management Agreements and Investment Policy Statements, and, with respect to the Insight Fund, on representations in an Offering Memorandum, and subscription agreements.

6. The Class Members remained invested in the Funds, relying upon the net asset values (NAV) of the Funds reported by the Defendants, and other representations made by the Stableview Group regarding the nature of the Funds' investments. Had the true state of affairs of the assets in the Funds been disclosed to the Class, they would have immediately divested themselves of their investments.

7. The Class has suffered financial losses due to the Stableview Group's and Fisher's negligence, breach of fiduciary duty, conflict of interest, breach of contract, and breaches of the *Securities Act*. Representatives of the Ontario Securities Commission estimate the minimum loss suffered by the Class as being \$7,900,000. The actual capital loss of the Class Members may be as great as \$20,000,000.

THE PLAINTIFF

8. Shannon Davidson is an individual who resides in Toronto, in the Province of Ontario. Ms. Davidson was a client of Colin Fisher's when he was a partner at Kingship Capital Corporation. Kingship Capital Corp. was an asset management company. When Mr. Fisher started Stableview in early 2014, Ms. Davidson moved her investments from Kingship Capital Corporation to Stableview.

9. Ms. Davidson entered into a managed account agreement with Stableview. Fisher, through Stableview, made all investment decisions in respect of the investment of Ms. Davidson's money in the Funds. Ms. Davidson was entirely dependent upon Fisher to make prudent investment decisions based upon her circumstances and in keeping with the Investment Policy Statement for her managed account. As such, Fisher and Stableview owed a fiduciary duty to Ms. Davidson.

10. Initially, Ms. Davidson entrusted approximately \$55,592.13 to Stableview for investment. Of that money, \$14,057.61 was in her son's Registered Education Savings Plan (R.E.S.P.). The remainder of her money (\$41,057.61) was in her Registered Retirement Savings Plan (R.R.S.P.). Both of these accounts are trust accounts held by Stableview for the benefit of Ms. Davidson, and in respect of which it owed her a fiduciary duty.

11. Ms. Davidson made further investments in both the R.E.S.P. and the R.R.S.P. from time to time. Often, Ms. Davidson contributed \$350 per month to her R.R.S.P. and \$1,000 to her son's R.E.S.P.

12. Between January 1, 2014 and March 24, 2020 Ms. Davidson entrusted more than \$190,000 to Stableview for investment in her registered trust accounts.

13. In 2019 alone, Ms. Davidson entrusted \$32,500 to Stableview for investment.

14. As of late 2019, the Client Statements provided to the Plaintiff by Stableview showed the value of Ms. Davidson's R.R.S.P. as being \$234,985.05, and the value to her son's R.E.S.P. as being \$47,379.68.

15. Ms. Davidson did not receive reports from the Stableview Group detailing the nature of the investments made by the Funds. Ms. Davidson had no input into the investment decisions taken by Stableview. From time to time she received Investment Performance Reports that detailed the total net asset value (NAV) of her investments.

16. Then, in the Investment Performance Report for the period of January 1 to December 31, 2019, which Ms. Davidson received in early 2020, there was a \$193,217.37 reduction in the value of Ms. Davidson's R.R.S.P. account and a \$37,244.81 reduction in the value of the investments in her son's R.E.S.P. In total, the drop in the reported NAV of the accounts was \$230,462.18.

17. When Ms. Davidson opened her managed account with Stableview, she signed an Investment Policy Statement which provided that her investments were to be allocated as follows:

ASSET CLASS	LOWER LIMIT (%)	TARGET (%)	UPPER (%)
CASH AND EQUITY	1	5	60
FIXED INCOME	15	30	70
EQUITY	5	10	80
ALTERNATIVE INVESTMENTS	0	10	20
DERIVATIVE INVESTMENTS	0	10	20

18. The numbers in the table above are percentages of the total assets Ms. Davidson entrusted to Stableview for investment. The upper limit of “alternative investments” to be held in her managed account was 20%.

19. The Defendants caused Ms. Davidson’s loss by over-concentrating investments in debentures issued by a penny stock technology company, Clarocity Corporation (Clarocity). According to Stableview’s own classification of asset classes, Clarocity’s debentures were “alternative” investments, hence, the maximum amount of Clarocity debentures that were permitted to be held in the Plaintiff’s managed accounts was 20% of the total NAV of the accounts.

20. However, over a period of months, starting in or about January 2016, the Defendants made repeated investments in Clarocity debentures, which resulted in concentrations of more than 70% of the Funds’ capital in this security.

THE STABLEVIEW GROUP

21. Fisher had been a partner in Kingship Capital Corporation. In or around August 2013, Mr. Fisher created Stableview Asset Management Inc. (“Stableview”).

22. Stableview is an Ontario corporation, with its head office located in Toronto. Stableview is registered with provincial securities regulators in Ontario, Alberta, and British Columbia. In Ontario, Stableview has been registered as a Portfolio Manager since August 2013 and as an Investment Fund Manager and Exempt Market Dealer since May 2014. At all material times, Stableview managed three investment funds on behalf of the Funds’ investors.

23. The Funds that Stableview managed are:

- a. Stableview Progressive Growth Fund; (the “Progressive Fund”)

- b. Stableview Yield & Growth Fund; (the "Yield Fund"), and
- c. Stableview Insight Fund LP (the "Insight Fund").

24. The Progressive Fund and the Yield Fund are each unit investment trusts created by Regulations and Pooled Fund Trust Indentures. The Progressive Fund and the Yield Fund were created on or about July 8, 2014. Stableview acted as both trustee and manager of these Funds. Stableview invested the funds of the Separately Managed Account holders in the Progressive Fund and the Yield Fund.

25. As of November 30, 2018, Stableview was managing assets for 102 holders of Separately Managed Accounts, and the money that the holders of these Separately Managed Accounts entrusted to Stableview was invested by it in one, the other, or both of the Progressive Fund or the Yield Fund.

26. The Insight Fund is a limited partnership established in October of 2014. Stableview Insight Fund GP Inc. ("Insight GP") is the general partner for the Insight Fund. Pursuant to a management agreement between Stableview and Insight GP dated June 13, 2014, Stableview was appointed as manager of the Insight Fund. The Insight Fund was offered as an investment to a small number of high net worth individuals. As of November 30, 2018, the Insight Fund had 7 investors.

27. Insight GP and Stableview owed fiduciary and contractual duties to the investors in the Insight Fund to ensure that the Insight Fund was managed in accordance with the terms of the management agreement, for the benefit of the Insight Fund holders.

28. On the whole, all of the investors in all of the Funds were substantially in the same situation in that (i) all of the investors were promised a diversified portfolio, (ii) all of the Funds

were subject to a maximum 20% leverage constraint, and (iii) all of the Funds had a liquidity constraint, that constraint being express in the Offering Memorandum for the Insight Fund LP and implied by the asset allocations, set out in the IPSs of the various PMAs in the Progressive Fund and the Yield Fund. All of the losses to all of the investors in all of the Funds were caused by overconcentration of the Funds' assets in Clarocity debentures, which were illiquid.

29. The Offering Memorandum for the Insight Fund included an expressed liquidity constraint, to the effect that no more than 30% of the assets of the Insight Fund were to be in illiquid securities at any given time.

30. A similar constraint was set out in an Investment Policy Statement for each of the SMAs, which was part of the PMA.

31. Colin T. Fisher is the sole officer and director, and the directing mind of Stableview. He is registered as Stableview's Ultimate Designated Person, Chief Compliance Officer, sole advising representative, and sole dealing representative. He was the sole person advising the Class with respect to their investments in the Funds. Fisher made all the investment decisions for all of the Funds.

32. Fisher signed the Class Members' Portfolio Management Agreements on behalf of Stableview. Particularly, the SMA holders relied upon Fisher to make prudent investment decisions for them based upon the terms of the IPSs.

33. Fisher was the author of the Offering Memorandum for the Insight Fund, the Sole Director and Officer of the General Partner, and the Sole Director and Officer of the Manager, Stableview Asset Management Inc.

34. As particularized below, Fisher caused Stableview to breach the investment parameters set out in the governing documents for the Funds.

THE TERMS OF THE FUNDS

35. The Pooled Fund Regulations, which established the Progressive Fund and Yield Fund, provide, in pertinent part:

3.01 “The investment objective of the Pooled Fund is to generate consistent positive absolute returns in various market conditions...”

3.02 “The Manager intends to invest in a diversified group of securities in both public and private companies which are deemed to represent solid return on equity for as minimal risk as possible for the given return.”

36. Stableview presented each of the SMA clients with a PMA. Each PMA included an IPS. The Regulations, the PMAs and the IPSs set out the terms of the contract between Stableview and the holders of the SMAs.

37. Part of each IPS was a Consolidated Discretionary Portfolio Asset Allocation, which set out, among other things, the target percentage and maximum percentage investment in “alternative investments” that each client could tolerate. For each of the SMAs, the agreed percentage of “alternative investments” was less than or equal to 30%.

38. The Regulations that established the Pooled Funds further provide:

3.02 **Use of Leverage** – The Pooled Fund may use leverage from time-to-time, to a maximum of 20% in the aggregate at the time of the leverage of the Pooled Funds’ Net Asset Value.

39. Sections 3.01 and 3.02 of the Regulations that established the Progressive Fund and the Yield Fund, and the asset allocations in the IPSs together, establish a diversification constraint, a leverage constraint and a liquidity constraint on the investments for the Progressive Fund and the Yield Fund. The liquidity constraints for the Progressive Fund and the Yield Fund are established by the limitation in the asset allocation on "alternative" investments.

40. Clarocity debentures were an alternative investment for each of the Funds.

41. Among the governing documents of the Progressive Fund and the Yield Fund were Trust Indentures. The money that clients entrusted to Stableview for investment in the Progressive Fund and the Yield Fund was trust money.

42. The Offering Memorandum and subscription agreements for the Insight Funds also promise a diversified group of investments, a 20% leverage constraint and a liquidity constraint on the Insight Fund investments, to the effect that no more than 30% of the assets of the Insight Fund were to be invested in illiquid securities at any given time.

THE DEFENDANTS' INVESTMENT DECISIONS

The Investment in Clarocity Debentures

43. From January 2016 through August 2018, Fisher caused the Funds to become highly concentrated in debentures issued by Clarocity. Clarocity is (or was) a penny-stock technology company that provided technology for real estate valuations.

44. As at December 31, 2017, the Funds' investment in Clarocity debentures (as a percentage of assets under management) was over 40% for each of the Funds' NAV. By

December 31, 2018 the concentration of investments in Clarocity was over 70% for each of the Funds' NAV.

45. By June of 2019, the Funds held Clarocity debentures which totaled over \$18,000,000; but Clarocity was worth less than \$5,000,000. Accordingly, the Clarocity debentures were illiquid and of negligible value.

46. From the outset, the Funds' investments in Clarocity breached Stableview's fiduciary duty and duty of care to the Class Members, and were in breach of the terms of the SMAs.

Particularly:

- a. Stableview failed to disclose that it was an insider of Clarocity;
- b. The investments in Clarocity were extremely speculative, exceeding the acceptable risk tolerances for the managed account holders as established by the IPSs;
- c. The investments in Clarocity contravened the obligation of the Funds to be invested in a diversified portfolio set out in the PMAs and IPSs for the SMAs;
- d. The investments in Clarocity breached the obligation of the Insight Fund to be invested in a diversified portfolio as set out in the Offering Memorandum for the Insight Fund;
- e. The investments in Clarocity breached the asset allocation restrictions set out in the IPSs;
- f. The investments in Clarocity breached the liquidity restriction set out in the Offering Memorandum for the Insight Fund;

- g. The amount of money that Stableview borrowed from Laurentian to buy Clarocity securities violated the leverage constraints set out in the governing documents for the Progressive Fund and Yield Fund, and in the Offering Memorandum for the Insight Fund;
- h. First Stableview, then Fisher, accepted fees from Clarocity, which created a conflict of interest that the Defendants never disclosed. This conflict of interest clouded Fisher's judgment; and
- i. The Defendants provided SGGG and Laurentian with inaccurate valuations of the Clarocity securities, which resulted in misleading NAV calculations, to the detriment of the Plaintiff and the Class.

47. Fisher's decision to have the Funds invest in Clarocity began in January 2016 and continued, unabated to August 2018, when he caused Stableview to move to have a receiver appointed over Clarocity. However, Clarocity securities were never appropriate investments for any of the Funds, as they were excessively speculative and overvalued.

48. From the outset, Clarocity's financial circumstances continuously deteriorated, yet Fisher caused the Funds to increase their investments in Clarocity, rather than divesting the Funds' investments in Clarocity when it became evident that this investment was unduly risky, and was consistently losing money.

49. The Defendants valued the Clarocity debentures at their purchase price, and valued Clarocity shares at par until the iLookabout Transaction, even though Clarocity's financial position was deteriorating. The debenture purchase price and par value of the shares was not their true market value.

50. During the entire period of time during which the Defendants were investing the Class' money in Clarocity, Clarocity was operating at a loss.

51. Clarocity's quarterly and annual financial statements and management discussions and analyses for the periods December 31, 2009 to December 31, 2015 show that Clarocity's cumulative deficit from inception to December 31, 2015 was \$91.2 million.

52. According to Clarocity's audited financial statements for the year ended December 31, 2017, Clarocity's cumulative deficit from inception to December 31, 2017 was \$114.6 million.

53. Starting in June 2016, Clarocity began making interest payments on debentures issued on January 25, 2016, including those held by the Funds, by issuing common shares instead of cash. Fisher knew or ought to have known by no later than June 2016 that Clarocity was insolvent, illiquid, and that investments in Clarocity's debentures and shares was inconsistent with the investment objectives and risk tolerance of the Class Members, and was a breach of the Funds' investment parameters.

54. By June 2016, Fisher knew or ought to have known that Clarocity could never repay the debentures and that they were effectively worthless. Fisher knew or ought to have known that holding Clarocity debentures and further investments in Clarocity debentures was a breach of the trust agreements, a breach of his and Stableview's fiduciary duty owed to the Plaintiff and the Class, and that the investments were grossly improvident.

The Receivership

55. On June 5, 2019, Stableview brought an application to appoint Hardie & Kelly Inc. as receiver of Clarocity. Despite moving to put Clarocity into receivership, the Defendants failed

to notify the Class of this event, or the fact that the Funds' investments in Clarocity were effectively worthless.

56. According to the First Report of the Clarocity Receiver dated June 11, 2019, the total indebtedness owed by Clarocity to debenture holders at that time was \$23.7 million including interest. Stableview was the largest of the debenture holders, holding in aggregate approximately 90% of the total outstanding debenture debt.

57. According to the Clarocity Receiver's First Report, the Clarocity Receiver estimated the liquidation value of Clarocity to be in the range of \$3 to \$4.8 million. The First Report stated that debenture holders would suffer a significant shortfall in the range of \$20 to \$22 million. These amounts related solely to the debentures, and did not include Clarocity Promissory Notes, which the Funds had also obtained prior to the receivership.

The iLookabout Transaction

58. Clarocity's receivership ended with the iLookabout Transaction. Pursuant to the iLookabout Transaction, iLookabout acquired all assets of Clarocity for a purchase price in the amount of the indebtedness owed by Clarocity to iLookabout and the debenture holders. However, the purchase price was paid not in cash but in common shares, warrants, and convertible debentures of iLookabout. The common shares were subject to a standstill agreement on terms as follows:

(a) Stableview was not

(i) in any one transaction or series of transactions to transfer in a single trading day a number of common shares greater than 2.2% of the average daily trading volume for the 5 preceding days;

(ii) Stableview was not to transfer in any calendar-quarter more than 5.5% of the common shares held by Stableview; and

(iii) Stableview was not to transfer more than 5.5% to any one person or entity without written consent of iLookabout.

(b) Stableview was not, for a period of three years, without express written consent of the iLookabout Board of Directors to do any of the following:

(i) acquire any iLookabout securities that would result in Stableview owning more than 25% of the common shares;

(ii) solicit any proxies with respect to iLookabout securities;

(iii) commence a takeover bid;

(iv) attempt to affect the control or influence of the management of the Board of Directors of iLookabout; or

(v) to publicly announce the intention to do any of the foregoing.

59. As a result of the Standstill agreement, the iLookabout shares were illiquid.

60. Following the court's approval of the iLookabout Transaction, the Funds held a substantial interest in iLookabout totaling 20,802,094 common shares, 17,184,338 warrants and a \$7,868,618 convertible debenture.

61. The iLookabout securities are subject to several restrictive terms, including the terms of the debentures, and the standstill agreement.

62. The concentration of iLookabout securities in the Funds is also excessive and in breach of the Funds' terms.

Conflict of Interest

63. While Fisher was improvidently investing the Class Members' money in Clarocity, he caused Stableview to enter into fee arrangements with Clarocity. In later 2015 and early 2016, Stableview entered into two agreements with Clarocity. Pursuant to the first agreement, Stableview entered into a debt facility that it was to coordinate for Clarocity, with funds to be supplied by, among other sources, Stableview's SMAs.

64. Stableview received a \$150,000 debenture under the terms of the Debt Coordination Agreement. In August 2018, Fisher caused Stableview to sell the \$150,000 Clarocity debenture to the Yield Fund and Stableview received payment of 66,702.2412 Class A units at \$1.1244 per unit and 73,227.8852 Class D units at \$1.0242 per unit of the pooled Fund. All the shares were held by Stableview, at times in one or another of the Funds.

65. Stableview received 1,300,000 common shares of Clarocity under the Fiscal Advisory/Consulting Agreement as compensation for assisting Clarocity to reorganize its capital structure. Stableview held these shares at times, in one or another of the Funds.

66. Stableview received a cash payment from Clarocity of \$70,000 per year, paid quarterly in the amount of \$17,500. Stableview received 6 quarterly payments of \$17,500 for a total cash payment of \$105,000 under the terms of the Debt Coordination Agreement.

67. In 2017 and 2018 Stableview was paid financial advisory fees of \$1,559,000 by Clarocity. The receipt of these advisory fees was a conflict of interest that was never disclosed to the Plaintiff or the Class.

68. Fisher received in-kind and cash payments, personally, for providing advice to Clarocity. The receipt of these advisory fees was a conflict of interest that was never disclosed to the Plaintiff or the Class.

69. As the sole shareholder of Stableview, Fisher was paid salary, fees, dividends or bonuses from the proceeds of the funds received by Stableview from Clarocity. When Fisher received these payments, he knew that they were funds that properly belonged to the Class Members and were being held in trust by Stableview for the Class Members' benefit. Fisher knew that when he received these funds, there was no juridical reason for the payment to him and that he was being unjustly enriched at the expense of the Class.

THE DEFENDANTS' INNACURATE REPORTING TO THE CLASS

70. SGGG provides several services to Stableview, including fund valuations, unit holder recordkeeping, financial reporting functions for the Funds (including fund accounting and preparing NAV reports), and completion of the necessary tax returns for the Funds.

71. Stableview provided the market values for the Clarocity debentures and promissory notes to SGGG. For much of the period of time in question, because the Clarocity securities were illiquid, Stableview told SGGG to value Clarocity debentures and promissory notes at cost, and to value Clarocity common shares at par. Around August 2018, Fisher instructed SGGG to increase the market value of the debentures to par. As a result, the SGGG reports on the Funds' NAV, including the July 31, 2018 and August 25, 2018 SGGG Report for the Insight Fund, and the July 25 and August 25, 2018 SGGG Reports for the Pooled Funds showed an increase in value of more than 5%, when, in fact, Clarocity's financial position was deteriorating.

72. For the iLookabout debentures, which are illiquid, Stableview told SGGG that they should be valued at par. The recorded book value and market value for these debentures have been recorded at par since they were first reported on the SGGG Reports.

73. Laurentian is the custodian of the Funds and provides account statements to Stableview clients. Laurentian also prepares monthly account statements for the Funds. Until January 2020, Laurentian was including values provided by Stableview for the Funds' iLookabout debentures in the Laurentian Fund Statements. Since January 2020, the Laurentian Fund Statements no longer include values for the iLookabout debentures, instead these values are reported as being "not available".

74. SGGG and Laurentian both report on the investments held in each of the Funds, but there are differences in the total values reported by each of them. Since January 2020, the differences are significant, given that Laurentian no longer includes a value for the illiquid iLookabout debentures in the Laurentian Fund Statements.

75. The majority of the investments held by the Funds since 2017 were Clarocity debentures. There is no market for these securities, and they are illiquid. In order for an asset manager to give a fair value for a security like a Clarocity debenture, he or she would have to base the valuation on the true financial position of the company that issued the debenture.

76. The Funds currently hold iLookabout's common shares, debentures and warrants. The Funds also continue to hold Clarocity shares, which are worthless. Since receiving the iLookabout debentures, Stableview continued to instruct SGGG to include the market values of these debentures in the SGGG Reports in amounts equal to their book value, which was not the actual NAV of these securities, and substantially overvalued them.

77. Clarocity's securities were over-valued by Stableview, at Fisher's direction, from at least June, 2016. The overvaluation and the over-concentration of the Funds in Clarocity securities arising from the Defendants breached of contract, breach of fiduciary duty, breach of duty of care, misrepresentations, and self-dealing caused significant losses to the Class. The minimum total losses suffered by the Class is an estimated \$7.3 million.

78. Stableview invested more than \$15,000,000 in Clarocity debentures and promissory notes. Clarocity was never a going concern company, and consistently operated at a loss. It ultimately had a liquidation value of less than \$5,000,000. Then Stableview forced that company into receivership, and arranged a sale (the iLookabout Transaction) whereby iLookabout purchased the Clarocity debt with iLookabout common shares (subject to a standstill agreement), iLookabout debentures and iLookabout warrants. The iLookabout Transaction did nothing to improve the problem of concentration of the Funds' assets, and the investments remained illiquid.

79. Laurentian is the Funds' custodian. Stableview also had a margin account with Laurentian, such that Stableview could borrow money from Laurentian to buy securities for the Funds. However, Laurentian was permitted, in certain circumstances to require Stableview to repay the money it had borrowed (a "Margin Call"). If Laurentian made a Margin Call and Stableview was unable to pay, then Laurentian was permitted to sell off some of the Funds' assets to pay the Margin Call.

80. One of the purposes of a leverage constraint is to ensure that an entity never owes so much that it will have to seriously alter its asset allocation in order to pay a Margin Call.

81. In August 2018, Laurentian required the Funds, including the Yield Fund, to reduce their level of margin. However, the Yield Fund had insufficient cash or liquid securities to fulfill

the Margin Call. As of July 31, 2018, the Yield Fund had a negative cash balance of \$5.1 million which was reduced to \$1.8 million by the end of February 2019.

82. In March and July 2019, Fisher engaged in a series of self-dealing transactions between the Progressive Fund and the Yield Fund to mask the fact that he had caused the Funds to be overleveraged.

83. Fisher caused the Progressive Fund to buy Yield Fund units. This series of transactions allowed the Yield Fund to reduce its level of margin, while the Progressive Fund increased its level of concentration in Clarocity securities, including debentures, thus reducing its liquidity and diversification. As a result of these investments, the previous breaches of the Investment Parameters in the Progressive Fund were exacerbated.

84. Specifically, in March 2019, the Progressive Fund purchased approximately \$670,000 of the Yield Fund using proceeds from the sale of another investment, Tera Firma Capital Corp. As of March 31, 2019, the Yield Fund held \$5,169,850 of Clarocity's debentures, representing approximately 86% of the total portfolio as reported in the Laurentian Fund Statements.

85. At the time, the Progressive Fund already directly held \$11,347,150 of Clarocity's debentures, representing 66% of its total portfolio, as reported in the Laurentian Fund Statements. The \$670,000 investment by the Progressive Fund in the Yield Fund indirectly increased the Progressive Fund's concentration in Clarocity's debentures by an additional \$576,000, resulting in its total concentration level increasing from 66% to 69%.

86. In July 2019, the Progressive Fund purchased an additional \$1,072,000 of the Yield Fund, using proceeds from the sale of shares of Versapay Corporation, which was another

security the Progressive Fund had held. This caused the concentration of holdings in Clarocity to become even greater.

87. As of July 31, 2019, the Yield Fund held \$5,169,850 of Clarocity Debentures, representing 96% of its portfolio. The Progressive Fund held \$11,347,150 of Clarocity Debentures, representing 66% of its portfolio.

88. The investments by the Progressive Fund in the Yield Fund in March and July 2019 totaled \$1.7 million as of July 2019, which indirectly increased the Progressive Fund's concentration in Clarocity Debentures by an additional \$1.66 million, resulting in its total concentration level increasing from 66% to 76%.

89. These transactions permitted the Yield Fund to significantly reduce its margin balance. Prior to these transactions, the Yield Fund had a negative cash balance of \$1.76 million as of February 28, 2019 and a negative cash balance of \$1 million as of June 30, 2019. By July 31, 2019, the Yield Fund had reduced its negative cash balance to \$982. However, the scope of the negative cash balance was illusory, as the value of the underlying Clarocity assets in the Funds was grossly overstated by Fisher and Stableview.

90. In December 2019 and January 2020, Fisher caused the Progressive Fund to loan the Insight Fund and the Yield Fund \$16,040 and \$92,621 respectively. This money was used to cover negative cash balance that arose from the payment of invoices, for example, the payments to SGGG, and to fund certain permitted redemptions.

91. The Insight Fund and the Yield Fund had little to no cash during these periods, whereas the Progressive Fund had approximately \$1.8 million in investors' cash.

92. The Insight Fund and the Yield Fund have significant holdings in iLookabout illiquid private debt and no cash. They will be unable to repay the loans to the Progressive Fund in the near term.

93. Stableview incorrectly included Clarocity Promissory Notes in its NAV calculations for periods commencing in September 2019 until the error was identified at the end of January 2020.

94. SGGG emailed Stableview several times between January 28 to 31, 2020 providing revised NAV Reports for September to December 2019 to write off the Clarocity Promissory Notes as of September 2019, following completion of the Clarocity receivership and the iLookabout Transaction.

95. SGGG stopped processing Stableview's NAV reports in the fall of 2019 when Stableview fell behind on their payments.

96. Stableview failed to disclose to the Class that it was acting in a conflict of interest by making the investments in Clarocity, as Stableview was an insider of Clarocity and received a chase payment in the amount of \$70,000 per year, paid quarterly in the amount \$17,500. Stableview received 6 quarterly payments in the amount of \$17,500 for a total cash payment of \$105,000 under the terms the Debt Coordination Agreement. Some of this money went to pay Fisher's salary and personal expenses.

97. Fisher also failed to provide SGGG and Laurentian with accurate valuations of the Funds' assets, with the result that investors relied on inaccurate NAV calculations to their detriment.

98. The Plaintiff and Class Members suffered significant losses as a result of Fisher's investment decisions.

99. As a result of the Defendants' failure to make full and fair disclosure about the Funds' underlying assets, neither the Plaintiff nor any of the Class Members could have discovered Stableview's breaches of their investment parameters before March 24, 2020, when, at the request of the Commission, Fisher signed an undertaking to refrain from executing or causing to be executed any portfolio transaction in respect of the Funds. As of that date, the Plaintiff and the Class were unable to divest themselves of their investments in the Funds.

100. In May of 2020, the Ontario Securities Commission applied for appointment of a receiver to manage the Stableview Group's assets and undertakings, with a view to winding up the Funds in an orderly fashion.

101. The total value of the Funds' assets is now a fraction of the money the Class entrusted to the Defendants for investment, and there is no prospect of the Funds' assets ever appreciating in value.

102. The reason for the Class' investment losses is solely Fisher's decision to violate the diversification, liquidity and leverage constraints set out in the Funds' governing documents, in breach of Stableview's contractual duties, and its fiduciary duties and duty of care owed to the Class.

CAUSES OF ACTION

Statutory Cause of Action

103. The Insight Fund Offering Memorandum, and the related subscription agreements, constitute an offering memorandum for purposes of section 130.1 of the *Securities Act*, R.S.O. 1990, c. S 5.

104. The Stableview PMAs and IPSs, and the Pooled Fund Regulation for the Stableview Progressive Growth Fund, and the Pooled Fund Regulation for the Stableview Yield and Growth Fund were offering memoranda for the purpose of section 130.1 of the *Securities Act*, RSO 1990 c S 5.

105. The Plaintiff and Class Members purchased the securities described in the offering memoranda during the Distribution Period.

106. The Offering Memorandum and subscription agreements for the Insight Fund, the Regulations that established the Progressive Fund and Yield Fund, the PMAs and IPSs (collectively, the “governing documents”) all contained misrepresentations including:

- (a) The governing documents included a representation that the Funds would obey a 20% leverage constraint, but the IFM caused this representation to be false by buying too much on margin;
- (b) The governing documents included a representation that the Funds investments would be diversified, but the IFM caused this representation to be false by over-concentrating the Funds' investments in Clarocity's debentures and promissory notes;
- (c) The governing documents included a representation that Funds would obey liquidity constraints. The liquidity constraints for the Progressive Fund and the Yield Fund were set out in the asset allocations in the IPSs. The liquidity constraint for the Insight Fund was set out in the Offering Memorandum. The Defendants caused this representation to be false by investing too heavily, first in illiquid securities of Clarocity, then in illiquid securities of iLookabout.

107. Among the governing documents for the Progressive Fund and the Yield Fund were Trust Indentures which included, or ought to have included, reporting requirements substantially similar to those set out in sections 11 and 14 of National Instrument 81-106 *Investment Fund Disclosure*, requiring the Defendants to (a) disclose the nature and substance of material changes in the affairs of the Funds' affairs; and (b) to calculate the NAV of the Funds using the fair value of the Funds' assets and liabilities.

108. If terms requiring prompt reporting of the material changes in the Funds' affairs and fair value of NAV calculations are not explicit in the Trust Indentures, then such terms are or should be implied.

109. The Offering Memorandum and the subscription agreements for the Insight Fund provided for similar reporting requirements.

110. The concentration of the Funds' assets in illiquid securities of Clarocity was a material change in the affairs of the Funds. The Defendants failed to report this change to the Plaintiff and Class Members. This failure to report a material change was a misrepresentation by omission.

111. The Defendants failed to calculate NAV based on the fair value of the Funds' assets and liabilities in that the Defendants continued to value Clarocity debentures and promissory notes, at acquisition cost, or, in the case of the debentures, at par, even though the Defendants knew that Clarocity's financial position was deteriorating.

112. The Plaintiff and Class Members relied on inaccurate NAV calculations in deciding to keep their investments with the Defendants.

113. The Plaintiff and Class Members were lulled into a false sense of safety by the Defendants' failure to report material changes.

114. The Plaintiff and the Class Members relied upon the representations in the IPSs in acquiring their investments in the Funds.

115. The Plaintiff and the Class Members relied upon the representations in the NAV calculations in deciding to keep their investments in the Funds.

116. The Plaintiff and Class Members relied on the Defendants' silence with respect to material changes in the Funds' affairs in keeping their investments with the Defendants.

117. The Plaintiff and the Class Members would not have invested in the Funds and would not have kept their investments with the Defendants, were it not for the misrepresentations.

118. The Plaintiff and the Class Members have suffered damages equal to the loss in value of their investments in the Funds at the date of acquisition and the current value of those investments, which is more than \$7,900,000.

119. The misrepresentations became known to the Plaintiff and the Class Members on or after March 24, 2020 when Fisher, at the request of the Commission, signed an undertaking to refrain from executing portfolio transactions in respect of the Funds.

Breach of Contract

120. There was a contract between each of the holders of the SMAs and Stableview whereby Stableview offered asset management services to the Plaintiff and to the Class Members. The consideration for these Asset Management Services was certain fees, to be charged as a percentage of assets under management, depending on the class of trust units

in which the Class Member's money was invested. The Plaintiff and the Class Members accepted the Defendants' offer and paid the required fees as consideration.

121. The terms of the contract were set out in the PMAs, IPSs, and the Regulations establishing the Pooled Funds. The terms of the contract included the following:

- a. That the money entrusted to the Defendants by the holders of the SMAs would be invested in a diversified group of securities;
- b. That the IFM would adhere to a 20% leverage constraint;
- c. That the IFM would adhere to the asset allocations set out in the IPSs; and
- d. That the IFM would act with that degree of care reasonably to be expected by an asset manager with an ordinary degree of prudence.

122. There was also a contract between the Defendants and the investors in the Insight Fund on similar terms. The terms of the contract between the investors of the Insight Fund LP and the Defendants are set out in the offering memorandum and various subscription agreements.

123. It was an explicit term of the contracts that Stableview would manage the money the Plaintiff and Class Members entrusted to them with that degree of care reasonably expected of an asset manager of ordinary prudence, given the circumstances. It was also a term of the contracts that the Stableview Group would act in the best interest of the Plaintiff and the Class Members.

124. It was also an explicit term of the contracts that the Defendants would adhere to a 20% leverage constraint, a diversification constraint, and to liquidity constraints set out the IPSs and the Insight Fund Offering Memorandum.

125. The Stableview Group breached their contracts with the Plaintiff and the Class Members by failing to diversify the Funds' investments, by investing first, too heavily in Clarocity debentures then, too heavily in illiquid securities of iLookabout, and by imprudently increasing the Funds' debt to Laurentian.

126. The Defendants breached their contracts with the Plaintiff and the Class Members by failing to fairly and accurately report the true NAV of the Funds, and by failing to report material changes in the NAV of the Funds, and by failing to report the material changes in the underlying assets in which the Funds were invested.

127. Stableview breached its contracts with the Plaintiff and the Class Members by taking fees for services that it did not provide to the Class.

128. The Stableview Group's breaches caused damage to the Plaintiff and Class Members. In particular, the units of the Funds' held by the Plaintiff and Class Members are now almost worthless, and are illiquid.

129. The Funds paid fees to Stableview, and Stableview took those fees from the Funds although it failed to provide the services for which it had contracted. The fees paid to Stableview by the Funds were paid without consideration and in breach of the Plaintiff's and the Class' contracts with Stableview. The Plaintiffs and the Class have been damaged in the amount of all fees paid by the Funds to Stableview.

Negligence

130. The Defendants owed the Plaintiff and the Class Members a duty of care to manage the money entrusted to the Stableview Group with that degree of diligence, care and skill reasonably to be expected of an asset manager of ordinary prudence, given the circumstances.

131. Pursuant to section 116 of the *Securities Act*, RSO 1990, c S 5 and the common law, Fisher owed the following duties at all material times to the Plaintiffs and Class Members, which he breached:

- a. A duty to exercise the powers and discharge the duties of his office in the best interest of the Plaintiffs and Class Members;
- b. A duty to act in the best interests of his clients, which included the Plaintiffs and Class Members; and
- c. A duty to exercise the degree of care, diligence and skill that a reasonably prudent trustee, investment fund manager, and investment manager would exercise in comparable circumstances.

132. Particulars of the Stableview Group's negligence are:

- a. They caused their clients' investments to become highly concentrated when an asset manager of ordinary prudence would have kept the investments diversified to minimize the likelihood of large losses;
- b. They spent more than \$15,000,000 buying debentures from a company that was worth less than \$5,000,000 when an asset manager of ordinary prudence would

have made investments that bore some reasonable proportion to the actual value of the company;

- c. They continued to invest in Clarocity while its financial position was deteriorating, when an asset manager of ordinary prudence would not have invested more unless and until the company's financial position stabilized;
- d. They over-concentrated their clients' investments contrary to the investment restrictions set out in Funds' governing documents;
- e. They acquired too many illiquid securities when an investment manager of ordinary prudence would have known to adhere to the liquidity constraints set out in the Funds' governing documents;
- f. They increased the Funds' debt to Laurentian beyond the leverage constraints set out in the Funds' opening documents when an asset manager of ordinary prudence would have known not to buy too much on margin;
- g. Colin Fisher allowed his judgment to be clouded by his receipt of undisclosed compensation through consulting agreements with Clarocity, when an investment advisor of ordinary prudence would not have involved himself in a conflict of interest that might affect his judgment to the detriment of his clients;
- h. They mis-reported the value of the debentures they purchased from Clarocity at a time when Clarocity's financial position was deteriorating;
- i. They agreed to the iLookabout Transaction when an asset manager of ordinary prudence would have realized that the iLookabout Transaction kept the Funds' investments over-concentrated in illiquid securities; and

- j. They failed to act with that degree of care reasonably to be expected of an asset manager of ordinary prudence given the circumstances.

133. The Defendants breached their duty of care to the Plaintiff and Class Members by investing improvidently in Clarocity and agreeing to or facilitating the iLookabout Transaction. The Defendants' negligence caused the Plaintiff and the Class Members to suffer losses which the Plaintiff and Class Members would not have suffered, but for the Defendants' negligence.

134. It was reasonably foreseeable by the Stableview Group that the Plaintiff and Class Members would suffer losses as a result of their negligence.

135. There was no remoteness in the relationship between the Plaintiff and the Class Members and the Defendant in that the Plaintiff and Class Members were known personally to the Defendants and each signed a contract with the Defendants.

136. The relationship between the Stableview Group on the one hand and the Plaintiff and Class Members on the other hand, is direct and proximate.

Negligent Misrepresentations

137. The Stableview Group made specific written representations to the Plaintiff and the Class Members. The Defendants' explicit written representations included the following:

- (a) A representation that the Funds' investments would be diversified;
- (b) A representation to the effect that the money entrusted to the Defendants by the holders of the SMAs would be invested in a way that did not violate the asset allocations in the IPSs;

(c) A representation to the effect that no more than 30% of the assets of the Insight Fund would be invested in illiquid securities; and

(d) A representation to the effect that the IFM would adhere to a 20% leverage constraint.

138. The Defendants also made representations (some explicit, some implied) as follows:

(a) That the NAV calculations in the Client Statements were accurate and based on fair valuation of the Funds' assets; and

(b) That the Defendants would report material changes in the Funds' affairs to the Plaintiff and Class Members.

139. The Defendants actions caused all of the representations set out in paragraphs 112 and 113 above to be false.

140. The Defendants acted negligently in causing the representations to be false. Particulars of their negligence include the following:

a. A representation that the Funds' investments would be diversified;

b. A representation to the effect that the money entrusted to the Defendants by the holders of the SMAs would be invested in a way that did not violate the asset allocations in the IPSs;

c. A representation to the effect that no more than 30% of the assets of the Insight Fund would be invested in illiquid securities; and

- d. A representation to the effect that the IFM would adhere to a 20% leverage constraint.

141. The Plaintiff and Class Members relied reasonably upon the Defendants misrepresentations.

142. There was a special relationship between the Defendants and the Plaintiff and Class Members in that the Defendants entered into contracts with the Plaintiff and Class Members and the Defendants violated the terms of those contracts by overconcentrating the investments of the Plaintiff and Class Members in Clarocity securities and by mis-reporting the NAV of the Funds.

143. The reasonable reliance of the Plaintiff and the Class Members upon the Defendants' misrepresentations caused the Plaintiff and Class Members to suffer losses which they would not have suffered, were it not for the Defendants' misrepresentations.

Breach of Trust

144. On or about July 8, 2016, Stableview made a Pooled Fund Trust Indenture both as Trustee and as Manager to establish the Progressive Fund and the Yield Fund as unit investment trusts. Stableview intended to hold investment funds in trust for any client who signed a PMA.

145. The subject matter of the trusts was the money entrusted to Stableview by the holders of the SMAs. The beneficiaries of the trust were the holders of the SMAs.

146. The object of the trusts was that Stableview would manage the entrusted money in a diligent and competent manner, so as to maximize consistent positive absolute returns in variable market conditions.

147. The Defendants breached their trust obligations to the Plaintiff and Class Members.

Particulars of their breaches of trust are:

- a. Fisher accepted undisclosed compensation from Clarocity, which clouded his judgment, and which prevented him from acting in the best interest of the beneficiaries;
- b. Fisher caused Stableview to make concentrated investments in Clarocity Debentures when an asset manager of ordinary prudence would have known not to do that;
- c. Fisher caused Stableview to violate the leverage constraints in the PMAs;
- d. Fisher caused Stableview to violate the asset allocation restrictions set out in the SMA clients' IPSs;
- e. Fisher, on behalf of Stableview, failed to provide SGGG and Laurentian with accurate valuations of the Clarocity debentures, even though he knew Clarocity's financial position was deteriorating;
- f. Fisher's words and actions resulted in the provision of inaccurate NAV calculations to the beneficiaries; and
- g. Fisher and Stableview failed to act with that degree of care reasonably to be expected of an asset manager and trustee of ordinary prudence given the circumstances.

143. The Defendants invested trust money in a way not permitted by the terms of the trust, expressed or implied. The Defendants' negligence, described above, was also a breach of the trust.

Unjust Enrichment

148. The Defendants charged fees to the Plaintiff and Class Members. The fees the Defendants charged ranged from 1.25% per annum to 1.93% per annum, depending on the class of units in which a particular Class Member's money was invested.

149. The holders of the SMAs agreed to pay the fees because the Defendants promised to manage the money entrusted to them with that degree of care reasonably to be expected of an asset manager of ordinary prudence given the circumstances.

150. The Defendants received a benefit from the Plaintiff and Class Members in the form of fees.

151. The Plaintiff and Class Members suffered a loss in that their investments decreased in value due to the Defendants' negligence when the Defendants received fees on the promise that they would invest the Plaintiff and Class Members' money in such a way as to ensure positive absolute returns in variable market conditions.

152. There is no juristic reason for permitting the Defendants to keep fees they did not earn.

153. Fisher and Stableview did not manage the money entrusted to them with that degree of care reasonably to be expected of an asset manager of ordinary prudence given the circumstances, with the result that the Plaintiff and Class Members suffered losses. Fisher

and Stableview acted in breach of trust and breach of contract, and did nothing to earn the fees that they took, with the result that the Defendants were unjustly enriched.

154. The Plaintiff claims an accounting, restitution, and disgorgement of all fees received by Fisher and Stableview on her own behalf and on behalf of the Class.

DAMAGES

155. Representatives of the Commission have estimated that losses suffered by investors of the Funds' are, at a minimum, \$7.3 million. The losses will crystalize when the Stableview Group receivership is completed.

156. The Plaintiffs and Class Members entrusted money to the Defendants for investment. The total NAV of the assets of the Funds is now much less than the amount of money that Class Members entrusted to the Defendants for investment, and the investments were lost solely as a result of the Defendants' misconduct.

157. The damage suffered by the Class is the difference between (a) the present value of a portfolio of securities substantially the same as the portfolio of securities held by the Funds just before January 1, 2016 and (b) the current values of the Funds' assets.

158. The Plaintiff and Class Members are also entitled to recover as damages, or costs in accordance with the *Class Proceedings Act, 1992*, SO 1992 c 6, the costs of administering the plan to distribute the recovery in this action.

PLACE OF TRIAL

159. The Plaintiff proposes that the trial of this action take place in Toronto.

Date: September 30, 2020

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Court File No.:

00CP

Davidson
Plaintiff

and

Stableview et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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