

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

-and-

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE, also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

**MOTION RECORD OF THE RECEIVER
(Motion returnable June 7, 2019)**

June 3, 2019

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TAB A

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

-and-

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE, also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

AMENDED NOTICE OF MOTION

A. Farber & Partners Inc., as receiver (“**Farber**” or the “**Receiver**”), without security, of all the assets undertakings and properties of Sandy Hutchens, Tanya Hutchens, and certain entities referred to in Schedule “A” of the Order of Justice Penny in this proceeding dated March 18, 2019, will make a Motion to a Judge in chambers on ~~Monday, the 10th~~ Friday, the 7th day of June, 2019 at 9:30 a.m., or on such further date as may be scheduled at that time, at the Court House, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard *(choose appropriate option)*

[] in writing under subrule 37.12.1(1) because it is *(insert one of on consent, unopposed or made without notice)*;

[] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally.

THE MOTION IS FOR

- (a) An order abridging the time for service of this Motion, if necessary;
- (b) An order authorizing the Sale Transaction (defined below), vesting in the purchasers thereunder the right, title and interest of the subject properties and authorizing the Receiver to take all steps required to complete the Sale Transaction;
- (c) An order sealing the Confidential Appendices to the Third Report of the Receiver unless and until the Receiver files a certificate confirming that the Sale Transaction has closed;
- (d) An order authorizing the Receiver to distribute \$80,319.60 ~~\$80,385.03~~, more or less, from the Sale Transaction (defined below) to Ronald Henderson, in payment of his loan to Sandy Hutchens secured by a mortgage registered on title to the subject property;
- (e) An order specifying that the Receiver is appointed over the Additional Properties (defined below) in accordance with the Order of this Honourable Court herein dated March 18, 2019, including but not limited to powers of management and control

set out at ¶¶2(e)-(g) of that order in respect of such of the Additional Properties as are currently earning rental income;

- (f) An order empowering and authorizing the Receiver to market and sell the Additional Saleable Properties (defined below); and
- (g) Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

Background

- (a) By order dated February 28, 2019 (the **“Interim Appointment Order”**), Justice Penny appointed Farber as interim receiver, without security, of all the assets undertakings and properties of Sandy Hutchens, Tanya Hutchens, and certain entities referred to in Schedule “A” of the order (collectively, the **“Debtors”**), including certain properties listed in Schedule “B” of the order (the **“Properties”**);
- (b) By order dated March 18, 2019 (the **“March Order”**), Justice Penny continued the Receiver’s appointment, expanded the list of Properties over which it extended, and expanded the Receiver’s powers to include control and management of certain Properties that produce rental income;
- (c) By order dated April 25, 2019 (the **“April Order”**), Justice Penny authorized and empowered the Receiver to sell five of the Properties (the **“Saleable Properties”**), and ordered a broader freezing of the Debtors’ assets subject to provisions for their living expenses and legal fees.

- (d) Pursuant to these three orders, the Receiver has undertaken three broad categories of work:
- (i) Investigation of Debtor assets;
 - (ii) Assessment and management of those Properties that the March Order empowered and authorized the Receiver to control and manage; and
 - (iii) Preparation to sell those Properties that the April Order empowered and authorized the Receiver to sell.

Sale to be Approved

- (e) The Receiver has entered into an agreement of purchase and sale (the “**Sale Transaction**”) in respect of one of the Saleable Properties, known municipally as 42 Clemow Avenue, Sudbury, Ontario (“**42 Clemow**”). The purchaser is arm’s length from the Receiver and the parties;
- (f) Although the Receiver is not required to seek Court approval of the Sale Transaction as its amount is below the approval threshold set out in the April Order, the Receiver prefers to obtain an approval and vesting order in order to simplify closing of the Sale Transaction;
- (g) The Receiver recommends that this Court approve the Sale Transaction. The Receiver selected a listing brokerage for 42 Clemow through a competitive proposals process; the realtor publicly marketed 42 Clemow for sale; the Receiver received two other offers for lower purchase prices and with less desirable other

terms; and the Receiver obtained a formal appraisal of the Property in an amount that is below the purchase price under the Sale Transaction;

Proposed Payment to Mortgagee

- (h) There is one mortgage registered on title to 42 Clemow. The mortgagee is arm's length from the Debtors, and has documented his mortgage loan. The Respondents have confirmed his information. The Receiver has obtained a security opinion to the effect that his mortgage is valid and enforceable to the extent of all monies advanced thereunder;
- (i) The Receiver anticipates that the net proceeds of the Sale Transaction will exceed the amount of the mortgage loan, with accrued interest. The Receiver proposes to repay the full outstanding amount of the mortgage loan from the net proceeds of the Sale Transaction given this mortgagee's priority and in order to stop the accrual of loan interest;

Additional Properties

- (j) The Receiver has identified four properties (the "**Additional Properties**"), not listed in Schedule B to the March Order, which are legally or beneficially owned by the Respondent, Tatiana (Tanya) Hutchens;
- (k) The Receiver considers that the Additional Properties are property subject to the Receivership pursuant to the March Order, which appoints Farber as Receiver over "all of the assets, undertakings and properties... of the Debtors." The Receiver wishes to clarify this by expressly adding the Additional Properties to the Properties listed in Schedule B to the March Order;

- (l) The Debtors do not occupy any of the Additional Properties as residences. Two are vacant, one is rented to a residential tenant, and the Receiver is uncertain as to whether the fourth is rented. Paragraphs 2(e)-(g) of the March Order empowered and authorized the Receiver to take possession of, exercise control over and manage Properties that do or might generate rental income. Consistent with the March Order and the Receiver's subsequent identification of the Additional Properties, the Receiver recommends that it be similarly empowered and authorized with respect to the one or two Additional Properties that are rented to tenants;

Additional Sales

- (m) The Receiver has assessed the condition of the Properties over which the March Order grants it management powers. Most of them are in very poor condition. Many require urgent repairs to bring them into compliance with municipal and provincial fire, health and safety and by-law requirements;
- (n) The Receiver now proposes to sell ~~six~~ seven Properties (the “**Additional Saleable Properties**”) in addition to the Saleable Properties that the April Order empowered it to sell, at the following municipal addresses:
- (i) 3415 Errington Avenue, Sudbury;
 - (ii) 3419 Errington Avenue, Sudbury;
 - (iii) 331 Regent Street, Sudbury;
 - (iv) 110-114 Pine Street, Sudbury;
 - (v) 367-369 Howey Drive, Sudbury;

- (vi) 1479 Maple Road, Innisfil; and
- (vii) 1573 Houston Avenue, Innisfil
- (o) The Additional Saleable Properties possess the following characteristics:
 - (i) Each has negative projected cash flow from operations, taking into account extraordinary repairs required;
 - (ii) Excluding extraordinary repair expenses (which may have to be incurred even if the properties are to be sold), each has projected cash flow from operations that is either negative or below +\$1,000/month, such that cash flow is likely to be negative after management fees;
 - (iii) Each is an investment property and none is presently used as a residence;
 - (iv) To the Receiver's knowledge, none serve any purpose or has value to the Debtors other than as an investment;
- (p) In addition, Mrs. Hutchens listed two ~~one~~ Additional Saleable Properties ~~Property~~ for sale prior to the Receiver's appointment, with an interested prospective purchaser.

Sealing

- (q) The Receiver has filed certain Confidential Appendices with the Third Report. The information contained in these appendices concerning the agreed purchase price and appraised value of the Property are commercially sensitive and it would be prejudicial to the receivership estate if the information contained therein is

disclosed publicly at this time. The Receiver therefore requests that the Court grant an Order sealing the Confidential Appendices unless and until the Receiver files a certificate confirming that the Sale Transaction has closed;

- (r) Rules 1.04, 1.05, 2.01, 2.03, 3, 37 and 41.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and s. 249 of the BIA; and
- (s) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Third Report of the Receiver, dated June 3, 2019 ~~to be filed~~; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

~~May 31, 2019~~ June 3, 2019

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A. Farber & Partners Inc.

STEVENS *et al.*
Applicants

-and-

HUTCHENS *et al.*
Respondents

Court File No. CV-18-608271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

AMENDED NOTICE OF MOTION

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TAB B

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

-and-

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE, also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

THIRD REPORT OF THE RECEIVER

June 3, 2019

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I. INTRODUCTION AND PURPOSE OF THE THIRD REPORT

1. On February 28, 2019, Justice Penny appointed A. Farber & Partners Inc. as interim receiver (**“Farber”** or the **“Receiver”**), without security, of all the assets undertakings and properties of Sandy Hutchens, Tanya Hutchens, and certain entities referred to in Schedule “A” of the Interim Appointment Order (collectively, the **“Debtors”**), including certain real property (the **“Properties”**). A copy of Justice Penny’s February 28, 2019 order (the **“Interim Appointment Order”**) is attached at **Appendix 1**.

2. On March 18, 2019, Justice Penny continued the Receiver’s appointment, expanded the list of Properties over which it extended, and expanded the Receiver’s powers to include control and management of certain of the properties that produced rental income. A copy of Justice Penny’s March 18, 2019 order (the **“March Order”**) is attached at **Appendix 2**.

3. On April 25, 2019, Justice Penny authorized and empowered the Receiver to sell five of the Properties (the **“Saleable Properties”**), and ordered a broader freezing of the Debtors’ assets subject to provisions for their living expenses and legal fees. A copy of Justice Penny’s April 25, 2019 order (the **“April Order”**) is attached at **Appendix 3**.

4. The Receiver files this third report (the **“Third Report”**) with the Court to advise of the Receiver’s activities and to support its request for an order:

- (a) Authorizing the Sale Transaction (defined below), vesting in the respective purchaser thereunder the right, title and interest of the subject property and authorizing the Receiver to take all steps required to complete the Sale Transaction;
- (b) Sealing Confidential Appendices A and B until further order of the Court;

- (c) Authorizing the distribution of \$80,319.60, more or less, from the Sale Transaction to Ronald Henderson, in payment of his loan to Sandy Hutchens secured by a mortgage registered on title to the subject property;
- (d) Specifying that the Receiver is appointed over the Additional Properties (defined below) in accordance with the March Order, including but not limited to the powers of management and control set out at ¶¶2(e)-(g) of that order in respect of such of the Additional Properties that are currently earning rental income; and
- (e) Empowering and authorizing the Receiver to market and sell the Additional Saleable Properties (defined below).

II. DISCLAIMER

5. In preparing this Third Report, the Receiver has relied upon the unaudited, draft and/or internal financial and other information provided by the Debtors, their advisors, and other third-party sources. Farber has not independently reviewed or verified such information. The Receiver has prepared this Third Report for the sole use of the Court and of the other stakeholders in these proceedings. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Third Report. Any use which any party, other than the Court, makes of this Third Report or any reliance on or a decision made based upon it is the responsibility of such party.

III. BACKGROUND

A. The Parties

6. The individual Applicants, Gary and Linda Stevens, are residents of Mayerthorpe, Alberta. The corporate Applicant, 1174365 Alberta Ltd., is an Alberta corporation, of which Gary and Linda are the sole shareholders.

7. The Respondents, Sandy Hutchens (“**Sandy**”) and Tatiana (Tanya) Hutchens (“**Tanya**”, together with Sandy, the “**Hutchens**”), are residents of Innisfil, Ontario and Vaughan, Ontario respectively. The United States District Court for the Eastern District of Pennsylvania has found the Hutchens liable to the Applicants for fraud in the amount of US\$26,774,736.09, pursuant to orders for default judgment entered on October 11, 2018 and December 19, 2018 (together the “**Pennsylvania Judgments**”, attached at **Appendices 4 and Appendix 5**, respectively). The Receiver understands that the Hutchens have appealed the Pennsylvania Judgments. Their appeals are outstanding as of the date of this Third Report.

8. The Applicants have brought the within Application for foreign recognition and enforcement of the Pennsylvania Judgments in Ontario, and for the appointment of a receiver in aid of enforcement.

B. The Pennsylvania Action and Judgments

9. In their Pennsylvania District Court action, the Applicants alleged that the Hutchens created and controlled a company, Westmoreland Equity Fund, LLC, which issued commitments for mortgage loans to prospective borrowers that it had neither the capacity nor intention to fund. Prospective borrowers were required to pay advance fees as a condition for closing. Once the loan application process was far enough along, Westmoreland would find fault with the loan application, impose additional terms, and often require additional fees. Westmoreland would invariably find that the prospective borrower had failed to abide by these new terms and terminate the loan application process. Upon termination of the loan application, Westmoreland would keep all the monies advanced (the “**Loan Fraud**”).

10. The District Court did not make factual findings in entering the Pennsylvania Judgments as the case proceeded by way of default. However, it concluded that the fraud claim was meritorious (*i.e.*, would support recovery if established at trial), that no *bona fide* defence had been raised by the Hutchens, and that their evidence of “innocence” was “clearly fraudulent”.¹ The allegations of fraud against the Hutchens are detailed in the Amended Federal Complaint, dated March 15, 2018 (attached at **Appendix 6**).

C. The Colorado Action

11. On May 1, 2017, a unanimous jury of the United States District Court for the District of Colorado found the Hutchens, as well as their daughter, Jennifer Hutchens, liable in a class action for a similar fraudulent scheme to the Loan Fraud, during an earlier period of time (the “**Colorado Class Action**”). The jury awarded class members compensatory damages in the amount of US\$8,421,367.00. On July 16, 2018, the Colorado District Court awarded treble damages, attorneys’ fees, costs of bringing suit, pre-judgment interest, and post-judgment interest in the total amount of US\$24,239,101.00 (the “**Colorado Judgment**”, attached at **Appendix 7**). The Colorado Judgment also imposed a constructive trust over various properties in Ontario. It is currently under appeal to the Tenth Circuit Court.

12. The plaintiffs in the Colorado Class Action have commenced a proceeding in the Ontario Superior Court of Justice (London) to recognize and enforce the Colorado Judgment (the “**Colorado Enforcement Action**”). As of the date of this Third Report, no judgment has been issued in the Colorado Enforcement Action.

¹ Pennsylvania Judgment, dated December 19, 2018, at p.10

IV. SALE TO BE APPROVED

13. On or around May 15, 2019, the Receiver entered into an agreement of purchase and sale (the “**Sale Transaction**”) in respect of one of the Saleable Properties, known municipally as 42 Clemow Avenue, Sudbury, Ontario (“**42 Clemow**”). A copy of the agreement of purchase and sale is attached at **Confidential Appendix “A”**. The Sale Transaction is scheduled to close on June 14, 2019.

14. The April Order authorizes and empowers the Receiver to:

- (a) “[C]onvey [or] transfer... the Saleable Properties or any part of parts thereof out of the ordinary course of business” without notice pursuant to the *Personal Property Security Act* or *Mortgages Act* (para. 1(b)); and
- (b) “[A]pply for any vesting order or other orders necessary to convey the Saleable Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Saleable Property” (para. 1(c)).

15. Although the Receiver is not required to seek Court approval for the Sale Transaction as its amount is below the approval threshold set out in the April Order, the Receiver prefers to obtain an approval and vesting order to simplify closing of the Sale Transaction.

16. The sale process followed and the basis for the Receiver’s recommendation to approve the Sale Transaction are set out below.

17. The Receiver requested listing proposals and marketing outlines from two Sudbury real estate brokerages. Given the state of disrepair, limited rental revenue, and unwillingness of the

tenant to cooperate with the Receiver or its agent, both brokerages suggested similarly conservative listing prices.

18. The Receiver chose Royal LePage Realty Team Brokerage as the listing brokerage (the “**Clemow Broker**”) because its listing proposal included a lower total commission rate than the other proposal. On May 9, 2019, the Clemow Broker publicly listed 42 Clemow sale at its suggested list price of \$114,900.

19. From May 9, 2019 to May 13, 2019, the Clemow Broker showed 42 Clemow 22 times. The Receiver received three offers to purchase 42 Clemow. From these, the Receiver considered one to be the best because it provided:

- (a) the highest purchase price;
- (b) no conditions (making it the only unconditional offer received);
- (c) the assumption of the current tenant; and
- (d) the shortest closing date of the three offers.

20. The Receiver also obtained a formal appraisal of 42 Clemow, as of May 15, 2019, which appraised the property to be worth approximately 8% lower than the purchase price under the Sale Transaction. A copy of the May 15, 2019 appraisal for 42 Clemow is attached at **Confidential Appendix “B”**.

21. Based on advice from the Clemow Broker and on the appraisal report, the Receiver accepted this offer, which was from an arm’s length party (the “**Clemow Purchaser**”).

22. As of the date of this report, the Clemow Purchaser has provided the Clemow Broker with a deposit of \$2,000, which is being held in trust by the Clemow Broker. The deposit is payable to

the Receiver as liquidated damages should the transaction not close due to default or failure to perform on the part of the Clemow Purchaser.

23. The Receiver recommends that this Court approve the Sale Transaction because:

- (a) The carrying costs incurred to manage 42 Clemow have been higher than the total rental revenue collected by the Receiver to date. Since the Receiver took over management of the Clemow Property, the tenant residing at 42 Clemow has only paid \$300 of the total \$3,600 rent due;
- (b) The Receiver selected a listing brokerage for 42 Clemow through a competitive proposals process;
- (c) The realtor marketed 42 Clemow for sale to the public and showed it to 22 prospective purchasers;
- (d) The Receiver received two other offers for lower purchase prices and with less desirable other terms;
- (e) The purchase price in the Sale Transaction is higher than the appraised value of the property; and
- (f) The purchase price of the Sale Transaction is sufficient to discharge the liability of the only mortgagee on title (set out in further detail below), who supports the Receiver closing the Sale Transaction.

V. PROPOSED PAYMENT TO MORTGAGEE

24. There is one mortgage registered on title to 42 Clemow. The mortgagee, Ronald Henderson, is arm's length from the Debtors and has documented his mortgage loan to the Receiver's satisfaction. The Respondents have confirmed Mr. Henderson's information. The

Receiver has obtained a security opinion to the effect that Mr. Henderson's mortgage is valid and enforceable to the extent of all monies advanced thereunder. A copy of the security opinion confirming Mr. Henderson's mortgage, dated May 8, 2019, is attached at **Appendix 8**.

25. The Receiver anticipates that the net proceeds of the Sale Transaction will exceed the amount of the mortgage loan, with accrued interest. The Receiver proposes to repay the full outstanding amount of the mortgage loan from the net proceeds of the Sale Transaction given this mortgagee's priority and in order to stop the accrual of loan interest. As of June 14, the scheduled closing date of the Sale Transaction, the amount payable to Mr. Henderson including interest will be \$80,319.60.

VI. ADDITIONAL PROPERTIES

26. The Receiver has identified the four properties at the following municipal addresses (the "Additional Properties"), not listed in Schedule B to the March Order, which are legally or beneficially owned by Tanya. The following table lists their addresses, registered owners, and Purview-estimated value of each Additional Property:

Hutchens et al				
Additional Properties of Interest				
Property	Registered Owner	Notes	Estimated Value	Comments
1573 Houston Ave, Innisfil	Tatiana Hutchens	1	932,700	Purchased May 27, 2016 for \$760,000. No mortgages on title
1760 Cross Street, Innisfil	Tatiana Hutchens	1	430,900	Purchased June 28, 2013 for 228,000. No mortgages on title
175 Hilda Ave, Suite 1015, Thornhil	Tatiana Hutchens	1	457,200	Purchased June 10, 2011 for 259,000. No mortgages on title
131 Beecroft Avenue Unit 62, Toronto	Dina Brik	1, 2	700,000	Purchased October 15, 1998. No Mortgages on title
Total			2,520,800	
Notes				
[1] Purchase date, amount and estimated market value based on Purview. For 131 Beecroft there was no market value so the original cost was used: \$230,000.				
[2] This Beecroft Avenue property pursuant to examination of Tanya Hutchens was purchased in trust for her by her mother Dina Brik. Further information has been requested to confirm the true beneficial owner of this property. Recent (2018) Purview comparative sales show a current market value of around \$700,000.				

27. The Receiver considers that the Additional Properties are subject to the Receivership pursuant to the March Order, which appoints Farber as Receiver over “all of the assets, undertakings and properties... of the Debtors.” The Receiver wishes to clarify this by expressly adding the Additional Properties to the Properties listed in Schedule B to the March Order.

28. Tanya is the registered owner of the first three properties at 1573 Houston Ave., Innisfil, 1760 Cross St., Innisfil, and 1015-175 Hilda Ave., Thornhill. Title searches indicate no registered mortgages on these properties.

29. Tanya’s mother, Dina Brik, appears to hold title to the condominium located at 131 Beecroft Avenue, Toronto, which was Tanya’s former residence. Both Tanya and Ms. Brik confirmed that Ms. Brik held this property in trust for Tanya. It therefore appears that Tanya holds a current beneficial interest in this property. During Tanya’s examination, she advised that this property was sold, but no such sale is registered on title and Tanya has not answered an undertaking to provide documentation of that sale as of the date of this Third Report. A copy of the parcel register and Purview (Teranet) search report are attached at **Appendix 9**.

30. The Debtors do not occupy any of the Additional Properties as residences. Two (1573 Houston Avenue and 1760 Cross Street) are vacant, one (1015-175 Hilda Avenue) is rented to a residential tenant, and the Receiver is uncertain as to whether the fourth (62-131 Beecroft) is rented. Paragraphs 2(e)-(g) of the March Order empowered and authorized the Receiver to take possession of, exercise control over and manage properties that do or might generate rental income. Consistent with the March Order and the Receiver’s subsequent identification of the Additional Properties, the Receiver recommends that it be similarly empowered and authorized with respect to the one or two Additional Properties that are rented to tenants.

VII. ADDITIONAL SALES

31. Paragraph 2 of the March Order empowers and authorizes the Receiver to take possession of, and exercise control over, certain of the Properties that produce rental income. Since the March Order, the Receiver has taken steps to possession and/or manage these properties, which are set out in detail in the Receiver's Second Report, dated May 15, 2019. The Receiver proposes to sell seven of these Properties and one Additional Property in addition to the Saleable Properties that the April Order empowered it to sell (the "**Additional Saleable Properties**"), namely the Properties located at:

- (a) 3415 Errington Avenue, Sudbury;
- (b) 3419 Errington Avenue, Sudbury;
- (c) 331 Regent Street, Sudbury;
- (d) 110-114 Pine Street, Sudbury;
- (e) 367-369 Howey Drive, Sudbury;
- (f) 1479 Maple Road, Innisfil; and
- (g) 1573 Houston Avenue, Innisfil.

32. The Receiver recommends the marketing and sale of the Additional Saleable Properties because:

- (a) Each has negative projected cash flow from operations, taking into account extraordinary repairs required due to the poor physical condition of most of the Properties;
- (b) Excluding extraordinary repair expenses (which may have to be incurred even if the properties are to be sold), each has projected cash flow from operations that is

either negative or below +\$1,000/month, such that cash flow is likely to be negative after management fees;

- (c) Each is an investment property and none is presently used as a residence;
- (d) To the Receiver's knowledge, none serve any purpose or has value to the Debtors other than as an investment;
- (e) In the case of 1479 Maple Road and 1573 Houston Avenue, Mrs. Hutchens listed them for sale prior to the Receiver's appointment. There are interested prospective purchasers in each.

33. The Additional Saleable Properties in Sudbury are in very poor condition. Many require urgent repairs to bring them into compliance with municipal and provincial fire, health and safety and by-law requirements. A copy of a report from North Key Property Management, a third party, Sudbury-based property manager that has been retained by the Receiver (the "**Sudbury Property Manager**") summarizing these issues is attached at **Appendix 10**. The issues include:

- (a) Insect and rodent infestations;
- (b) Household and other waste littering internal common areas;
- (c) Household waste, old furniture and other waste littering external areas, resulting in potential contravention of municipal by-laws and health and safety standards;
- (d) Overwhelming odours, which may be the result of mold or other contaminants;
- (e) Buildings not being up to fire code and/or a lack of evidence that legally required fire code checks were completed;
- (f) Vacant units being in a general state of disrepair (including issues with floors, drywall, cabinetry, roof leakage, plumbing, electrical, garbage), making them unrentable;

- (g) Leaking pipes causing water damage and other issues; and
- (h) Broken doors and windows that that present security risks.

34. The Sudbury Property Manager has sourced cost quotes from various service providers to bring the Sudbury Additional Saleable Properties up to fire code and to a state of repair that is commensurate with health and safety standards, municipal by-laws and general cleanliness. The Receiver has arranged these repairs on an urgent basis.

35. The Receiver has not taken possession of either of the two Additional Saleable Properties located in Innisfil and so does not have precise information as to their physical state. However, since both Properties are unrented, they are necessarily cash flow negative.

36. The Receiver has prepared a weekly consolidated cash flow forecast for the Additional Saleable Properties, that includes the cash requirements for these extraordinary costs of repair, which is attached at **Appendix 11**. Its figures are subject to the confirmation of property tax arrears, which the Receiver is in the process of obtaining from the appropriate municipalities. As detailed in the cash flow forecast, the estimated extraordinary repair costs for each of the Additional Saleable Properties are as follows:

Property	Waste Removal	Clean-Up	Pest Control	Fire Code	Building Repairs	Total
110-114 Pine Street	\$ 15,000	\$ 2,000	\$ 7,000	\$ 5,000		\$ 29,000
367-369 Howey Drive	\$ 2,200	\$ 1,500		\$ 5,000	\$ 3,000	\$ 11,700
331 Regent Street	\$ 2,200	\$ 1,000	\$ 3,000	\$ 5,000		\$ 11,200
3415 Errington Avenue	\$ 1,100	\$ 500		\$ 2,500		\$ 4,100
3419 Errington Avenue	\$ 1,100	\$ 500		\$ 2,500		\$ 4,100
1479 Maple Road		\$ 500			\$ 5,650	\$ 6,150
1573 Houston Avenue		\$ 500				\$ 500
Total	\$ 21,600	\$ 6,500	\$ 10,000	\$ 20,000	\$ 8,650	\$ 66,750

VIII. SEALING ORDER

37. Confidential Appendices A and B contain information disclosing the agreed sale price and appraised value, respectively, of 42 Clemow. The Receiver expects that disclosure of this information prior to the closing of the Sale Transaction may prejudice its negotiating position in the sale process for 42 Clemow that would be required if the Sales Transaction is not approved or do not close for any reason.

IX. RELIEF REQUESTED

38. Based on the foregoing, the Receiver respectfully requests that this Court issue an order:

- (a) Authorizing the Sale Transaction, vesting in the purchasers thereunder the right, title and interest of the subject property and authorizing the Receiver to take all steps required to complete the Sale Transaction;
- (b) Sealing Confidential Appendices A and B unless and until the Receiver files a certificate confirming that the Sale Transaction has closed.
- (c) Authorizing the distribution of \$80,319.60, more or less, from the Sale Transaction to Ronald Henderson, in payment of his loan to Sandy Hutchens secured by a mortgage registered on title to the subject property;
- (d) Specifying that the Receiver is appointed over the Additional Properties (defined below) in accordance with the March Order, including but not limited to the powers of management and control set out at ¶¶2(e)-(g) of that order in respect of such of the Additional Properties that are currently earning rental income; and
- (e) Empowering and authorizing the Receiver to market and sell the Additional Saleable Properties.

All of which is respectfully submitted this 3rd day of June, 2019.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS COURT APPOINTED
INTERIM RECEIVER OF HUTCHENS *ET AL.*
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY.**



APPENDIX 1

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE

JUSTICE PENNY

)

28TH DAY OF FEBRUARY, 2019

)



GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

– and –

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

**ORDER
(Appointing an Interim Receiver)**

THIS MOTION made by the Applicants on notice for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing A. Farber & Partners Inc. as receiver without security, of all of the assets, undertakings and properties of the Respondents and the entities referred to at Schedule “A” attached hereto (collectively, with the Respondents, the “Debtors”) acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicants, the Supplementary Motion Record of the Applicants and the Factum of the Applicants, the consent of A. Farber & Partners Inc. to

act as the receiver, the letter from counsel for the plaintiffs in Court File No. 2651/17 supporting the relief sought herein, and on hearing the submissions of counsel for the Applicants and the Debtors:

APPOINTMENT

1. THIS COURT ORDERS that, from the date of this Order until March 18, 2019 (the "Adjournment Period"), A. Farber & Partners Inc. is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties, including the real property listed in Schedule "B" hereto (the "Schedule "B" Properties"), of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

INTERIM RECEIVER'S POWERS

2. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to investigate and monitor, but not to exercise control over, the Debtors' affairs and Property;
- (b) to review and have access to any and all financial information pertaining to the Debtors and the Property, including bank statements, financial records and accounts;
- (c) to demand access to additional documents as it sees fit;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property

and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;

- (f) to conduct examinations under oath of any Person concerning the management of known assets of the Debtors and the existence of any other assets; and
- (g) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below) and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

3. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, shareholders, banks, financial institutions, brokerages, and all officers and employees of such banks, financial institutions and brokerages, (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, and (iv) anyone acting on the instructions of anyone listed in this paragraph (all of the foregoing, collectively, being "Persons" and each being a "Person", save and except for the Applicants) shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control.

4. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed

or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

6. THIS COURT ORDERS that the Interim Receiver shall have access to those premises wherever the Records are kept, retained, stored or used, including, but not limited to, the Schedule "B" Properties, upon reasonable notice to any of the Debtors having control of such premises, or their legal counsel, and the offices or residential premises of all Persons (as defined in sub-paragraph 3 above) relating to the business and affairs of the Debtors, and the Debtors and all Persons shall take all reasonable steps to ensure that the Interim Receiver will have such access.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that, with the exception of the proceeding underway in Court File No. 2651/17 in the Superior Court of Justice at London, Ontario, no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Interim Receiver, or affecting the Property, except the within proceeding and the proceeding underway in Court File No. 2651/17 in the Superior Court of Justice at London, Ontario, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized

banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

12. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

13. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The amount of the Interim Receiver's Charge shall not exceed \$150,000.

14. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its

legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

SERVICE AND NOTICE

15. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<<https://farbergroup.com/engagements/hutchens/>>'.

16. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

17. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

18. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

19. THIS COURT ORDERS that the appointment of the Interim Receiver shall expire on March 18, 2019, or such other date as ordered by the Court, unless continued by an Order of this Court.

20. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

21. THIS COURT ORDERS that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

22. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

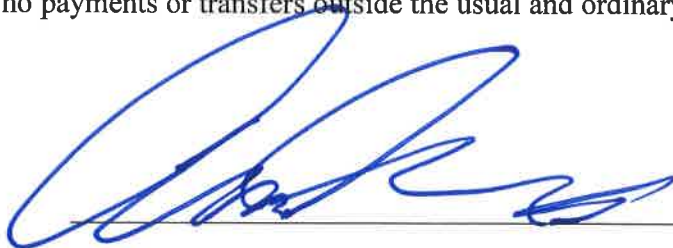
FREEZING OF ASSETS

23. THIS COURT ORDERS that the Debtors, and their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of the Property;

- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

24. THIS COURT ORDERS that the Property shall be managed in the usual and ordinary course of business and that there shall be no payments or transfers outside the usual and ordinary course of business.



Alan G. Smith

SUPERIOR COURT OF
JUSTICE

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

MAR 05 2019

PER / PAR: *RW*

SCHEDULE "A"
DEBTOR ENTITIES

1. 29 Laren Street Inc.
2. 3415 Errington Avenue Inc.
3. 3419 Errington Avenue Inc.
4. 331 Regent Street Inc.
5. 110-114 Pine Street Inc.
6. 15-16 Keziah Court Inc.
7. 193 Mountain Street Inc.
8. 625 Ash Street Inc.
9. 101 Service Road Inc.
10. 146 Whittaker Street Inc.
11. Estate of Judith Hutchens
12. 364 Morris Street Inc.
13. 367-369 Howey Drive Inc.
14. 720 Cambrian Heights Inc.
15. JBD Hutchens Family Holdings Inc.
16. 17 Serpentine Street Inc.

SCHEDULE "B"
DEBTOR PROPERTIES

Real Property:

	Property Address	Registered Owner	Legal Description of Real Property
1.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0001 (LT); PCL 12042 SEC SES; PT LT 31 BLK B PL M9 DRYDEN & PT LT 32 BLK B PL M9 DRYDEN AS IN LT67718; PT LT 33 PL M9 DRYDEN PT 1 53R64589; GREATER SUDBURY
2.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0006 (LT); PCL 12115 SEC SES; LT 30 BLK B PL M9 DRYDEN; GREATER SUDBURY
3.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0008 (LT); PLC 12201 SEC SES; LT 29 BLK B PL M9 DRYDEN; PT PINE ST PL M9 DRYDEN; PT LANE PL PL M9 DRYDEN (NOW CLOSED) PARTS 3- 5, 53R9050 SAVE & EXPECTING THEREFROM THE CANADIAN PACIFIC RAILWAY COMPANY PROPERTY, & THAT PORTION OF THE WAHNAPIITAE RIVER; S/T LT567345; GREATER SUDBURY
4.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0493 (LT); PCL 3816 SEC SES; LT 5-6 BLK B PL M9 DRYDEN; S/T LT567345; GREATER SUDBURY
5.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0446 (LT); PCL 12386 SEC SES; LT 1-3 BLK B PL M9 DRYDEN; GREATER SUDBURY
6.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0512 (LT); PLC 198 SEC SES; LT 4 BLK B PL M9 DRYDEN; GREATER SUDBURY
7.	3415 Errington Avenue Sudbury, Ontario	3415 Errington Avenue Inc.	PIN: 73349-1569 (LT) PCL 10618 SEC SWS; LT 215 BLK 6

	Property Address	Registered Owner	Legal Description of Real Property
			PL M91 BALFOUR; GREATER SUDBURY
8.	3419 Errington Avenue Sudbury, Ontario	3419 Errington Avenue Inc.	PIN: 73349-0720 (LT) PCL 21629 SEC SWS; LT 222 BLK 6 PL M91 BALFOUR; GREATER SUDBURY
9.	331 Regent Street Sudbury, Ontario	331 Regent Street Inc.	PIN #73586-0638 (LT) LT 297 PL 4SC MCKIM; GREATER SUDBURY
10.	110-114 Pine Street Sudbury, Ontario	110-114 Pine Street Inc.	PIN #02135-0246 (LT); LTS 48, 49, PT LT 50, BLK B PLAN 3SA; PTS 2, 4, 5, 6 53R11500 SUBJECT TO S94352 CITY OF SUDBURY
11.	193 Mountain Street Sudbury, Ontario	193 Mountain Street Inc.	PIN #02132-0942 (LT); PCLS 2388, 3113 AND 21292 SEC SES LTI PLAN M28B EXCEPT COMM AT THE S ELY ANGLE OF LT1; THENCE S 37 DEG 16'W ALONG THE SLY LIMIT OF LT1 A DISTANCE OF 42FT 3INCHES TO THE SLY ANGLE OF SAID LT1; THENCE S 73 DEG 04"W ALONG THE SLY LIMIT OF SAID LT1 A DISTANCE OF 10FT, 6INCHES TO THE SW ANGLE OF LT1; THENCE N 52DEG 10"W ALONG THE W LIMIT OF LT1 A DISTANCE OF 10FT, 6INCHES TO A POINT; THENCE N 64DEG 29'E A DISTANCE OF 11 FT MORE OR LESS TO A POINT BEING 11.0FT N 25DEG 31'W OF THE SLY ANGLE OF LT1; THENCE N 52 DEG 00' E A DISTANCE OF 38FT MORE OR LESS TO THE POC, PLAN ATTACHED IN 33273, NOW PCL 5776 SES; LT2 PLAN M28B EXCEPT COMMENCING AT THE S ELY ANGLE OF LT2, THENCE S 73 DEGREES 04'W ALONG THE SLY LIMIT OF LT2 A DISTANCE OF 63'2" TO THE S WLY ANGLE OF LT2, THEN N64 DEGREES 29' EA DISTANCE OF 62' MORE OR LESS TO A POINT ON THE ELY LIMIT OF LT2, THENCE S 52 DEGREES E ALONG THE ELY LIMIT OF LT2 A

	Property Address	Registered Owner	Legal Description of Real Property
			DISTANCE OF 10'6" MORE OR LESS TO THE POC; PLAN ATTACHED IN 33273, NOW PLC 5776 SES; EXCEPT COMM AT A POINT IN THE S WESTERN LIMIT OF SAID LT2 DISTANT 95.0FT FROM THE MOST SLY ANGLE OF SAID LT; THENCE N 45DEG 23'W TO A POINT IN THE HIGHWATER MARK OF THE EASTERN BANK OF JUNCTION CREEK; THENCE S WLY FOLLOWING ALONG SAID HIGHWATER MARK TO THE MOST WLY ANGLE OF SAID LT; THENCE S 54DEG 42'E ALONG THE AFORESAID S WESTERN LIMIT 95.0 FT MORE OR LESS TO THE POC, NOW PCL 21291 SES; EXCEPT PT1 53R8264; PT LT3 PLAN M28B COMM AT TA POINT IN THE N ELY ANGLE; THENCE S 70 DEG 32' W ALONG THE S EASTERN LIMIT OF SAID LT 18.0FT; THENCE N 45DEG 23'W TO THE POC; EXCEPT PT 2 53R8264 SUBJECT TO 25265S/T LT868119 PART 6&7 ON PLAN 53R-16220 CITY OF SUDBURY
12.	1779 Cross Street Innisfil, Ontario	Tanya Hutchens	PIN #58069-0150 (LT); PT N 1/2 LT 25 CON 6 INNISFIL AS IN R01093173; ST R01093173; INNISFIL
13.	367-369 Howey Drive Sudbury, Ontario	367-369 Howey Drive Inc.	PIN #73583-0400 (LT); LT 1-2 BLK A PL 5SA MCKIM S/T & T/W S112782; S/T INTEREST IN S112782; GREATER SUDBURY
14.	33 Theodore Place Vaughan, Ontario	Tatiana Hutchens	PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593: Vaughan
15.	33 Theodore Place Vaughan, Ontario	Tatiana Hutchens	PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593: Vaughan
16.	1889 Simcoe Blvd Innisfil, Ontario	Tatiana Hutchens	LT 31, PL 657; INNISFIL being all of PIN (58072-0299 (LT))
17.	1790 Cross Street	Tatiana Hutchens	LT 1, PL 978; INNISFIL

	Property Address	Registered Owner	Legal Description of Real Property
	Innisfil, Ontario		being all of PIN (58069-0103 (LT))
18.	1479 Maple Road Innisfil, Ontario	Tatiana Hutchens	LT 6, PL 642; INNISFIL being all of PIN (58068-0102 (LT))

Personal Property:

Sea Doo Boat located at 33 Theodore Place, Vaughan, Ontario.

GARY STEVENS et al. v. SANDY HUTCHENS et al.
Applicants Respondents

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(APPOINTING INTERIM RECEIVER)**

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171 John Street, Suite 101
Toronto, Ontario M5T 1X3
Fax: 1.866.495.8389

Justin Necpal (LSO# 56126J)
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ahassan@necpal.com

Lawyers for the Applicants, Gary Stevens,
Linda Stevens and 1174365 Alberta Ltd.

APPENDIX 2

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE

JUSTICE PENNY

)

18TH DAY OF MARCH, 2019

)

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

-and-

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

**ORDER
(Continuing Receivership)**

THIS MOTION made by the Applicants on notice for an Order continuing the appointment of A. Farber & Partners Inc. as receiver without security, of all of the assets, undertakings and properties of the Respondents and the entities referred to at Schedule "A" attached hereto (collectively, with the Respondents, the "Debtors"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicants, the Supplementary Motion Record of the Applicants and the Factum of the Applicants, the consent of A. Farber & Partners Inc. to act as the receiver, and on hearing the submissions of counsel for the Applicants, the Debtors and the plaintiffs in Court File No. 2651/17:

APPOINTMENT CONTINUED

1. THIS COURT ORDERS that the Order dated February 28, 2019 (the "February 28 Order") appointing A. Farber & Partners Inc. as Receiver, without security, of all of the assets, undertakings and properties, including the real property listed in Schedule "B" hereto (the "Schedule "B" Properties"), of the Debtors, including all proceeds thereof (the "Property"), is hereby continued on the terms set out below, until further order of this Court.

RECEIVER'S POWERS

2. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to investigate and monitor the Debtors' affairs and the Property;
- (b) to review and have access to any and all financial information pertaining to the Debtors and the Property, including bank statements, financial records and accounts;
- (c) to demand access to additional documents as it sees fit;
- (d) to take possession of and exercise control over the real property listed in Rows 1-13 and 16-20 of Schedule "B" hereto (hereinafter "the Income Producing Property") and any and all proceeds, receipts and disbursements arising out of or from the Income Producing Property;
- (e) to receive, preserve, and protect the Income Producing Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (f) to manage, operate, and carry on the business of the Debtors with respect to the Income Producing Property, including the powers to enter into any agreements,

incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (g) to receive all revenues generated by the Income Producing Property, including without limitation any rents paid by tenants thereof;
- (h) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) to conduct examinations under oath of any Person concerning the management of known assets of the Debtors and the existence of any other assets; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;
- (l) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below) and without interference from any other Person.

RING-FENCING AND USE OF FUNDS

3. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected, from and after the making of this Order, from any source whatsoever, including without limitation the collection of rents paid by tenants of the Property and

the collection of any accounts receivable of the Debtors in whole or part, whether in existence on the date of the Order or hereafter coming into existence, shall be deposited into new property-specific accounts (the "**Segregated Accounts**") to be opened by the Receiver immediately. The Segregated Accounts shall be segregated such that all receipts in respect of a property shall be deposited into the Segregated Account opened in respect of such property and all permitted disbursements (the "**Permitted Disbursements**") in respect of such property shall be withdrawn therefrom, if sufficient funds are available. Permitted Disbursements shall mean, in relation to the property in respect of which a Segregated Account has been opened, realty taxes, utilities, payroll, insurance, maintenance expenses, other reasonable property-specific expenses and business expenses associated with such property. The Receiver shall have sole signing authority over the Segregated Accounts.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, shareholders, banks, financial institutions, brokerages, and all officers and employees of such banks, financial institutions and brokerages, (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, and (iv) anyone acting on the instructions of anyone listed in this paragraph (all of the foregoing, collectively, being "Persons" and each being a "Person", save and except for the Applicants) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall have access to those premises wherever the Records are kept, retained, stored or used, including, but not limited to, the Schedule "B" Properties, upon reasonable notice to any of the Debtors having control of such premises, or their legal counsel, and the offices or residential premises of all Persons (as defined in sub-paragraph 4 above) relating to the business and affairs of the Debtors, and the Debtors and all Persons shall take all reasonable steps to ensure that the Receiver will have such access.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that, with the exception of the proceeding underway in Court File No. 2651/17 in the Superior Court of Justice at London, Ontario, no Proceeding against or in

respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, except the within proceeding and the proceeding underway in Court File No. 2651/17 in the Superior Court of Justice at London, Ontario, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each

case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

LIMITATION ON THE RECEIVER'S LIABILITY

13. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

14. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

15. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

16. THIS COURT ORDERS that the Receiver and its counsel shall allocate their respective fees and disbursements with respect to work done on each of the Income Producing Properties.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, including monies in the Segregated Accounts, against its fees and disbursements, including legal fees and

disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

18. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "C" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

21. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

22. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

23. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

TIMING OF FURTHER STEPS

24. The Respondents shall fulfill their obligations under the February 28 order by no later than April 18, 2019.

25. The Receiver shall deliver a further report by April 30, 2019.



CM CHIBA, Registrar
Superior Court of Justice

330 UNIVERSITY AVE.	330 AVE. UNIVERSITY
7TH FLOOR	7E ÉTAGE
TORONTO, ONTARIO	TORONTO, ONTARIO
M5G 1A7	M5G 1A7

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

MAR 26 2019

PER / PAR: *RW*

SCHEDULE "A"
DEBTOR ENTITIES

1. 29 Laren Street Inc.
2. 3415 Errington Avenue Inc.
3. 3419 Errington Avenue Inc.
4. 331 Regent Street Inc.
5. 110-114 Pine Street Inc.
6. 15-16 Keziah Court Inc.
7. 193 Mountain Street Inc.
8. 625 Ash Street Inc.
9. 101 Service Road Inc.
10. 146 Whittaker Street Inc.
11. Estate of Judith Hutchens
12. 364 Morris Street Inc.
13. 367-369 Howey Drive Inc.
14. 720 Cambrian Heights Inc.
15. JBD Hutchens Family Holdings Inc.
16. 17 Serpentine Street Inc.

SCHEDULE "B"
DEBTOR PROPERTIES

Real Property:

	Property Address	Registered Owner	Legal Description of Real Property
1.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0001 (LT); PCL 12042 SEC SES; PT LT 31 BLK B PL M9 DRYDEN & PT LT 32 BLK B PL M9 DRYDEN AS IN LT67718; PT LT 33 PL M9 DRYDEN PT 1 53R64589; GREATER SUDBURY
2.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0006 (LT); PCL 12115 SEC SES; LT 30 BLK B PL M9DRYDEN;GREATERSUDBURY
3.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0008 (LT); PLC 12201 SEC SES; LT 29 BLK B PL M9 DRYDEN; PT PINE ST PL M9 DRYDEN; PT LANE PL PL M9 DRYDEN (NOW CLOSED) PARTS 3- 5, 53R9050 SAVE & EXPECTING THEREFROM THE CANADIAN PACIFIC RAILWAY COMPANY PROPERTY, & THAT PORTION OF THE WAHNAPITAE RIVER; S/T LT567345; GREATER SUDBURY
4.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0493 (LT); PCL 3816 SEC SES; LT 5-6 BLK B PL M9 DRYDEN; S/T LT567345; GREATER SUDBURY
5.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0446 (LT); PCL 12386 SEC SES; LT 1-3 BLKB PL M9DRYDEN;GREATERSUDBURY
6.	29 Laren Street Sudbury, Ontario	29 Laren Street Inc.	PIN #73481-0512 (LT); PLC 198 SEC SES; LT 4 BLK B PL M9 DRYDEN;GREATERSUDBURY
7.	3415 Errington Avenue Sudbury, Ontario	3415 Errington Avenue Inc.	PIN: 73349-1569 (LT)

	Property Address	Registered Owner	Legal Description of Real Property
			PCL 10618 SEC SWS;LT215BLK6PL M91 BALFOUR; GREATER SUDBURY
8.	3419 Errington Avenue Sudbury, Ontario	3419 Errington Avenue Inc.	PIN: 73349-0720 (LT) PCL 21629 SEC SWS; LT 222 BLK 6 PL M91 BALFOUR; GREATER SUDBURY
9.	331 Regent Street Sudbury, Ontario	331 Regent Street Inc.	PIN #73586-0638 (LT) LT 297 PL 4SC MCKIM; GREATER SUDBURY
10.	110-114 Pine Street Sudbury, Ontario	110-114 Pine Street Inc.	PIN #02135-0246 (LT); LTS 48, 49, PT LT 50, BLK B PLAN 3SA; PTS 2, 4, 5, 6 53R11500 SUBJECT TO S94352 CITY OF SUDBURY
11.	193 Mountain Street Sudbury, Ontario	193 Mountain Street Inc.	PIN #02132-0942 (LT); PCLS 2388, 3113 AND 21292 SEC SES LTI PLAN M28B EXCEPT COMM AT THESELY ANGLE OF LT1; THENCE S 37 DEG 16'W ALONG THE SLY LIMIT OF LT1 A DISTANCE OF 42FT 3INCHES TO THE SLY ANGLE OF SAID LT1; THENCE S 73 DEG 04'W ALONG THE SLY LIMIT OF SAID LT1 A DISTANCE OF 10FT, 6INCHES TO THE SW ANGLE OF LT1; THENCE N 52DEG 10'W ALONG THE W LIMIT OF LT1 A DISTANCE OF 10FT, 6INCHES TO A POINT; THENCE N 64DEG 29'E A DISTANCE OF 11 FT MORE OR LESS TO A POINT BEING 11.0FT N 25DEG 31'W OF THE SLY ANGLE OF LT1; THENCE N 52 DEG 00' E A DISTANCE OF 38FT MORE OR LESS TO THE POC, PLAN ATTACHED IN 33273, NOW PCL5776 SES; LT2 PLAN M28B EXCEPT COMMENCING AT THESELY ANGLE OF LT2, THENCE S 73 DEGREES 04'W ALONG THE SLY LIMIT OF LT2 A DISTANCE OF 63'2" TO THE SWLY ANGLE OF LT2, THEN N 64 DEGREES 29' EA DISTANCE OF 62' MORE OR LESS TO A POINT ON THE ELY LIMIT OF LT2, THENCE S 52 DEGREES E ALONG THE ELY LIMIT OF LT2 A

	Property Address	Registered Owner	Legal Description of Real Property
			DISTANCE OF 10'6" MORE OR LESS TO THE POC; PLAN ATTACHED IN 33273, NOW PLC 5776 SES; EXCEPT COMM AT A POINT IN THE S WESTERN LIMIT OF SAID LT2 DISTANT 95.0FT FROM THE MOST SLY ANGLE OF SAID LT; THENCE N 45DEG 23'W TO A POINT IN THE HIGHWATER MARK OF THE EASTERN BANK OF JUNCTION CREEK; THENCE S WLY FOLLOWING ALONG SAID HIGHWATER MARK TO THE MOST WLY ANGLE OF SAID LT; THENCE S 54DEG 42'E ALONG THE AFORESAID S WESTERN LIMIT 95.0 FT MORE OR LESS TO THE POC, NOW PCL 21291 SES; EXCEPT PT1 53R8264; PT LT3 PLAN M28B COMM AT TA POINT IN THEN ELY ANGLE; THENCE S 70 DEG 32' W ALONG THE S EASTERN LIMIT OF SAID LT 18.0FT; THENCE N 45DEG 23'W TO THE POC; EXCEPT PT 2 53R8264 SUBJECT TO 25265S/T LT868119 PART 6&7 ON PLAN 53R-16220 CITY OF SUDBURY
12.	1779 Cross Street Innisfil, Ontario	Tanya Hutchens	PIN #58069-0150 (LT); PT N 1/2 LT 25 CON 6 INNISFIL AS IN R.01093173;STR.01093173;INNISFIL
13.	367-369 Howey Drive Sudbury, Ontario	367-369 Howey Drive Inc.	PIN #73583-0400 (LT); LT 1-2 BLK A PL 5SA MCKIM S/T & T/W S112782; S/T INTEREST IN S112782; GREATER SUDBURY
14.	33 Theodore Place Vaughan, Ontario	Tatiana Hutchens	PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593; Vaughan
15.	33 Theodore Place Vaughan, Ontario	Tatiana Hutchens	PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593; Vaughan
16.	1889 Simcoe Blvd Innisfil, Ontario	Tatiana Hutchens	LT 31, PL 657; INNISFIL being all of PIN (58072-0299 (LT))
17.	1790 Cross Street Innisfil, Ontario	Tatiana Hutchens	LT 1, PL 978; INNISFIL being all of PIN (58069-0103 (LT))

	Property Address	Registered Owner	Legal Description of Real Property
18.	1479 Maple Road Innisfil, Ontario	Tatiana Hutchens	LT 6, PL 642; INNISFIL being all of PIN (58068-0102 (LT))
19.	17 Serpentine Street Sudbury, Ontario	17 Serpentine Street Inc.	PIN 73599-0157 (LT); PLC 40961 SEC SES SRO; LT 95 PL MI 025 MCKIM; S/T LT 387652, LT387654; GREATER SUDBURY
20.	42 Clemow Avenue Sudbury, Ontario	Sandy Hutchens and the Estate of Judith Hutchens	

Personal Property:

Sea Doo Boat located at 33 Theodore Place, Vaughan, Ontario.

SCHEDULE "C"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT\$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

- 6 -

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

GARY STEVENS et al. v. SANDY HUTCHENS et al.
Applicants Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(CONTINUING RECEIVERSHIP)**

Necpal Litigation Professional Corporation
171 John Street, Suite 101
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Lawyers for the Applicants, Gary Stevens,
Linda Stevens and 1174365 Alberta Ltd.

APPENDIX 3

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY , THE 25TH

)

JUSTICE PENNY

)

DAY OF APRIL, 2019

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

– and –

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

ORDER

THIS MOTION, made by the Respondents, was heard this day at 330 University Avenue, Toronto, Ontario.

ON BEING ADVISED of the Consent of the Applicants, the Respondents, the entities referred to at Schedule “B” attached hereto, the plaintiffs in the Ontario Superior Court of Justice proceeding bearing London Court File No. 2651/17 (the “**London Plaintiffs**”), Ronald Henderson, Meridian Credit Union Limited, and A. Farber & Partners Inc. as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of the Respondents and certain additional entities pursuant to Orders in this proceeding dated February 28 and March 18, 2019 (together, the “**Appointment Orders**”), and on being advised that no other member of the Service List in this proceeding has opposed the relief herein,

SALE OF PROPERTIES

1. THIS COURT ORDERS that in addition to the Receiver's powers and authorizations set out in the Appointment Orders, the Receiver is hereby empowered and authorized, but not obligated, to act as follows in respect of the properties listed in Schedule "A" hereto (the "**Saleable Properties**"):

- (a) to market any or all of the Saleable Properties, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (b) to sell, convey, transfer, lease or assign the Saleable Properties or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act* shall not be required; and

- (c) to apply for any vesting order or other orders necessary to convey the Saleable Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Saleable Property.

2. THIS COURT ORDERS that paragraph 3 of the Order herein dated March 18, 2019 shall apply to the proceeds of sale of any Saleable Property, net of closing expenses.

FREEZING, LIVING EXPENSES, LEGAL EXPENSES

3. THIS COURT ORDERS that the Respondents and the entities referred to at Schedule "B" attached hereto (collectively, the "Debtors"), and their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Debtors, wherever situate;
- (b) instructing, requesting, counselling, demanding , or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

4. THIS COURT ORDERS that paragraph 3 applies to all of the Debtors' assets whether or not they are in their own names and whether they are solely or jointly owned. For the purpose of this order, the Debtors' assets include any asset which any one of them has the power, directly or indirectly, to dispose of or deal with as if it were his own. A Debtor is to be regarded as having such power if a third party holds or controls the assets in accordance with the Debtor's direct or indirect instructions.

5. THIS COURT ORDERS that notwithstanding paragraphs 3 and 4 of this Order, the Receiver shall:

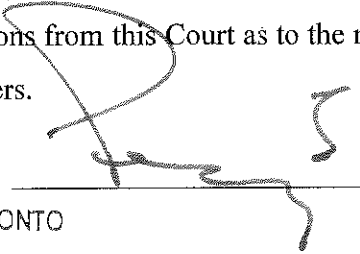
- (a) pay to the Debtors reasonable amounts from the funds in the Receiver's possession as a result of the Appointment Orders or this Order, subject to the availability of such funds for spending on ordinary living expenses and legal advice and representation, and excluding the following funds from the proceeds of the Saleable Properties noted, which funds shall not be paid to the Debtors without the express written consent of the London Plaintiffs or further Order of the Court obtained on notice to the London Plaintiffs:

- 4 -

- (i) 33 Theodore Place, Vaughan, Ontario – \$379,968;
 - (ii) 42 Clemow Avenue, Sudbury, Ontario – \$615,000; and
 - (iii) 1779 Cross Street, Innisfil, Ontario – \$150,626.22;
- (b) authorize the Debtors to spend reasonable amounts from funds in their power, possession or control otherwise subject to paragraph 3 above on ordinary living expenses and legal advice and representation, and in either case the Debtors shall be entitled to spend such funds on ordinary living expenses and legal advice and representation only.

6. THIS COURT ORDERS that the Receiver shall provide notice to the Applicants and the London Plaintiffs of any amount to be paid or authorized to a Debtor pursuant to paragraph 5 above at least 24 hours prior to making such a payment.

7. THIS COURT ORDERS that if the Receiver and any Debtor cannot agree on reasonable amounts to be paid pursuant to paragraph 5 above, or if the Applicants and/or the London Plaintiffs dispute the reasonableness of any amount proposed to be paid, any of the Receiver, the Debtors, the Applicants, or the London Plaintiffs may seek directions from this Court as to the reasonable quantum to be paid on at least 24 hours' notice to the others.



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

APR 25 2019

PER/PAR: UM

SCHEDULE "A"
SALEABLE PROPERTIES

	Property Address	Registered Owner	Legal Description of Real Property
1.	1779 Cross Street Innisfil, Ontario	Tanya Hutchens	PIN #58069-0150 (LT); PT N 1/2 LT 25 CON 6 INNISFIL AS IN R01093173; ST R01093173; INNISFIL
2.	1889 Simcoe Blvd Innisfil, Ontario	Tatiana Hutchens	LT 31, PL 657; INNISFIL being all of PIN (58072-0299 (LT))
3.	1790 Cross Street Innisfil, Ontario	Tatiana Hutchens	LT 1, PL 978; INNISFIL being all of PIN (58069-0103 (LT))
4.	42 Clemow Avenue Sudbury, Ontario	Sandy Hutchens and the Estate of Judith Hutchens	PCL 7614 SEC SES; LT 278 PL M128 MCKIM; GREATER SUDBURY
5.	33 Theodore Place Vaughan, Ontario	Tatiana Hutchens	PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593: Vaughan

SCHEDULE "B"
DEBTOR ENTITIES

1. 29 Laren Street Inc.
2. 3415 Errington Avenue Inc.
3. 3419 Errington Avenue Inc.
4. 331 Regent Street Inc.
5. 110-114 Pine Street Inc.
6. 15-16 Keziah Court Inc.
7. 193 Mountain Street Inc.
8. 625 Ash Street Inc.
9. 101 Service Road Inc.
10. 146 Whittaker Street Inc.
11. Estate of Judith Hutchens
12. 364 Morris Street Inc.
13. 367-369 Howey Drive Inc.
14. 720 Cambrian Heights Inc.
15. JBD Hutchens Family Holdings Inc.
16. 17 Serpentine Street Inc.

STEVENS *et al.*
Applicants

-and-

HUTCHENS *et al.*
Respondents

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Lawyers for the Receiver,
A. Farber & Partners Inc.

APPENDIX 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GARY STEVENS, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	Civ. No. 18-692
	:	
WESTMORELAND EQUITY FUND, LLC,	:	
et al.,	:	
Defendants.	:	

ORDER

On September 4, 2018, Plaintiffs Gary and Linda Stevens filed a Motion for Default Judgment against Defendant Sandy Hutchens Pursuant to Rules 37 and 55. (Doc. No. 104); Fed. R. Civ. P. 37, 55. Plaintiffs' base their motion on Hutchens' repeated and flagrant disregard of their discovery requests and my Order compelling him to comply with those requests. (See Doc. Nos. 94, 100.) On September 26, 2018, I issued an Order compelling Hutchens to show cause why I should not grant Plaintiffs' Motion. (Doc. No. 107.) Hutchens has not responded. I will grant the Motion.

I. BACKGROUND

Plaintiffs brought this action to recover damages they suffered as a result of a purportedly fraudulent scheme carried out by Hutchens, Westmoreland Equity Fund, and others. (Am. Complaint ¶ 1, Doc. No. 31.)

As pled, in October 2014, Plaintiffs sought refinancing for mortgage loans on property they were developing in Saskatchewan, Canada. (Id. ¶ 134.) Defendants Sofia Capital Ventures, LLC and Barbara Leuin referred Plaintiffs to Westmoreland and its Canadian representative, Ed Ryan. (Id. ¶ 137–43.) Plaintiffs allege that “Ed Ryan” is one of a number of Hutchens' pseudonyms. (Id. ¶ 9.) On October 30, 2014, Plaintiffs received a letter of intent from

Westmoreland, offering to provide a development loan of \$13,400,000 CDN. (Id. ¶ 145.) To secure the loan, Westmoreland required Plaintiffs to pay advance fees of over \$50,000. (Id. ¶ 146, 155.) Plaintiffs furnished these fees by mortgaging their Arizona home. (Id. ¶ 149.)

Plaintiffs were assured by Defendant American Escrow and Settlement Services—which they believed to be an independent company—that Westmoreland had a loan capacity of \$475,000,000. (Id. ¶ 153.) As alleged, American Escrow was actually a sham entity run by Defendant Bernard Feldman, on behalf of Defendant Lydecker Diaz—the law firm Sandy Hutchens engaged to represent Westmoreland. (Id. ¶ 48–55.)

On November 10, 2014, Westmoreland gave Plaintiffs a commitment letter for a loan of \$13,900,000 CDN. (Id. ¶ 156.) On February 23, 2015, after two appraisals of the Plaintiffs’ property, Westmoreland dropped that offer to \$5,700,000 CDN. (Id. ¶ 166.) Westmoreland also determined that Plaintiffs had forfeited their advance fees because they had breached the commitment letter. (Id. ¶ 167.) On March 23, 2015, Westmoreland again changed the terms of the loan commitment to \$7,500,000 CDN, conditioned on Plaintiffs meeting certain fund requirements. (Id. ¶ 168–69.) While Westmoreland delayed, however, the original lender foreclosed on Plaintiffs’ Saskatchewan property. (Id. ¶ 171.) Moreover, Plaintiffs were unable to repay the mortgage on their Arizona home and subsequently lost the property. (Id. ¶ 150.)

II. DISCUSSION

“If a party . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders.” Fed. R. Civ. P. 37(b)(2)(A). These actions may include “rendering a default judgment against the disobedient party.” Id. 37(b)(2)(A)(vi).

Plaintiffs seek an Order of Default Judgment against Sandy Hutchens to recover treble

damages for their loss of \$8,924,921.03. (Pls.' Interim Rep. 3, Doc. No. 117; Pls.' Mot. Default J. 5, Doc. No. 104.) Entering a Rule 55 default judgment as sanctions for failing to participate in litigation is governed by the *Poulis* factors. See Mindek v. Rigatti, 964 F.2d 1369, 1373 (3d Cir. 1992) (*Poulis* factors are the proper standard for considering punitive dismissals); Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 868 (3d Cir. 1984) (listing six factors for determining whether the district court "abused its discretion in dismissing, or refusing to lift a default").

These six factors are:

(1) the extent of the party's personal *responsibility*; (2) the *prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a *history* of dilatoriness; (4) whether the conduct of the party or the attorney was *willful* or in *bad faith*; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of *alternative sanctions*; and (6) the *meritoriousness* of the claim or defense.

Poulis, 747 F.2d at 868 (emphasis in original). I must "make explicit factual findings concerning these factors," but "it is not necessary that all of these factors point toward a default before that sanction will be upheld." Hoxworth v. Blinder, Robinson & Co., Inc., 980 F.2d 912, 919 (3d Cir. 1992). After considering these factors, I find that all six weigh in favor of entering default judgment against Hutchens.

First, Hutchens is personally responsible for ignoring repeated discovery requests, my Order to compel discovery, and my Order to show cause. Hutchens is able to respond to all of these, as he originally answered Plaintiffs' Amended Complaint. (Doc. No. 60.) His *pro se* status does not excuse his failure to participate. See, e.g., Hoxworth, 980 F.2d at 920 ("Defendants had personal responsibility for the conduct of the litigation after their attorney withdrew."); Jimenez v. Rosenbaum-Cunningham, Inc., No. 07-1066, 2010 WL 1303449, at *6 (E.D. Pa. Mar. 31, 2010) (this factor weighed against *pro se* litigant who did not comply with

discovery requests); Smith v. Altegra Credit Co., No. 02-8221, 2004 WL 2399773, at *4-5 (E.D. Pa. Sept. 22, 2004) (same for *pro se* litigant who missed numerous status conferences).

Second, I find that Plaintiffs are prejudiced by Hutchens' refusal to engage in discovery. His recalcitrance has greatly impaired Plaintiffs' attempts to remedy their losses. Third, Hutchens has a history of dilatoriness: he has ignored repeated discovery requests and two of my Orders. Fourth, although the record does not prove Hutchens' motives, his pattern of recalcitrance strongly suggests he is acting willfully and in bad faith. See Roman v. City of Reading, 121 Fed. Appx. 955, 960 (3d Cir. 2005) (non-precedential) (Plaintiffs' failure to offer any excuse for "dilatory conduct" was suggestive of bad faith). Fifth, Hutchens' failure to provide any excuse for is inaction "depriv[es] [me] of the ability to craft a more moderate sanction that will ensure future compliance." Plumbers Union Local No. 960 v. F.P.S. Plumbing, Inc., No. 08-4271, 2009 WL 2591153, at *4 (E.D. Pa. Aug. 20, 2009). Accordingly, I find that the imposition of alternative sanctions would be ineffective.

Finally, I find that Plaintiffs have a meritorious claim as defined by the *Poulis* Court: "the allegations of the pleadings, if established at trial, would support recovery by plaintiff." Poulis, 747 F.2d at 870. Hutchens' ten page answer to Plaintiffs' eighty-one page Amended Complaint provides a mere boilerplate response to Plaintiffs' detailed factual allegations against him. (See Doc. Nos. 31, 60.) This factor also weighs in favor of a default.

III. CONCLUSION

In sum, I find that all six *Poulis* factors weigh in favor of entering a default judgment against Hutchens, who has plainly abandoned any defense of this action. Accordingly, I will grant Plaintiffs' Motion and judgment will be entered in favor of Plaintiffs and against Defendant

Sandy Hutchens. An appropriate Judgment follows.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

October 10, 2018

Paul S. Diamond, J.

APPENDIX 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GARY STEVENS, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	Civ. No. 18-692
	:	
WESTMORELAND EQUITY FUND, LLC,	:	
et al.,	:	
Defendants.	:	

ORDER

On January 26, 2018, Plaintiffs Gary and Linda Stevens filed this RICO action against Defendants Sandy Hutchens, Westmoreland Equity Fund, LLC, and others, in the Philadelphia Common Pleas Court, alleging injuries arising from Defendants' advance-fee mortgage frauds. (Doc. No. 1.) On February 15, 2018, Defendants removed the case. (*Id.*) Plaintiffs subsequently amended their Complaint. (Doc. No. 31.) On September 4, 2018, Plaintiffs sought default judgment against Sandy Hutchens for his failure to comply with discovery requests and my Orders. (Doc. No. 104); Fed. R. Civ. P. 37; 55. On September 26, 2018, I ordered Hutchens to show cause as to why Plaintiffs' Motion should not be granted, giving him until October 17, 2018 to respond. (Doc. No. 107.) On October 9, 2018, I prematurely entered Judgment against Hutchens, pursuant to Rules 37 and 55. (Doc. Nos. 119, 120.) On October 10 and 11, 2018, I vacated my October 9th Order and Judgment, and reentered corrected versions. (Doc. Nos. 121, 122, 123.) On October 16, 2018, Hutchens responded to my September 26, 2018 Show Cause Order, pointing out that I had entered Judgment against him before his response period had expired. (Doc. No. 126.) Plaintiffs responded, agreeing that the Order and Judgment should be vacated to clear the record of procedural error. (Doc. No. 127.) I thus vacated my Order and Judgment against Hutchens, and gave Hutchens until November 16, 2018 to comply with my prior Orders. (Doc. No. 128.)

On October 18, 2018, Plaintiffs asked me to reinstate the Judgment against Hutchens. (Doc. No. 131.) I denied their Motion. (Doc. No. 132.) Hutchens filed delinquent discovery responses before the end of my thirty-day deadline. (See Doc. Nos. 143, 144, 148.)

On November 16, 2018, Plaintiffs filed the instant Motion for Reentry of Default Judgment Against Sandy Hutchens. (Doc. No. 142.) Hutchens opposed the Motion, Plaintiffs replied, and Hutchens sur-replied. (Doc. Nos. 151, 152, 153.) I will reenter Judgment against Hutchens.

I. FACTUAL BACKGROUND

As pled, in October 2014, Plaintiffs sought refinancing for mortgage loans on property they were developing in Saskatchewan, Canada. (Am. Compl. ¶ 134, Doc No. 31.) Defendants Sofia Capital Ventures, LLC and Barbara Leuin referred Plaintiffs to Westmoreland Equity Fund and its Canadian representative, “Ed Ryan,” who was Sandy Hutchens acting under a pseudonym. (Id. ¶¶ 9, 137–43.) On October 30, 2014, Plaintiffs received a letter of intent from Westmoreland, offering to provide them with a development loan of \$13,400,000 CDN. (Id. ¶ 145.) To secure the loan, Westmoreland required Plaintiffs to pay advance fees of over \$50,000. (Id. ¶¶ 146, 155.) Plaintiffs obtained these fees by mortgaging their Arizona home. (Id. ¶ 149.)

Plaintiffs were assured by Defendant American Escrow and Settlement Services—which they believed to be an independent company—that Westmoreland had a loan capacity of \$475,000,000. (Id. ¶ 153.) As alleged, American Escrow was a sham entity run by Defendant Bernard Feldman on behalf of Defendant Lydecker Diaz—the law firm Hutchens engaged to represent Westmoreland. (Id. ¶¶ 48–55.)

On November 10, 2014, Westmoreland gave Plaintiffs a commitment letter for a loan of \$13,900,000 CDN. (Id. ¶ 156.) On February 23, 2015, after two appraisals of the Plaintiffs’ property, Westmoreland dropped that offer to \$5,700,000 CDN. (Id. ¶ 166.) Westmoreland also

determined that Plaintiffs had forfeited their advance fees because they had breached the commitment letter's terms. (Id. ¶ 167.) On March 23, 2015, Westmoreland again changed the terms of the loan commitment to \$7,500,000 CDN, conditioned on Plaintiffs meeting certain fund requirements. (Id. ¶¶ 168–69.) While Westmoreland delayed, however, the original lender foreclosed on Plaintiffs' Saskatchewan property. (Id. ¶ 171.) Moreover, Plaintiffs were unable to repay the mortgage on their Arizona home, which they subsequently lost. (Id. ¶ 150.)

Plaintiffs charge Hutchens with: (1) fraud and misrepresentation, (2) conversion and civil theft, (3) civil conspiracy, (4) aiding and abetting, and (5) four RICO counts. (See id.); 18 U.S.C. §§ 1962(c), (d). Plaintiffs now seek to reinstate Judgment against Hutchens for damages in the amount of \$ 26,774,763.09, subject to any offsets. (Mot. Reentry Default J., Doc. 142); Fed. R. Civ. P. 37(b)(2)(A)(vi), 55(b)(2).

II. LEGAL STANDARDS

"If a party . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders." Fed. R. Civ. P. 37(b)(2)(A). These actions may include "rendering a default judgment against the disobedient party." Id. 37(b)(2)(A)(vi).

Entering a Rule 55 default judgment as a sanction for failing to participate in litigation is within my discretion and governed by the *Poulis* factors. See Mindek v. Rigatti, 964 F.2d 1369, 1373 (3d Cir. 1992) (*Poulis* factors are the proper standard for considering punitive dismissals); Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 868 (3d Cir. 1984) (listing six factors for determining whether the district court "abused its discretion in dismissing, or refusing to lift a default"). These six factors are:

- (1) the extent of the party's personal *responsibility*; (2) the *prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a *history* of dilatoriness; (4) whether the conduct of the party or the attorney was *willful* or in *bad faith*; (5) the effectiveness of sanctions other than dismissal, which

entails an analysis of *alternative sanctions*; and (6) the *meritoriousness* of the claim or defense.

Poulis, 747 F.2d at 868 (emphasis in original). I must “make explicit factual findings concerning these factors,” but “it is not necessary that all of these factors point toward a default before that sanction will be upheld.” Hoxworth v. Blinder, Robinson & Co., Inc., 980 F.2d 912, 919 (3d Cir. 1992).

A party’s *pro se* status does not excuse his failure to participate in discovery or comply with Orders. See, e.g., id. at 920 (“Defendants had personal responsibility for the conduct of the litigation after their attorney withdrew.”); Jimenez v. Rosenbaum-Cunningham, Inc., No. 07-1066, 2010 WL 1303449, at *6 (E.D. Pa. Mar. 31, 2010) (this factor weighed against *pro se* litigant who did not comply with discovery requests); Smith v. Altegra Credit Co., No. 02-8221, 2004 WL 2399773, at *4–5 (E.D. Pa. Sept. 22, 2004) (same for *pro se* litigant who missed numerous status conferences).

III. DISCUSSION

Plaintiffs ask me to reenter judgment against Hutchens as sanctions for his willful failure to comply with my Orders and provide discovery in good faith. (Pls.’ Mot. Reentry Default J., Doc. No. 142); Fed. R. Civ. P. 37(b)(2)(A)(vi), 55(b)(2). Plaintiffs allege that “Hutchens has filed false, unverified interrogatory answers incorporating forged documents, produced virtually no relevant documents, and has provided no reason in response to the Court’s Order to show cause why judgment should not be reentered.” (Pls.’ Mem. Supp. Mot. Reentry Default J. 1, Doc. No. 142-1.) I agree, and will provide a summary of Hutchens’ obstructive and fraudulent pattern of behavior during this litigation.

On June 8, 2018, Plaintiffs first served Hutchens with requests for production of documents and interrogatories. (Id. at 3–4, 13.) After he made no response, on July 19, 2018, Plaintiffs again

served Hutchens with the same discovery requests, which Hutchens continued to ignore. (Id.; Pls.' Mot. Compel 1–2, Doc. No. 94.) On August 21, 2018, Plaintiffs asked me to compel Hutchens to provide discovery. (See Mot. Compel.) On August 28, 2018, Hutchens failed to appear at the preliminary pre-trial hearing in defiance of my July 6, 2018 Order requiring his attendance. (Doc. Nos. 92, 101.) Accordingly, on the same day, I ordered Hutchens to respond to Plaintiffs' outstanding discovery requests by September 3, 2018, admonishing that his failure to provide discovery could result in entry of judgment against him. (Doc. No. 100.)

Hutchens ignored my August 28, 2018 Order. (See Mot. Default J., Doc. No. 104.) In fact, Hutchens continued to ignore this litigation and his corresponding obligations until *after* I entered Judgment against him. (Doc. No. 107, 121, 123.) On November 6, 2018, Hutchens finally produced eleven documents (totaling 285 pages), and sent Plaintiffs the following discovery responses: (1) Answers to Interrogatories; (2) Response Notice to Production of Documents; and (3) Initial FRCP 26 Disclosures. (Pl.'s Mem. Supp. Mot. Reentry Default J. 3–4, 13, Doc. No. 142-1; Def.'s Answers to Interrogs., Doc. No. 143; Def.'s Resp. Notice Produc. Docs., Doc. No. 144; Def.'s Initial FRCP 26 Discls., Doc. No. 148.) There is considerably less to these submissions than their titles would suggest.

Hutchens refused to respond to ten out of the twenty-three interrogatories posed by Plaintiffs, objecting that they were either irrelevant or “overly broad, vague and extremely burdensome.” (See Def.'s Answers to Interrogs.) Hutchens simply did not respond to an eleventh. (Id. at 15.) My review of these unanswered interrogatories confirms that they were appropriate under Rule 26.

For example, Hutchens refused to provide contact information for other named Defendants, despite this request being a mandatory initial disclosure. (Id. 1–2); Fed. R. Civ. P. 26(a)(1)(A)(i).

Hutchens refused to provide details for loan deals listed on Westmoreland's website as "neither being relevant nor leading to an[y] relevant evidence," despite clearly going towards establishing Westmoreland's ongoing RICO conspiracy. (Id. at 13–14.) Hutchens also refused to answer—on the basis of relevance—interrogatories relating to: (1) testimonials listed on Westmoreland's website; (2) transactions involving Defendants Sofia Capital and Leuin; (3) Westmoreland payments to Sofia Capital and Leuin; (4) payments and transfers made by Defendant American Escrow at the direction of Westmoreland; (5) transactions between Westmoreland and the Finrock Defendants; and (6) Westmoreland payments to the Finrock Defendants. (Id. at 14–17.) Hutchens argues that because these interrogatories involve Defendants no longer party to the case, the information is not relevant. (Id.) Hutchens either ignores or misunderstands that the information is relevant to Plaintiffs' RICO conspiracy claims against him and therefore is squarely within the scope of Rule 26. Fed. R. Civ. P. 26(b)(1).

Hutchens also refused to "identify each and every transaction for which Westmoreland accepted a fee in connection with a loan" as "overly broad, vague and extremely burdensome." (Def.'s Answers to Interrogs. 17.) It is troubling that Hutchens finds maintaining and providing basic business records to be so burdensome. Their relevance to Plaintiffs' RICO allegations is obvious.

More troubling, those responses Hutchens *did* provide are largely false or fraudulent. When asked to identify Westmoreland's source of funds for Plaintiffs' loan, Hutchens named lending agreements with banks that the files produced by his co-defendants (Bernard Feldman and American Escrow), indicate did not become part of the Westmoreland scheme until two years later. (See Def.'s Answers to Interrogs. 10; Pls.' Mem. Supp. Mot. Reentry Default J. 16–20.) Notably,

Hutchens did not produce the lending agreements he identified in his Responses. (Pls.' Mem. Supp. Mot. Reentry Default J. 18; Def.'s Resp. Notice Produc. Docs.)

In these circumstances—where Hutchens refused to answer basic, relevant questions and, when he did respond, did so falsely—it is apparent that Hutchens has continued to defy his discovery obligations and this Court's Orders.

Plaintiffs requested that Hutchens produce, *inter alia*, "all documents relating to" the named Defendants, Hutchens' alias, and a number of Westmoreland's loan deals. (See Def.'s Resp. Notice Produc. Docs. 1–3.) Hutchens refused to produce documents responsive to these six Requests, again objecting that they were "overly broad and burdensome and essentially a fishing expedition" and "relate to persons [or] entities not defendants in this action." (*Id.*) Once again, the Requests were entirely proper. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.") Hutchens fails to appreciate that those persons or entities are the Defendants in this case who were dismissed due to settlement, failure to serve, or entry of default judgment. Documentation regarding these Defendants—who are named members of the Westmoreland RICO conspiracy—is obviously relevant to the charges against Hutchens, the alleged leader of that conspiracy.

Hutchens deigned only to produce documents related to Plaintiffs' and their property, the Intervenor Plaintiffs, and Westmoreland wire transfers—a grand total of eleven documents. (Def.'s Resp. Notice Produc. Docs. 3–5; Pls.' Mem. Supp. Mot. Reentry Default J. 13 n.7.) Moreover, Hutchens failed to produce complete copies of the documents he offered as "evidence" of his "innocence" in his Response to my September 26, 2018, Show Cause Order, and he also failed to produce *any* of the documents he mentioned in his interrogatory Responses. (Pls.' Mot. Reentry Default J. 2; Def.'s Resp. Order Show Cause 2–28.) Although Hutchens stated that he

did not have documents relating to another five categories of Requests, he did not sign or otherwise verify his Response. (See Def.'s Resp. Notice Produc. Docs.) He has since corrected this failure—after Plaintiffs pointed it out—by filing a separate verification which does not comport with applicable law. (Verification, Doc. No. 154; Pls.' Mot. Strike, Doc. No. 156); 28 U.S.C. § 1746.

In his Initial FRCP 26 Disclosures, Hutchens identified “all other defendants” and “all plaintiffs” as individuals likely to have discoverable information to support his defense. (See Def.'s Initial FRCP 26 Discls., 89–92.) Hutchens also identified “documents previously produced” as those that would support his defense. (Id.) He made no other disclosures. (See id.) These “Disclosures” are obviously worthless.

In sum, Hutchens has virtually stonewalled Plaintiffs' discovery requests. Hutchens only response to my September 26, 2018 Show Cause Order was to allege that he failed to comply with my Order to compel because “he was never served at any time in accord with the applicable laws and treaties in existence between the USA and Canada.” (Def.'s Resp. Order Show Cause 1, Doc. No. 126.) Hutchens further alleges that “he did not receive all the various pleadings and Orders” and further contests—without offering any supporting evidence—the merits of Plaintiffs' claim, alleging that: (1) Plaintiffs' loan application contained fraudulent misrepresentations; (2) Plaintiffs' project was not viable and would have failed “regardless of what lender [Plaintiffs] would have approached for funding”; and (3) that Plaintiffs suffered “no damages whatsoever.” (Id. at 1–4 (emphasis omitted).) Hutchens offered no additional excuse for his delay other than contesting validity of service. Notably, on March 27, 2018, I ordered Plaintiffs to serve Hutchens with the Amended Complaint and pleadings by regular mail to his home address and by email. (Doc. No. 35); Fed. R. Civ. P. 4(f)(3). Since then, Plaintiffs' counsel has verified service by email and regular mail at Hutchens' address per my Order for all pleadings. (Aff. of Service, Doc. No.

39; Pls.' Mem. Supp. Mot. Reentry Default J. 6.) Hutchens undoubtedly was aware of the ongoing lawsuit because, on May 15, 2018, he filed an Answer to the Complaint. (Doc. No. 60.) Hutchens has nonetheless repeatedly and consistently flouted my Orders to participate.

Plainly, Hutchens has not shown good cause for his failure to comply with discovery requests or my Orders, nor has he remotely shown why I should not enter Judgment against him. See Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298, 1306 n.9 (3d Cir. 1995) (good cause is "a discretionary judgment to be exercised by the district court" and is governed by an abuse of discretion standard.) In these circumstances—where Hutchens' pattern of behavior reveals an unapologetic contempt for the judicial process—entry of default judgment is an appropriate sanction as guided by the *Poulis* factors. See Poulis, 747 F.2d at 868.

Hutchens—and Hutchens alone—is responsible for failing to engage in this litigation. His *pro se* status is no excuse. See Hoxworth, 980 F.2d at 920. His statement that he never received pleadings is obviously false and contradicted by the record. (See Aff. of Service; Pls.' Mem. Supp. Mot. Reentry Default J. 6.)

Hutchens' failure to participate in this litigation has severely prejudiced Plaintiffs, who have been unable to obtain crucial evidence regarding their claims, including loan appraisals proving that Plaintiffs' property was valued accurately (despite Hutchens and Westmoreland's allegations that it was worth barely half that amount). (Compare Def.'s Resp. Show Cause Order 1–6 with Pls.' Mem. Supp. Mot. Reentry Default J. 7–8 n.3.) Moreover, in negotiating settlements with other Defendants, Plaintiffs' strategy was reasonably affected by their understanding that there would be a judgment against Hutchens. (Pls.' Mem. Supp. Mot. Reentry Default J. 21.)

As I discussed above, Hutchens has an extensive history of missed deadlines, appearances, and ignored Orders. Even now, he ignores the electronic filing system and defies my Standing

Order governing motions practice. (See Doc. Nos. 2, 92.) His discovery responses virtually non-existent and his discovery objections are frivolous. Moreover, they appear rife with inaccuracies and falsehoods, supported only by forged or fraudulent documents. (See Pls.' Mem. Supp. Mot. Reentry Default J. 16–21; Pl.'s Reply, Doc. 152.) In responding to the instant Motion, he has appended documents and exhibits that he told Plaintiffs did not exist or were irrelevant to the litigation. (Pls.' Reply 2; Pls.' Mot. Strike 2.) His actions are obviously both dilatory and taken in bad faith.

Alternative sanctions would not be effective. Hutchens has repeatedly ignored or defied my prior Orders. The seriousness of this sanction against him is appropriate and merited by my continual warnings and notice to Hutchens of the likely consequences. (See Doc. Nos. 92, 100, 107.)

Plaintiffs also have a meritorious claim as defined by the *Poulis* Court: “the allegations of the pleadings, if established at trial, would support recovery by [P]laintiff[s].” *Poulis*, 747 F.2d at 870. Hutchens’ ten page answer to Plaintiffs’ eighty-one page Amended Complaint provides nothing more than single denials of Plaintiffs’ detailed factual allegations. (See Doc. Nos. 31, 60.) Hutchens’ current arguments reveal his casual attitude towards the truth. His “evidence” of “innocence” is clearly fraudulent and contradicted by documents obtained by the Plaintiffs from other Defendants. (Pls.’ Mem. Supp. Mot. Reentry Default J. 9–21; Pls.’ Reply, Doc. No. 7; Compare Exs. to Def.’s Opp. Mot. Default J., 151-2 with Exs. to Pls.’ Mot. Reentry Default J., 142-2.) Hutchens has provided me with no reason to believe that he has a meritorious or even bona fide defense to Plaintiffs’ claims.

Accordingly, all six *Poulis* factors weigh in favor of entering default judgment against Hutchens. I will therefore do so. An appropriate Judgment follows.

December 19, 2018

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

APPENDIX 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Gary Stevens; Linda Stevens; and
1174365 Alberta Ltd.,

Plaintiffs,

v.

Civil No. 2:18-cv-692-PD

Westmoreland Equity Fund LLC; Sandy Hutchens
Ed Ryan; Tanya Hutchens; Jennifer Hutchens;
Shannon Hutchens; Matthew Kovce;
Jason Underwood; Bernard Feldman;
Sofia Capital Ventures, LLC; Barbara Leuin;
American Escrow & Settlement Services, LLC;
Elias Correa; Alan Feldman; Lydecker, Lee, Berga,
& De Zayas LLC; Lydecker LLP and Richard
Lydecker,

Defendants.

AMENDED FEDERAL COMPLAINT

I. INTRODUCTION

1. Plaintiffs Gary Stevens, Linda Stevens, and 1174365 Alberta Ltd. bring this action pursuant to Pennsylvania Law and the Federal Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1964(c), to recover the damages they suffered after being swept up in a massive advance-fee real-estate loan scam.

II. PARTIES

2. Plaintiffs Linda and Gary Stevens are natural persons, residents of Mayerthorpe, Alberta, Canada.

3. Plaintiff 1174365 Alberta Ltd. is a corporation incorporated in Alberta, Canada. Linda and Gary Stevens are the sole stockholders of 1174365 Alberta.

4. Defendant American Escrow and Settlement Services LLC (“American Escrow”) is a Florida Corporation organized by Defendant Bernard Feldman. It claims Boca Raton, Florida, as its principal place of business, and has also listed an address in Hollywood, Florida.

5. Defendant Elias Correa was a partner with the Florida law firm of Lydecker, Lee, Berga & De Zayas, LLC (operating as “Lydecker Diaz”). All acts and omissions carried out by Correa alleged in this complaint were done in his capacity as a partner of Lydecker Diaz.

6. Defendant Alan Feldman was a partner with the Florida law firm of Lydecker Diaz. All acts and omissions carried out by Alan Feldman alleged in this complaint were done in his capacity as a partner of Lydecker Diaz.

7. Defendant Bernard Feldman (“Feldman”) is a natural person who is a resident of Boca Raton, Florida.

8. Defendant Jennifer Hutchens is the daughter of Sandy Hutchens. On information and belief, under the alias of Jennifer Araujo, she represented herself to be the “Manager of Underwriting” for First Central Mortgage Funding Inc.,

Canadian Funding Corporation, and 308 Elgin Street Inc. Jennifer Hutchens is the mother of Defendant Matthew Kovce's children.

9. Defendant Sandy Hutchens ("Hutchens") is a Canadian citizen and a resident of Toronto, Ontario, Canada. Hutchens has used many aliases, and presented himself as the chief executive of several fraudulent corporate entities that he has created to carry out his fraudulent schemes, including presenting himself as "Ed Ryan," the Managing Member of Westmoreland, when he defrauded Plaintiffs.

10. Defendant Shannon Hutchens is the daughter of Sandy Hutchens. Shannon Hutchens is the mother of Defendant Ed Ryan's children.

11. Defendant Tanya Hutchens is the wife of Sandy Hutchens. On information and belief, she participated in the enterprise in several ways, including preparing many of the loan commitment letters issued by the enterprise and helping to launder the funds derived from the scheme.

12. Defendant Matthew Kovce is purportedly in a "common law" marriage with Defendant Jennifer Hutchens. Defendant Kovce allowed Hutchens to use his name to conceal Hutchens's true identify. Upon information and belief, Plaintiffs allege that Hutchens paid Kovce in exchange for allowing him to use his name.

13. Defendant Barbara Leuin is a resident of California and the chief executive officer of Defendant Sofia Capital Ventures, LLC.

14. Defendant Lydecker, Lee, Berga & De Zayas, LLC, is a Florida limited liability company with its principal place of business in Miami, Florida.

15. Defendant Lydecker LLP is a Florida limited partnership D/B/A Lydecker Diaz F/D/B/A Lydecker Diaz, F/D/B/A Lydecker, Lee, Berga & De Zayas, LLC, (“Lydecker LLP”) was formed by Defendant Richard Lydecker on May 23, 2017. On November 14, 2017, Lydecker LLP registered the fictitious name Lydecker | Diaz. Lydecker | Diaz is the new fictitious name for, and mere continuation of its predecessor, Defendant Lydecker, Lee, Berga & De Zayas, LLC. Both are controlled by the same person, Defendant Richard Lydecker. Both have the same management, personnel, location, clients, and both conduct the same business of providing legal services.

16. Defendant Richard J. Lydecker is a resident of Miami, Florida. He was the managing member of Lydecker, Lee, Berga & De Zayas, LLC and Lydecker LLP.

17. Defendant Ed Ryan is purportedly in a “common law” marriage with Defendant Shannon Hutchens. Defendant Ryan allowed Sandy Hutchens to use his name to conceal Hutchens’ true identity. Upon information and belief, Plaintiffs allege that Sandy Hutchens paid Ryan and/or Defendant Shannon Hutchens in exchange for allowing them to use Ed Ryan’s name.

18. Defendant Sofia Capital Ventures, LLC (“Sofia”) is a Colorado corporation with its principal place of business in Colorado Springs, Colorado.

19. Defendant Jason Underwood (“Underwood”) was represented by Westmoreland to be a natural person to have undertaken the function as underwriter on its behalf. His location is unknown. Westmoreland’s prior counsel could not furnish an address for him and the receptionist at Westmoreland’s claimed principal place of business had never heard of him.

20. Defendant Westmoreland Equity Fund (“Westmoreland”) is a Delaware Corporation. Its principal place of business is 1650 Market Street, Philadelphia, Pennsylvania.

III. VENUE AND JURISDICTION

21. Venue was proper in the Pennsylvania Court of Common Pleas of Philadelphia County and under federal law under 18 U.S.C. § 1965(a), (b).

22. The Court has jurisdiction over this action under 28 U.S.C. § 1441, pursuant to which Defendants removed this action from the Pennsylvania Court of Common Pleas of Philadelphia County.

23. The Court has original jurisdiction over this action pursuant to RICO, 18 U.S.C. § 1964(c), which confers jurisdiction upon this Court over the subject matter of this action. The Court also has jurisdiction over the subject matter

pursuant to 28 U.S.C. § 1331 in that this action arises under the laws of the United States.

24. The Pennsylvania Court of Common Pleas had jurisdiction over this action under 42 Pa. Stat. and Cons. Stat. Ann. § 5322 as Defendants acted directly or by an agent as to a cause of action or other matter arising from such person: (1) Transacting any business in this Commonwealth. (i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object. (ii) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts. (iv) The engaging in any business or profession within this Commonwealth. (3) Causing harm or tortious injury by an act or omission in this Commonwealth. (4) Causing harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth. (7) Accepting election or appointment or exercising powers under the authority of this Commonwealth as a: (iv) Director or officer of a corporation and (10) Committing any violation within the jurisdiction of this Commonwealth of any statute, home rule charter, local ordinance or resolution, or rule or regulation promulgated thereunder by any government unit or of any order of court or other government unit.

25. Westmoreland's principal place of business is at the 36th Floor of 1650 Market Street in Philadelphia, Pennsylvania. That virtual office is also the Philadelphia address of Defendant Lydecker Diaz.

IV. FACTS GIVING RISE TO THIS CAUSE OF ACTION

A. THE ROLES OF THE KEY PARTICIPANTS IN THE SCHEME

1. Westmoreland Equity Fund

26. Westmoreland Equity Fund, LLC ("Westmoreland"), purported to be a major commercial lender. Its website stated, among other things during the relevant period: "A Trusted Partner In Over 3,000 Deals. Westmoreland Equity Fund LLC has participated in thousands of closed transactions over the past several years and is known for its ability to complete underwriting and fund quickly." It further claimed that "Westmoreland participated as a funding partner in over 100 projects in 2014 and continues to seek new projects."

27. Westmoreland's website, like Westmoreland's Pennsylvania Foreign Corporation Registration, stated that its principal place of business was 1650 Market Street, 36th Floor, Philadelphia, Pennsylvania, i.e., Liberty Place. It listed no other place of business other than the 1650 Market Street address.

28. In fact, Westmoreland had no employees at its headquarters and only identified office. This is because Westmoreland is total fraud. It is the latest iteration of a long-running criminal enterprise.

29. The mastermind of the scheme is Sandy Hutchens, whose extensive criminal record goes back more than twenty years. He was most recently convicted for three counts of fraud in Canada in April, 2005. To disguise his criminal past, Hutchens used numerous aliases, including “Ed Ryan,” “Fred Hayes,” “Moishe Alexander,” “Moshe Ben Avraham,” “Alexander MacDonald,” “Frederick Merchant,” “Mathew Kovce,” and others. Hutchens never used his true name in any of his dealings with the Plaintiffs.

30. Before Westmoreland was created in or about 2013, the scheme had operated through an entity known as “Canadian Funding Corporation” (“CFC”), which Hutchens incorporated on January 28, 2004. The scam was subsequently renamed and reincorporated under various names, including 308 Elgin Street, Inc., and First Central Mortgage Funding Inc. (“FCMF”).

31. After the Toronto Star and Internet websites such as “Ripoff Report” and the “Jewish Whistleblower” had exposed Hutchens and his use of CFC, 308 Elgin, and FCMF to carry out his scheme, Hutchens, using the alias “Mathew Kovce,” incorporated the Great Eastern Investment Fund (“GEIF”) in March, 2011. When GEIF began to be identified as a fraud, the enterprise changed names again in early 2013, incorporating under the name of Defendant Westmoreland.

32. Defendant Bernard Feldman has been actively involved since at least the GEIF iteration of the scheme, in which he participated through his entity,

Hollywood Title Services, LLC, the same entity Feldman used in the transactions for which Feldman pleaded nolo contendere to charges of criminal fraud.

33. The victims of the enterprise are persons or entities who require financing for real estate transactions. To that end, they engage the services of various mortgage brokers, such as Defendants Barbara Leuin and Sofia. The mortgage brokers obtained loan applications and related materials from these borrowers, which were transmitted via the U.S. Mail and/or interstate wire facilities to the Westmoreland enterprise.

34. The enterprise would then issue loan commitments to victims even though it had neither the capacity nor the intent to fund the real estate loans. These loan commitments provided that, as a condition for closing on the respective commitment, substantial fees, characterized as “lender’s legal fees,” “lender’s administrative fee,” “inspection fee,” and “brokerage fee” were to be paid in advance. For example, after the applicant paid the “inspection fee,” the enterprise would arrange for an “inspection” of the prospective collateral.

35. Once the loan application process was far along, the enterprise would invariably find fault with the loan applications and materials submitted, the victims’ compliance with the covenants of the commitment letter, or with the property offered as collateral. The enterprise would then impose additional terms and conditions, often including a demand for additional fees and, in time,

invariably found that the applicant had failed to satisfy these new terms and conditions. The enterprise would then identify trumped-up defects as grounds for terminating the loan application process. Upon the loan application being terminated, the enterprise would keep all the monies advanced. Claiming that the fees had been earned and were nonrefundable, it refused to give any of it back to the borrowers.

36. Upon information and belief, Defendant Tanya Hutchens wrote letters issued and sent by the enterprise purporting to commit loans to applicants. Upon information and belief, Defendant Jennifer Hutchens issued wiring instructions for the legal and administrative fees to be wired to one of the enterprise's accounts.

37. Over the years, the enterprise committed to loans worth hundreds of millions of dollars, and collected more than \$10 million in advance fees.

2. "Ed Ryan"/Sandy Hutchens

38. Sandy Hutchens ("Hutchens") is a notorious criminal in Canada. In 2004, he pleaded guilty to financial fraud charges and was sentenced to two years of house arrest followed by two years of probation. Defendants undertook significant efforts to disguise his identity from Plaintiffs.

39. The foreign corporation registration statement filed for Westmoreland Equity Fund, LLC with Pennsylvania Department of State contains a sworn

certification with the signature “Ed Ryan.” Ed Ryan was the alias that Hutchens used to conceal his identity during the operation of Westmoreland.

40. Westmoreland has been named in other cases which allege the same fraudulent scheme, and Ed Ryan was identified as the person represented to be Westmoreland’s principal in each of them. *See Campanile Investments, LLC v. Westmoreland Equity Fund, LLC*, 17-00337 (W.D. Tex. April 17, 2017); *Leathem Stearn et al. v. Westmoreland Equity Fund, Ed Ryan, and Bernard Feldman*, No. 1:16-cv-01211 (D. Col., May 20, 2016); *Oak Hall Companies, LLC v. Westmoreland Equity Fund, LLC*, No. 15-7702-6 (Super. Ct. Dekalb Cty, Ga., July 22, 2015), *U.S. RE Companies, Inc. v. Feldman*, No. 2018-000005-CA-01 (Fla. Cir. Ct. Miami-Dade Cty. Jan. 2, 2018).

41. Sandy Hutchens has been named in at least two additional cases involving earlier iterations of the scheme involving CFC, FCMF, and 308 Elgin. In May 2017, a class action under RICO brought against Hutchens, his wife (Defendant Tanya Hutchens) and his daughter (Defendant Jennifer Hutchens) in the United States District Court for the District of Colorado, entitled *CGC Holdings, LLC et al. v. Hutchens et al.*, Case No. 11-CV-01012-RBJ-KLM resulted in a jury verdict of \$8.4 million. In September 2017, the court trebled that figure under RICO and entered a final judgment for \$24.2 million. The class period in that matter ends on April 7, 2013. The fraud perpetrated against the Plaintiffs

occurred in 2014 and 2015. Other victims of the enterprise have sued Hutchens or his aliases in courts throughout the United States and Canada. *David Antoniono Investments, LLC v. Hutchens*, No. 15-61233 (S.D. Fla., June 10, 2015), describes the GEIF scheme carried out after the events addressed in *CGC Holding*.

42. Hutchens used money taken from victims of Westmoreland to pay the lawyers to defend the *CGC Holdings* case. From 2014 to 2017, Bernard Feldman, under instructions from Hutchens, wired hundreds of thousands of dollars to Hutchens's Colorado lawyer, Steven Klenda, then of Adroit Advocates, LLC (now known as Klenda, Gessler & Blue, LLC). Many of the transfers were of sums of \$10,000 or more.

43. Hutchens testified in the Colorado action that he used "Ed Ryan" as an alias during the time he was doing business under the name Westmoreland Equity.

44. The real Ed Ryan is Hutchens's common-law son-in-law. He participated in the scheme by permitting Hutchens to use his name to carry out the scheme.

45. In February, 2017, after the Writ of Summons was served, Hutchens, posing as Ed Ryan, made multiple calls to Plaintiffs and persons who had been involved with Plaintiffs in their dealings with Westmoreland, including Colin Durward and Don Smith and left multiple voice messages.

46. On February 19, 2017, he sent the following email to Colin Durward:

From: Ed Ryan <westmorelandequityfundllc@gmail.com>
Date: February 19, 2017 at 6:01:40 PM CST
To: Colin Durward <Colin.Durward@falconcreekindustries.com>, Colin Durward <colin.santangroup@gmail.com>
Subject: Gary Stevens

I am wonedering when you could take a call at your convienance,
please advise.

*Ed Ryan
Managing Member
Westmoreland Equity Fund LLC
1650 Market Street, 36th Floor,
Philadelphia PA 19103*

47. In August, 2017, Westmoreland and Ed Ryan, represented by Bochetto & Lentz, P.C., allowed a final judgment for \$9,117,811.92 to be entered against them in this case.

3. Bernard Feldman

48. Bernard Feldman ("Feldman") also has a history of criminal fraud. In December 2016, he pleaded *nolo contendere* to criminal charges in Florida involving a different real-estate based fraud scheme. He is a disbarred lawyer (in two states) after serial suspensions for, among other things, forging clients' signatures on settlement checks and appropriating the proceeds.

49. Feldman served as the financial agent for the scheme and as the only natural person affiliated with Westmoreland to meet victims.

50. Feldman presented himself to victims as an independent consultant (purportedly employed by Bernard Feldman PA) who was retained by Westmoreland to inspect properties and assist in the transactions.

51. In fact, Feldman was intimately involved the operations of Westmoreland. He prepared and filed the foreign corporation registration statement for Westmoreland with the Pennsylvania Department of State and requested that the file-stamped copy of the registration be sent to Bernard Feldman, 2255 Glades Road Suite 324A, in Boca Raton, Florida, even though it identified the principal place of business of Westmoreland as 1650 Market Street, 36th Floor, Philadelphia, Pennsylvania (One Liberty Place). His company, Defendant American Escrow and Settlement Services (“American Escrow”), served as Westmoreland’s exclusive financial agent.

52. Westmoreland retained Feldman’s entity, Defendant American Escrow, as an independent escrow agent and to serve as its exclusive financial agent. Feldman was the principal of American Escrow, which, at most, had one employee other than Feldman. It is located at a virtual office, essentially a mail drop, used as an address by several other Feldman entities.

53. Feldman through American Escrow, was involved in at least 92 transactions with Westmoreland.

54. Feldman was the only person affiliated with Westmoreland whom Plaintiffs met in person in connection with the funding transaction.

55. Numerous cases have been filed describing Feldman's participation in fraudulent Westmoreland transactions:

- a. *Leathem Stearn et al. v. Westmoreland Equity Fund, Ed Ryan, and Bernard Feldman*, No. 1:16-cv-01211 (D. Col., May 20, 2016), raises nearly identical claims of fraud in obtaining fees for a bogus commercial loan. It avers: "Defendant Feldman played the role of a purported independent agent of W[estmoreland]E[quity] F[und] to give the illusion of actual due diligence by travelling to Colorado, meeting with [the plaintiff] and inspecting the properties." (¶ 48).
- b. *Oak Hall Companies, LLC v. Westmoreland Equity Fund, LLC*, No. 15-7702-6 (Super. Ct. Dekalb Cty., Ga., July 22, 2015), describes a nearly identical scam involving Westmoreland and American Escrow.
- c. *Campanile Investments v. Westmoreland Equity Fund LLC, et al.*, No. 17-337 (W.D. Tex. April 17, 2017), alleges a nearly identical scheme involving Westmoreland, Ed Ryan, American Escrow and Feldman.

d. *David Antoniono Investments, LLC v. Hutchens*, No. 15-61233

(S.D. Fla., June 10, 2015), describes Feldman's participation through his entity Hollywood Title Loans in the essentially identical scheme involving GEIF.

56. On May 12, 2017, Sandy Hutchens, testifying at the *CGC Holding* trial, testified that he was, "still doing business with Bernard Feldman."

57. Feldman has either incorporated or been associated with at least eleven corporations in Florida, including at least two associated with the Westmoreland scheme.

58. On or about February 16, 2017, after Plaintiffs served the summons, Feldman called Colin Durward, an associate of the Plaintiffs, and left a message. He also sent an email, which read:

From: "bernie" <bernie@bernardfeldmanpa.com>
Date: February 16, 2017 at 8:26:07 AM CST
To: <colin.santangroup@gmail.com>
Subject: Gary Stevens

Good morning. I am a consultant for Westmoreland Equity Fund LLC who previously had received and processed a financing application from Mr. Stevens concerning property in Saskatchewan. I would appreciate the opportunity to speak to you concerning your knowledge of the events. I will try to call you this morning about 9:00 AM your time. Thank you.

Bernard Feldman
Bernard Feldman PA
2255 Glades Road, Suite 324A
Boca Raton, Florida 33431
Office: 954-873-4052

59. The address provided by Feldman on this email and on the Foreign Corporation Registration Statement of Westmoreland, 2255 Glades Road, Suite 324A Boca Raton, Florida 33431, is a virtual office run by Regus Corporation that rents space by the hour and provides mail drop and telephone answering service. It is the same company that operated Westmoreland's and Lydecker Diaz's offices in Philadelphia.

60. Feldman used two virtual offices as mail drops, one for American Escrow and one for Bernard Feldman PA, in order to conceal his involvement in American Escrow.

61. Feldman also used two separate email accounts for each of the entities also to conceal his involvement in American Escrow. Hutchens upbraided Feldman when he used a "Bernard Feldman PA" email for business of American Escrow, fearing that victims would discover Feldman's involvement in American Escrow and his criminal background.

62. On May 26, 2015, the Chief Financial Officer of the State of Florida entered a consent order in In The Matter of: Bernard Feldman, Case No. 165934-14-AG, ordering Feldman to cease and desist from acting as a title agent without a

license, permanently barring him from applying for licensure and appointment with the Florida Department of Financial Services, and permanently barring him from participating with any entity licensed or regulated under the Florida Insurance Code.

63. Despite being barred on May 26, 2015 from acting as title agent, Defendant Bernard Feldman continued to operate Bernard Feldman PA, which had been formed in November, 2011, for the stated purpose of “operation as a Florida licensed title agent” with a principal place of business at 3701 N. 29 Avenue, Hollywood, Florida. On April 27, 2015, Bernard Feldman PA changed its principal address to a residence located at 7234 Panache Way, in Boca Raton, Florida.

64. On June 8, 2015, Feldman was arrested on felony counts including two counts of grand theft, and organized fraud (for the transaction of insurance without a license). An investigation conducted in coordination with the Florida Department of Financial Services’ Division of Insurance Fraud revealed that Feldman was transacting insurance business and closings with no agent or title agency license and converting consumers’ money. The investigation revealed at least three instances wherein he obtained funds from consumers for settlement charges including title insurance and taxes, but converted the money. In total, Feldman diverted nearly \$22,000 for his own personal use.

65. On December 13, 2016, Feldman pleaded *nolo contendere* to the criminal fraud charges. He received six years' probation and was ordered to pay restitution.

66. The press release issued by the Florida Department of Financial Services at the time Feldman was charged identifies Wharton Realty and Hollywood Title Services as among the entities used in the scheme. Both used the same address as one of the entities associated with the current scheme. Hutchens has also used Feldman's Hollywood Title Services to further additional frauds.

67. The charges to which Feldman pleaded *nolo contendere* included: (i) three counts of Grand Theft of the Third Degree, (ii) Organized Fraud; (iii) three counts of Uttering a Forged Instrument, and (iv) three counts of Acting as an Unlicensed Adjuster.

68. The Probable Cause Affidavit filed June 2, 2015, against Feldman states, among other things:

An affidavit from First American Title Insurance Company attests that insurance documents taken from the three closings were fraudulent documents and the defendant was not authorized to represent them. The defendant made admissions that he prepared the documents without authority. A review of the HUD1s for the three closings reveal that the defendant committed theft when he collected funds from the victims

and failed to use those funds as documented on the HUD1s, thus appropriating the funds to his own use.

69. Feldman was disbarred in Michigan in 2002 after being suspended from practice multiple times.

70. He was suspended August 21, 1993. The Notice of Suspension states, among other things:

a. Respondent ... failed to deposit the settlement proceeds into a client trust account; failed to notify the client of receipt of the settlement check; failed to promptly deliver the settlement check; knowingly made false statement to his client; and, knowingly made a false statement in his answer to the request for investigation.

71. He was suspended November 22, 1995. The Notice of Suspension states, among other things:

Respondent ... settled the matter without his client's knowledge or consent; failed to keep his client reasonably informed concerning the status of the matter; knowingly made false representation to his client regarding the settlement; and made a false statement in his answer to the Request for investigation.

72. He was suspended December 27, 2000. The Notice of Suspension states, among other things, that he “engaged in the practice of law on behalf of a single client after the effective date of an order suspending his license.”

73. He was suspended May 7, 2001. The Notice of Suspension states, among other things:

Respondent ... [f]ailed to deposit a settlement check into an interest-bearing account for funds separate from his own funds; and failed to promptly pay his client the \$1,250.00 settlement funds she was entitled to receive.

74. His license to practice law was revoked a year later. The Notice issued May 22, 2002, states, among other things:

The hearing panel found that respondent had neglected a client’s legal matter, made misrepresentations to his client regarding the delay in filing her lawsuit and that the dismissal was the result of court error; failed to file an appeal brief; and misrepresented to his client that an appeal was proceeding. Also, in a civil case, respondent failed to deposit a settlement check into an interest-bearing account separate from his own funds; endorsed his client’s name on the back of the check without his client’s knowledge or prior consent; and failed to

promptly pay the settlement funds to his client. Further, in another matter, respondent continued to engage in the practice of law while suspended.

75. His license to practice law was revoked a second time effective April 2, 2003. The Notice states, among other things:

The hearing panel found, by default, that respondent continued to practice law while suspended; failed to advise five clients that he was suspended; failed to return unearned fees in three matters; failed to timely respond to his clients' inquiries in two matters; and failed to answer requests for investigation served by the Grievance Administrator.

76. Feldman was disbarred in Florida when he sought to practice there after he was disbarred in Michigan. *Florida Bar v. Feldman*, 868 So. 2d 525 (Fla. 2004).

4. American Escrow and Settlement Services

77. American Escrow and Settlement Services ("American Escrow") is located at 21301 Powerline Road, Suite 106, Boca Raton, Florida.

78. Feldman incorporated the entity "American Escrow and Settlement Services" on or about June 23, 2014.

79. The address of American Escrow, like the addresses of Westmoreland and Bernard Feldman PA, is a virtual office, i.e. essentially a maildrop.

80. American Escrow served as the exclusive financial services company for Westmoreland. It established accounts in Florida at J.P. Morgan Chase where it received the funds wired to it by entities doing business with Westmoreland and later directed those funds to various financial accounts.

81. With these funds American Escrow paid the scheme's expenses, including the charges for Westmoreland's office at 1650 Market Street, 36th Floor, Philadelphia, Pennsylvania, Hutchens's attorneys defending the RICO action in Denver, the fees of Defendant Lydecker Diaz, and of Defendants Sofia and Leuin.

82. American Escrow routinely sent letters to victims of the scheme certifying that Westmoreland had hundreds of millions of dollars in lending capacity based on its review of Westmoreland's bank records. The letters from American Escrow contains an electronic signature of a "Cheryl Conti." but were, in fact, prepared by Feldman in concert with Hutchens.

83. The corporate documents filed by American Escrow available on the website of the Secretary of State of Florida, sometimes spell the name "Cheryl Conti" and sometimes spell the name "Cheryl Conte." The error is repeated several times, including in documents purportedly sent from Ms. Conte/Conti to victims of the scheme. Because people generally know how to spell their own names and the

involvement of Feldman in the incorporation of American Escrow, Plaintiffs believe that Conti or Conte is an alias of Feldman or a straw acting on his behalf.

84. Multiple documents confirm that Mr. Feldman purported to be Ms. Conti in communications he wrote to victims and other participants in the scheme, in order to hide his involvement, or the degree of his involvement, with American Escrow.

85. Feldman's name is also listed on state corporate documents. When various victims of the scheme inquired about Feldman's association with American Escrow, he repeatedly and fraudulently told them—in communications in which he pretended to be Cheryl Conti—that American Escrow was run by Cheryl Conti and that Feldman's only role was in helping to set up the corporation.

86. American Escrow received wired funds from scores of victims, which it distributed to other members of the scheme by wire, often through transactions of greater than \$10,000.

5. Lydecker Diaz, Elias Correa, Alan Feldman and Richard Lydecker

87. Bernard Feldman's son, Defendant Alan Feldman, was a partner at the Defendant law firm Lydecker, Lee, Berga & De Zayas, LLC (operating as "Lydecker Diaz"). He and fellow Lydecker Diaz partner Defendant Elias Correa, together with others at Lydecker Diaz, conducted and supported the affairs of the enterprise for years by, *inter alia*, fraudulently misleading victims and courts as to

the identities of the fraudsters, lending the firm's name to transactions to provide the appearance of legitimacy to the fraudulent scheme, receiving funds fraudulently obtained from victims and transmitting those funds to other members of the scheme, drafting documents it knew were to be used as part of the ongoing scheme, covering up the scheme, inducing victims into early settlements intended to conceal the scheme and to permit it to continue operating, reaching settlements paid with the proceeds of the fraudulent scheme, and referring victims to the scheme. Lydecker Diaz received hundreds of thousands of dollars through the scheme.

88. Lydecker Diaz's Philadelphia office is located in the same suite at 1650 Market Street, 36th Floor, that Westmoreland identified as its headquarters.

89. For all, or nearly all, of the period of Westmoreland's operation, Alan Feldman and others at Lydecker Diaz, provided the appearance of legitimacy to the scheme. Lydecker Diaz—and, in particular, Alan Feldman and Elias Correa—served as the law firm for Westmoreland, “Ed Ryan,” and Bernard Feldman of the Westmoreland scheme. As a result of the Lydecker Diaz activities and involvement, the scheme was sustained over a three-year period.

90. Lydecker Diaz defendants knew that Westmoreland, “Ed Ryan,” and Bernard Feldman were engaged in a fraudulent scheme.

91. In March 2015, Westmoreland sought the representation of Krevolin & Horst, LLC, in Atlanta.

92. In contrast to Lydecker Diaz, Krevolin & Horst refused to represent Westmoreland after Hutchens refused to provide basic information it requested, such as: the owners of the business, the source of the funding, and the identities of borrowers whose loans had closed.

93. Lydecker Diaz was involved with Westmoreland, Ryan, and Feldman for years and never obtained the basic information denied Krevolin & Horst. In contrast to Krevolin & Horst, the Lydecker Diaz Defendants received continuous complaints of Westmoreland's fraud throughout the period of its involvement, knew of the criminal background and activities of persons associated with it, and knew that Westmoreland never funded any commitment it had undertaken in the period Lydecker Diaz represented it. Only long after its involvement did Lydecker Diaz enter into a formal agreement with Westmoreland.

94. On April 20, 2015, Lydecker Diaz received a complaint in a letter from the attorney for a party who had wired money directly to Lydecker Diaz, the bulk of which Lydecker Diaz had transferred to Bernard Feldman at American Escrow for further distribution to Ryan/Hutchens. Alan Feldman responded directly, falsely stating that Lydecker Diaz was not holding any of the previously wired funds, even though it had retained \$7500 of the funds for itself. He refused

to confirm that its client, Westmoreland, had funds sufficient to fund the loan at issue, and falsely stated that Westmoreland was “in full compliance with all terms, obligations, and covenants in the Letter of Intents and all other aspects of these transactions.”

95. Shortly thereafter, in May 2015, Westmoreland received a demand from counsel for Oak Hall. Hutchens/Ryan immediately passed the case to Elias Correa and Alan Feldman. Oak Hall filed suit in July 2015. Its complaint described how it had received a commitment letter from Westmoreland which then reneged on the commitment, falsely accusing the plaintiff of violating terms of the commitment. Correa represented Westmoreland in that litigation, ultimately settling the case before any substantive response to the complaint was filed.

96. The lack of any evidence of a closed transaction by Westmoreland was repeatedly raised by outside lawyers. For example, on September 25, 2015, Pamela Green, a lawyer at Pallet Vallo LLP in Mississauga, Ontario, facing a court hearing, emailed Correa: “Is there a law firm that can attest to completing a transaction with Westmoreland?”

97. By September, 2015, Alan Feldman was concerned that the scheme was at risk of being exposed by the complaints and lack of evidence of any closings. Bernard Feldman emailed to Ryan/Hutchens: “Alan is really upset about this again.- No record of closings, accusations that Westmoreland is a scam etc.”

However, though no records of closings existed, no deal in which they represented Westmoreland ever closed, Bernard Feldman, Westmoreland's exclusive financial agent had been arrested for fraud in June, 2015, and accusations that Westmoreland was a scam continued to snowball, the Lydecker Diaz Defendants continued to participate in the scheme for over a year-and-a-half during which they reaped hundreds of thousands of dollars of fees from the scheme while assuring victims of the legitimacy of Westmoreland.

98. Lydecker Diaz, through Elias Correa, represented Westmoreland, Ed Ryan, and Bernard Feldman (formally entering his appearance on behalf of all three) in *Leathem Stearn et al. v. Westmoreland Equity Fund, Ed Ryan, and Bernard Feldman*, No. 1:16-cv-01211 (D. Col. May 20, 2016).

99. Lydecker Diaz entered a formal appearance for Ed Ryan even though Ed Ryan did not exist and even though the complaint in *Leathem Stearn* made clear that no one had seen Ryan but that Bernard Feldman was "the eyes and ears" of Ryan. This was consistent with the many complaints it had already resolved short of litigation.

100. *Leathem Stearn* described the same course of conduct as had *Oak Hall* and numerous other matters that Lydecker Diaz had dealt with for Westmoreland: a commitment letter issued after high upfront fees, Westmoreland per Ryan finding a

purported defect in the victim's compliance with commitment letter, and Westmoreland refusing to return the fees that had been wired to American Escrow.

101. After *Leathem Stearn*, Lydecker Diaz continued to be told repeatedly by victims of identical fraudulent conduct in complaints filed with the courts and in negotiations of claims made by victims short of litigation.

102. By November 2016, Lydecker Diaz's late payment ledger showed that it had participated by then in at least 38 transactions involving Westmoreland, none of which had closed and had, by then received at least \$800,000 in wires related to Westmoreland.

103. Not one transaction was ever funded by Westmoreland and none was funded during the two-and-a-half years of Lydecker Diaz's involvement. In *every* instance, Westmoreland asserted some defect by the victim and attempted to retain the advance fees it had received.

104. The only person anyone at Lydecker Diaz is known to have met in person who was affiliated with Westmoreland was Bernard Feldman, Westmoreland's exclusive financial agent. Feldman was involved in virtually every transaction relating to Westmoreland, often in two roles. He was the principal of American Escrow and dealt with Lydecker Diaz regularly in this capacity, including frequent transfers to and from Lydecker Diaz of the proceeds of the scheme. He also served as the property inspector for the schemes purportedly as an

employee of Bernard Feldman PA. Lydecker Diaz knew that Feldman had a history of moral turpitude, that he had been disbarred twice following multiple suspensions for forging clients' signatures on settlement checks and appropriating the funds and that he had been arrested was engaging in a fraud scheme in June, 2015.

105. Lydecker Diaz shared as its Philadelphia office the same suite at 1650 Market Street that Westmoreland identified as its headquarters and that Ryan identified as his office. Lydecker Diaz therefore had to know that Westmoreland had no officers or employees at the location it claimed as its headquarters. Lydecker Diaz also had to know that the headquarters of Westmoreland, which claimed on its website to be a major lender that had engaged in over 3,000 transactions, was only a virtual office which could be rented by the hour and serve as a mail drop. No Lydecker Diaz defendant ever met any officer or employee of Westmoreland over the entire duration of its relationship despite their knowledge described above. All of their communications with Westmoreland or Ryan were by phone and email.

106. From shortly after the inception of Westmoreland and from at least October, 2014, until at least May, 2017, the Lydecker Diaz Defendants acted in furtherance of the scheme in many ways:

- a. They provided the Lydecker Diaz name to be identified as attorneys for particular transactions in order to provide the appearance of legitimacy to these transactions;
- b. They prepared the paperwork for new transactions and negotiated loans with new victims at the very same time that they were settling repeated claims and suits all alleging the same thing: that Westmoreland was a fraud that took large advanced fees for loan commitments and then reneged on the commitments;
- c. They assured victims and potential victims of the legitimacy of Westmoreland;
- d. They concealed their knowledge of Bernard Feldman's background;
- e. As a standard part of each transaction, Westmoreland issued an "Acknowledgement & Irrevocable Letter of Direction" that identified Alan Feldman of Lydecker Diaz as Westmoreland's attorney.
- f. The Lydecker Diaz Defendants received funds directly from certain victims and, in turn, transferred those proceeds (less its own share of the proceeds) to other participants in the scheme, including through transactions totaling greater than \$10,000.

- g. They actively negotiated and processed loan documents for scores of fraudulent transactions even after Plaintiffs initiated this action and after Plaintiffs' counsel had described his understanding of the fraud to them.
- h. They directly contracted with title companies involved in more than a dozen fraudulent transactions, receiving stolen funds from the scheme in order to pay invoices intended to provide the appearance that the fraudulent transactions were, in fact, legitimate.

107. The Lydecker Diaz Defendants knew of the Westmoreland fraud and had to have known, at least the following, as well, from which any reasonable person would have known Westmoreland was a fraud:

- a. that though Westmoreland described itself on its website as a major commercial lender involved in a multitude of transactions, Westmoreland had no genuine offices, but claimed as its principal place of business a virtual office at which there were no employees, facts Lydecker Diaz had to know since it claimed the very same suite as its own Philadelphia office;

b. that Westmoreland had no history of business relationships.

Lydecker Diaz knew that when documentation of an actually funded loan was sought, Westmoreland provided none;

c. that while immediately aware of complaints that Westmoreland was a fraud, including complaints provided by other attorneys, and/or complaints that it had failed to fund commitments, Lydecker Diaz was unaware of any transaction by Westmoreland that had actually closed or of any positive reference for Westmoreland;

d. that it (and apparently nobody else) had never met the Ed Ryan purportedly employed by Westmoreland as its managing member;

e. that it lacked any telephone number by which it could contact Ryan directly;

f. that the wires it received of funds related to Westmoreland did not originate with Westmoreland;

g. that the escrow company used by Westmoreland, American Escrow, was affiliated with and/or controlled by Bernard Feldman, a person it knew to have engaged in serious crimes involving moral turpitude; and

h. that there was no evidence that Westmoreland ever closed a loan and extensive evidence that it told every victim, in at least forty

instances known to Lydecker Diaz, that it had in some way violated some covenant of the Westmoreland commitment letter entitling Westmoreland to retain the advanced fees it had taken.

108. The Lydecker Diaz Defendants worked to settle many other disputes before a case was filed, resulting in releases and agreements to maintain confidentiality, which permitted the scheme to continue. Many of these agreements specifically name Lydecker Diaz and its attorneys as released parties. Where Lydecker Diaz was not released by name, it was released in clauses releasing Westmoreland's attorneys.

109. Through its conduct, Lydecker Diaz hid Sandy Hutchens's identity by fraudulently maintaining the "Ed Ryan" alias. The firm quickly settled these actions on behalf of "Ed Ryan," Bernard Feldman, and Westmoreland, keeping Hutchens's identity secret and the overall scheme afloat.

110. In each of these cases, Lydecker Diaz knowingly and purposely disguised the fact that its client, Westmoreland, was not a real funder at all, but was a fictional shell with no employees, no office, and no capacity to fund any loan.

111. In acting for Westmoreland, "Ryan," and Bernard Feldman in these litigations and threatened litigations, Lydecker Diaz knew it was using funds stolen as part of the scheme to obtain the settlements, just as it knew that it was paid from stolen funds.

112. By continuously negotiating settlements in multiple suits in which complaints detailed the fraud being committed by Westmoreland, Bernard Feldman and “Ed Ryan,” as well as in multiple communications from victims whose claims were resolved short of litigation similarly describing the fraud, while contemporaneously negotiating transactions with future victims throughout the period of its involvement with Westmoreland, Lydecker Diaz was at the heart of the fraud. It covered up past fraud and lured victims of future fraud, reassuring victims of the legitimacy through affirmative statements regarding Westmoreland’s and Ryan’s legitimacy and material omissions of the facts it knew, such as Westmoreland’s never having closed a transaction and Feldman’s background.

113. This behavior went on throughout the period, but egregious examples are set forth below during the later part of period.

114. For example, in July and August of 2016, Lydecker Diaz was negotiating a confidential settlement agreement with Anthony & Middlebrook, counsel for Friendship West Baptist Church, in which Westmoreland was to pay \$134,500 in exchange for a release of Lydecker Diaz and its co-conspirators. At the very same time it was negotiating this settlement, Lydecker Diaz was negotiating a transaction for Westmoreland involving a proposed first mortgage on 855 Ashmore Bridge, Greenville, SC (a transaction referred by Defendants Sofia and Leuin), and a transaction with Palmas del Mar Resort in Humanco, Puerto Rico.

115. In September and October of 2016, Lydecker Diaz was negotiating a confidential settlement agreement with Jim Penick, counsel for James Barnes, in which Westmoreland was to pay \$55,000 in exchange for a release of Lydecker Diaz and its co-conspirators. During this time, and through November, it was also negotiating other confidential settlement agreements with Hinshaw & Culbertson, LLP, representing Habitribe Fund 1, LLC, and with Patrick Malloy regarding a property in Bay Harbor Island, Florida. Both agreements contained releases of Lydecker Diaz and its co-conspirators. At the same time, Lydecker Diaz was negotiating multiple transactions for Westmoreland including, among others, a commitment to US RE Corporation on a transaction referred by Defendants Sofia and Leuin, and a proposed mortgage on 11327 Expo Blvd., San Antonio, Texas.

116. Even after the present case was filed, and Defendant Correa had conversations with Plaintiffs' counsel in February, 2017, who described their knowledge of Bernard Feldman's background, the multiple suits against Westmoreland, the virtual office with no employees and the phantom Ed Ryan, Lydecker Diaz continued to negotiate transactions with victims up until mid-May, 2017. These included numerous other transactions, including properties in Midland, Ontario, Coachella, California, and West Hanover, New Jersey.

117. The behavior was even more egregious because at the same time as Lydecker Diaz was in discussions with Plaintiffs' counsel in this case, it was in the

process of settling yet other claims against Westmoreland including, among others, a confidential settlement of approximately \$150,000 with Knox Medical, which also released Lydecker Diaz and its co-conspirators. Many other examples of such conduct exist.

118. Lydecker Diaz and Alan Feldman also referred victims to Westmoreland for funding while concealing the fraud and actively assisted Westmoreland in carrying out the scheme as to these victims. For example, a complaint filed January 2, 2018, in *U.S. RE Companies, Inc. v. Feldman*, No. 2018-000005-CA-01 (Fla. Cir. Ct. Miami-Dade Cty.), described the following instances:

119. In March 2015, Defendant Alan Feldman working as an attorney for Lydecker Diaz referred the owners of a nursery in Miami-Dade County nursery to Defendant Westmoreland to discuss a series of prospective loans for their nursery. The nursery victims met with Alan Feldman at the Lydecker Diaz office to discuss their loan needs. Alan Feldman then introduced them by telephone to Westmoreland. Thereafter, in June, 2015, the victims were directed to wire funds to American Escrow, even though Bernard Feldman had recently been arrested on the fraud charges giving rise to his later nolo contendere plea. Alan Feldman undertook work on behalf of the loan and vouched for Westmoreland even after the nursery victims raised questions. The nursery victims began to uncover the pattern of fraudulent behavior. They threatened litigation unless their funds were returned

to them. Ultimately, Lydecker Diaz returned the funds to them, and no lawsuit was filed.

120. On or about August 21, 2015, Defendant Alan Feldman introduced U.S. RE Companies, Inc. (“U.S. RE”) to Westmoreland by means of an email. Alan Feldman advised U.S. RE officials that Westmoreland was a client of Defendant Lydecker Diaz, and that he was personally handling Westmoreland’s legal representation. When U.S. RE officials discovered negative information regarding Westmoreland posted on the internet, Alan Feldman reassured U.S. RE that its concerns were unnecessary, that this was “false information” online, and that he and Lydecker Diaz were in the process of causing the information to be removed from the web. Shortly after the decision to work with Defendant Westmoreland, U.S. RE began requesting a meeting with “Ed Ryan.” Despite numerous requests, Ryan would not agree to a personal meeting and continually provided one excuse or another for his inability to meet. In the ensuing year, until June, 2017, Alan Feldman and Lydecker Diaz continued to assure U.S. RE of the bona fides of Westmoreland, forwarded fraudulent “proof of funds” documents and other material to U.S. RE on behalf of Westmoreland. Over the period U.S. RE paid hundreds of thousands of dollars in fees to Westmoreland and Lydecker Diaz in connection with the bogus loans. As discussed above, this all took place during

the period Lydecker Diaz was continuously settling cases and claims against Westmoreland.

121. Lydecker Diaz accepted hundreds of thousands of dollars derived from the bogus activity. By February 28, 2017 (three months before it terminated its involvement in the scheme), Lydecker Diaz had received no less than 63 wire transfers, including many of more than \$10,000, totaling over \$800,000. Lydecker Diaz received these funds knowing that it was stolen from victims of the scheme.

122. Lydecker Diaz made no effort to withdraw from the scheme until the scheme became public.

123. On May 12, 2017, Sandy Hutchens publicly acknowledged, under oath at the *CGC Holdings* trial, that he used “Ed Ryan” as an alias and operated Westmoreland Equity Fund. He also testified that was continuing to do business with Bernard Feldman at the time. Three days later, on May 15, 2017, a jury found Hutchens and his codefendants liable for the full amount sought by the Plaintiffs under RICO for over 100 victims of the scheme.

124. On May 16, 2017, Alan Feldman informed the other members of the scheme that Lydecker Diaz would no longer be associated with Westmoreland or participate in further telephone conferences.

125. On June 5, 2017, Plaintiffs informed Lydecker Diaz of their intention to sue the firm and Correa. Shortly thereafter, Elias Correa and Alan Feldman were terminated by Lydecker Diaz.

126. Upon information and belief, Richard Lydecker restructured Lydecker Diaz in the manner described in paragraph 15 above, with the knowledge of its involvement in the scheme and potential liability, in an effort to insulate his and Lydecker Diaz's assets from the liability arising from its participation in the scheme.

6. Barbara Leuin & Sofia

127. Barbara Leuin and Sofia actively and knowingly operated, controlled, and/or furthered the fraud by referring Plaintiffs to Westmoreland and by managing the relationship. In addition, they repeatedly concealed Sandy Hutchens' true identity from Plaintiffs.

128. Defendants Leuin and Sofia held themselves out as experts in commercial real estate lending. They represented to Plaintiffs that they had thoroughly vetted defendant Westmoreland and that Westmoreland was an appropriate lender for the transaction.

129. Before referring Plaintiffs to Westmoreland, Defendant Leuin assured Plaintiffs that she was fully familiar with Westmoreland and that she had engaged in multiple prior transactions with Westmoreland. Defendant Leuin on more than

one occasion advised Plaintiffs that she knew Ed Ryan and his wife and had engaged in many transactions with Westmoreland all the while knowing that Westmoreland was a complete fraud.

130. When, in 2016, Plaintiff Gary Stevens called Defendant Leuin asking for Ryan's phone number, she told him that she could not give him a number, that she would have to arrange for any call with Ryan, but that Ryan and his wife had both recently had serious illnesses and that Ryan was not taking many calls.

131. Leuin and Sofia remained involved in the scheme throughout its existence and continued to refer victims even though they had no knowledge of any transaction actually funded by Westmoreland and had knowledge of multiple transactions in which Westmoreland had failed to fund commitments it had made.

132. Because of their knowledge of the working of the scheme, Sofia and Leuin altered their compensation scheme from one which was funded entirely from the funds at closing, to one in which they were also paid an upfront finders fee by Westmoreland regardless of whether the transaction was funded.

133. After the writ of summons was served, Leuin called Plaintiffs and left repeated messages seeking to arrange a conference call between Plaintiffs, Ed Ryan and herself.

B. Plaintiffs' Encounter with the Fraud

134. In October 2014, Plaintiffs Gary and Linda Stevens were seeking refinancing of mortgage loans on a property they were developing in Saskatchewan through their corporation 1174365 Alberta Ltd.

135. Plaintiffs' advisor throughout their efforts to obtain refinancing was Colin Durward.

136. Durward referred them to a mortgage broker in Vancouver, B.C. who, in turn, referred them to Defendants Sofia Capital Ventures, LLC and Barbara Leuin.

137. They were referred to Westmoreland by Defendants Sofia Capital Ventures, LLC and Barbara Leuin.

138. The Stevenses' first contact with Leuin was on or about October 14, 2014.

139. Sofia and Leuin held themselves out to be experienced mortgage brokers. The Sofia website states, among other things:

When you work with Sofia Capital Ventures, you will be in the hands of commercial lending experts.

We connect you to carefully selected private commercial lenders who can structure a loan package to fit your specific needs. Frequent communication with our lender base enables us

to stay on the leading edge of the commercial lending market so that we can help you understand the best way to secure funding for your commercial real estate project.

140. Leuin referred Gary and Linda Stevens to Westmoreland Equity Fund as a potential lender, which Sofia claimed it had vetted and was a lender for commercial real estate appropriate for Plaintiffs' needs.

141. Plaintiffs reviewed Westmoreland's website shortly after Leuin had suggested Westmoreland to them.

142. Ed Ryan was the name provided by Leuin to Plaintiffs as the contact person on behalf of Westmoreland throughout the time of the transaction.

143. Leuin assured Plaintiffs that she knew Ryan and his family personally and had done many transactions with Westmoreland.

144. Plaintiffs were directed to submit all their communications with Westmoreland through Leuin, who was to share the documentation with Westmoreland through use of a "Drop Box" account. Throughout the period, from Leuin's initial contact with Plaintiffs, Leuin and Sofia assumed responsibility for furnishing all requisite documentation to Westmoreland and for communication with Westmoreland.

145. On October 30, 2014, Westmoreland, over Ryan's signature, provided a letter of intent to Plaintiffs stating that it was prepared to furnish a loan of

\$13,400,000CDN to refinance and complete development of the Saskatchewan property.

146. Among other things, the letter required the Plaintiffs to establish a United States based escrow account from which significant fees would be paid in advance of the loan and that certain of those fees be directed to American Escrow.

147. Because he had once been a victim of an advance fee loan fraud, on or about late October, 2014, when the level of Westmoreland's fees were disclosed, Colin Durward sought assurance of Westmoreland's legitimacy.

148. At that time, Durward learned that Westmoreland was represented by Lydecker Diaz and determined that Lydecker Diaz appeared to be a legitimate law firm of significant size located in Miami. Based on this information he was reassured of Westmoreland's legitimacy and advised the Plaintiffs that he would assist them in obtaining funds to pay Westmoreland's fees.

149. Durward then sought and obtained funds for the Plaintiffs to pay Westmoreland's fee. The funds he obtained for Plaintiffs were secured by a home the Stevenses owned in Arizona.

150. As a result of Defendants' actions, Plaintiffs were unable to repay the funds that were secured by this home and they lost the house in Arizona.

151. Between October 29, 2014, and February 26, 2015, Plaintiffs participated in approximately six conference calls in which Ed Ryan/Hutchens

participated—always through a call-in number. On at least one of those calls in 2014, Ed Ryan/Hutchens told Plaintiffs that if they had issues to be addressed that required Westmoreland’s attorneys, they should contact Alan Feldman at Lydecker Diaz. At all times Westmoreland held itself out to be a legitimate lender with a capacity to fund the Plaintiffs’ borrowing needs.

152. The October 30, 2014 letter from Westmoreland represented under “Proof of Funds” that American Escrow would be authorized to verify, among other things, that “the funds required for this transaction to be funded by Westmoreland ... have been specifically allocated for this transaction and that American Escrow ... [has] verified the funds by way of confirming bank Statements.”

153. On November 5, 2014, an email over the name “Ed Ryan, Managing Member, Westmoreland Equity Fund LLC,” forwarded a letter over the name of Cheryl Conti, American Escrow and Settlement Services, stating that American Escrow and Settlement Services had reviewed Westmoreland bank records and that Westmoreland had a \$475,000,000 loan capacity.

154. Plaintiffs specifically reallege that at no time were they advised of Bernard Feldman’s disbarments or of his other criminal frauds.

155. After receiving the letter purporting to confirm Westmoreland’s lending capacity, Plaintiffs transferred funds to a United States based account at

J.P. Morgan Chase Bank that held over \$50,000. Defendants subsequently unlawfully converted those funds.

156. On November 10, 2014, Westmoreland provided Plaintiffs with a twenty-two-page commitment letter for a loan of \$13,900,000CDN.

157. On January 20, 2015, Bernard Feldman, claiming to be an independent person employed by Bernard Feldman PA and retained by Westmoreland to inspect the property, flew, at Plaintiffs' expense, to inspect the site in Saskatchewan. Colin Durward accompanied Gary Stevens when he met Bernard Feldman at the airport. During the drives between the airport and the property, Durward, having noticed that Alan Feldman of Lydecker Diaz and Bernard Feldman shared a last name, was told by Bernard that Alan was his son and that it was an advantage that he, the Lydecker Diaz firm, and American Escrow and Settlement Services were all located in the Miami area.

158. Following issuance of the commitment letter there were communications among Plaintiffs, Sofia (per Leuin), Westmoreland (per Hutchens as "Ryan"), Plaintiffs' underlying original lender, and counsel regarding the loan and the upcoming closing.

159. Westmoreland, Hutchens and Bernard Feldman were aware that time was of the essence regarding the transaction because payment to Plaintiffs' original lender was due and the refinancing was, in part, to make such payment.

160. The Commitment Letter specifically had stated that it was issued following review of the detailed independent appraisal provided by Plaintiffs.

161. Beginning in early December 2014, Westmoreland, per Sandy Hutchens as “Ryan,” began demanding a second appraisal of the property be undertaken. During this time, Ryan also repeatedly claimed there were deficiencies in his files even though the materials he sought had been furnished to Westmoreland by Plaintiffs through Leuin.

162. A second appraiser was retained at Plaintiffs’ expense; however, Westmoreland, per Ryan, prohibited the appraiser from having any contact with Plaintiffs.

163. Rather than directing that the property be appraised at fair market value as required by their earlier agreement, Westmoreland directed the appraiser to appraise the property at an alternative distress sale value, which he knew would render a lower valuation.

164. On or about February 19, 2015, an email over Ryan’s name claimed that based on the new appraisal the property was worth “about 50% of what it is supposed to be worth. ... its like being offered a funding opportunity on a Hilton Hotel and when you go to inspect, its more like Freddy’s Motel.”

165. Westmoreland, per Hutchens as “Ryan,” refused to provide Plaintiffs with a copy of the appraisal.

166. Knowing that Plaintiffs required the loan because of the pressures from the underlying lender, Westmoreland, over Ryan's signature, advised Plaintiffs by letter of February 23, 2015, that based on the new appraisal and on a report from Feldman it would no longer lend \$13,900,000CDN set forth in the commitment letter but would only lend \$5,700,000CDN.

167. The letter further asserted, falsely, that Plaintiffs were in breach of commitment letter and had forfeited the fees that had been paid to Westmoreland.

168. On March 23, 2015, Westmoreland advised Plaintiffs that it was prepared to lend \$7,500,000CDN.

169. The new purported commitment was conditioned on Plaintiffs' "demonstration that he has the remaining funds available to meet his projections of fund requirements as set out in his original application." However, Westmoreland knew that Plaintiffs had no such funds or ability to obtain such funds under the time constraints they faced.

170. According to numerous emails purportedly sent by Ryan, the decision to lower the loan amount was made after extensive consultations with Bernard Feldman and Jason Underwood.

171. Because of the failure of Westmoreland to provide the promised money, together with the delays caused by Defendants, the original lender moved to foreclose on the property. To mitigate their damages, Plaintiffs entered an

arrangement with a third party, Donald Smith, which would permit them to retain an interest in the property. Plaintiffs' agreement with Mr. Smith was contingent on his purchasing the property from the original lender.

172. Defendants used this situation as an attempt to extract yet more fraudulent proceeds. Westmoreland agreed to provide financing to Mr. Smith for the sale, providing an "Acknowledgement & Irrevocable Letter of Direction" identifying Lydecker Diaz as Westmoreland's counsel. The letter required significant additional fees. Mr. Smith, concerned that he was being asked to pay fees for a loan for which the Stevenses had already paid fees and which had already been considered and rejected by Westmoreland, terminated his involvement.

173. In August, 2015, in response to complaints from the Stevenses, Ed Ryan directed that they have their attorney contact Westmoreland's attorney, Alan Feldman of Lydecker Diaz.

174. From November, 2014, through January, 2015, Plaintiffs directed fees to be paid from their United States account at AESS to Westmoreland as follows:

- | | |
|----------------------|-------------|
| a. November 4, 2014 | \$10,000 |
| b. November 12, 2014 | \$51,784.81 |
| c. January 13, 2015 | \$12,500 |

175. The conduct by Defendants described above follows a pattern of conduct like that described in complaints filed in *Campanile Investments LLC v. Westmoreland Equity Fund LLC*, 17-00337 (W.D. Tex. April 17, 2017), *Leathem Stearn et al. v. Westmoreland Equity Fund, Ed Ryan, and Bernard Feldman*, No. 1:16-cv-01211 (D. Col. May 20, 2016), and *Oak Hall Companies, LLC v. Westmoreland Equity Fund, LLC*, No. 15-7702-6 (Super. Ct. Dekalb Cty, Ga., July 22, 2015). It is also the same modus operandi described by the Tenth Circuit in its decision regarding Hutchens, *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076 (10th Cir. 2014), as well as in *David Antoniono Investments, LLC v. Hutchens*, No. 15-61233 (S.D. Fla. June 10, 2015).

176. Each of these complaints describe promises of commercial loans, high up-front fees, subsequent low appraisals not shared with Plaintiffs, reneging on the loans by Westmoreland, and pocketing of the fees by Westmoreland and/or its associates.

177. After Plaintiffs commenced this action by a writ of summons in January, 2017, and Bernard Feldman and Sandy Hutchens learned that the Plaintiffs were represented by counsel, Plaintiffs' counsel received a call from Elias Correa of Lydecker Diaz, who said he represented Westmoreland and wanted to discuss settlement.

178. Plaintiffs' counsel described to Correa all the facts they then had demonstrating that Westmoreland was a fraud including: that Westmoreland's claimed headquarters in Philadelphia was not a genuine office but a "virtual" office rented by the hour even though Westmoreland claimed to be a major lender involved in thousands of loans; that Bernard Feldman who was a disbarred lawyer and a felon was heavily involved with the scheme and operated American Escrow and Settlement Services which had appropriated Plaintiffs' funds; that Ed Ryan was likely a fiction or alias; that Plaintiffs' experience was identical to the experiences described in the *Oak Hall* and *Leathem Stearn* and those Plaintiffs also had apparently never seen Ed Ryan, only Bernard Feldman.

179. Correa claimed that he only represented Westmoreland. He said that he could not respond because he did not represent Bernard Feldman. He feigned ignorance and argued that the existence of a virtual office as Westmoreland's office indicated nothing, that his own wife used space in a virtual office. Correa stressed to Plaintiffs' counsel that he was a transactional lawyer for Westmoreland, not a litigator, and that Westmoreland wanted to avoid the expense of obtaining litigation counsel. He said he was ill equipped to discuss the Plaintiffs' transaction because it preceded his own representation of Westmoreland. He claimed to be familiar only with the fraud allegations in one case.

180. Plaintiffs subsequently learned that Correa had entered his appearance specifically on behalf of Feldman, Ryan, and Westmoreland in the *Leathem Stearn* case less than a year earlier as litigation counsel and had also represented Westmoreland in the *Oak Hall* case as well as numerous claims against Westmoreland resolved short of litigation.

181. Plaintiffs subsequently learned from Bernard Feldman's document production that Correa was exchanging emails with Bernard Feldman about the present dispute even while he claimed not to represent him.

182. Correa's other statements, that he was only a transactional lawyer who lacked knowledge to respond to Plaintiffs' counsel's description of the fraud, were also false. Correa was described on the Lydecker Diaz website as a litigation attorney, with appellate advocacy and complex commercial litigation listed among his specialties, and had actively represented Westmoreland, "Ed Ryan," and Bernard Feldman in matters involving the exact fraud Plaintiffs' counsel had described.

183. Correa and Alan Feldman also had to know that Bernard Feldman, their client in *Leathem Stearn* (and Alan Feldman's father), was in the process of pleading nolo contendere to grand theft, organized fraud, and uttering a forged instrument in the contemporaneous Florida criminal proceeding involving a separate real-estate-related fraud, yet Correa was disclaiming any ability to respond

to the description of the fraud described to him by Plaintiffs' counsel, because he allegedly did not represent Feldman.

184. Correa's false and misleading statements and omissions were specifically intended to hide the facts about the fraudulent Westmoreland scheme as well as Lydecker Diaz's role in the scheme.

185. Correa repeatedly urged Plaintiffs' counsel not to file a complaint which would necessarily describe the conduct Plaintiffs' counsel had described to him.

186. Shortly after the call by Correa, Bernard Feldman, representing himself to be a "consultant" for Westmoreland, called Colin Durward, and left a message on his cell phone and sent an email. He said he was inquiring about the Stevenses' transaction. When that call was not answered, "Ed Ryan" called Durward and left a message and sent an email. When that message was not answered, Barbara Leuin called Durward, trying to set up a conference call that would include Ryan. Leuin also called Plaintiffs' counsel, and when Plaintiffs' counsel asked immediately if she was represented by counsel she assured him not only that she was not, but that she lacked any funds to pay for a lawyer.

187. Correa continued to email and call Plaintiffs' counsel, furnishing documents he claimed would show Plaintiffs were not injured and urging Plaintiffs not to file a complaint. He then proposed that the parties mediate their dispute.

Plaintiffs' counsel asked who would attend a mediation on behalf of Westmoreland and Correa said it would be Ed Ryan, but moments later said it might be that Ryan could only attend by telephone even though Westmoreland was located in the same city as the proposed mediation and a date had not yet been set. Plaintiffs' counsel said he would consider mediation only if Correa would accept service for Ryan. On February 22, Correa emailed Plaintiffs' counsel saying that if agreement were reached to mediate, he would accept service for both "his clients," Ryan and Westmoreland. In response Plaintiffs' counsel sent a detailed proposal calling for both limited discovery and mediation.

188. While Correa sent an email as late as March 7, promising to contact Plaintiffs' counsel, the next call Plaintiffs' counsel received on behalf Westmoreland was on March 9 from David Fineman, of the Philadelphia firm Fineman, Kreckstein and Harris, P.C., who left a message that he was now representing Westmoreland. The Fineman firm subsequently withdrew as counsel after Plaintiffs' counsel advised the firm of their concerns about Ed Ryan.

189. Before withdrawing, the Fineman firm moved to quash pre-complaint discovery Plaintiffs had served, successfully arguing to the Court that Plaintiffs had adequate facts upon which to plead their fraud case. The Court of Common Pleas cited this motion in later denying certain Defendants' preliminary objections to

Plaintiffs' complaint that argued that the averments of fraud were not pleaded with sufficient specificity.

190. Plaintiffs lost their property in Arizona and Canada as well as their entire investment in developing the Saskatchewan property. Because of the scheme, Plaintiffs incurred many millions of dollars in damages.

FIRST CLAIM FOR RELIEF

Fraud and Misrepresentation

**Plaintiffs v. Sandy Hutchins, Bernard Feldman, Bernard Feldman PA,
American Escrow & Settlement Services, Barbara Leuin and Sofia Capital
Ventures, LLC.**

**Final Judgment has been entered on this claim against Westmoreland and
"Ed Ryan"**

191. Plaintiffs incorporate all the previous paragraphs of the Complaint.

192. Defendants operated a completely fraudulent up-front fee scheme designed to bilk potential borrowers of fees on loans which Defendants had no intention or capacity of completing.

193. Defendants made affirmative misrepresentations of present or past material facts to Plaintiffs, including, but not limited to the following:

- a. That Westmoreland was a legitimate lender;
- b. That the extensive representations and presentations on its website were true, providing the illusion that it was a genuine lender;
- c. That Westmoreland had funded a large number of prior loans;

- d. That Westmoreland was willing to lend money to Plaintiffs pursuant to the loan commitments;
- e. That Westmoreland would lend Plaintiffs \$13,900,000CDN.
- f. That Westmoreland would conduct due diligence in good faith with the intent of closing the loan and funding the loan;
- g. That Westmoreland had participated in many prior transactions;
- h. That the various endorsements contained on its website were true statements of natural persons;
- i. That Westmoreland had a lending capacity of \$475,000,000;
- j. That American Escrow had reviewed bank records of Westmoreland to verify Westmoreland's lending capacity;
- k. That Feldman was an independent inspector retained by Westmoreland;
- l. That Ed Ryan was a managing member of Westmoreland; and
- m. That Jason Underwood was the "manager of assets and valuations" of Westmoreland.

194. The proposed loan transactions were a sham intended to induce Plaintiffs to advance substantial lender fees to Westmoreland. The representations made to Plaintiffs were false. At the time of the representations and at the time of contracting, Defendants had the present intent never to make any loan to Plaintiffs

and then to retain the fees paid by Plaintiffs on pretextual grounds as part of their plan and secret and undisclosed intent.

195. Defendants made each of their misrepresentations to Plaintiffs with the specific intent that Plaintiffs would rely upon the representations.

196. Plaintiffs relied upon Defendants representations.

197. Plaintiffs' reliance was justified.

198. Defendants acting directly and through Westmoreland and Ryan made material omissions in their representations to Plaintiffs rendering their representations to Plaintiffs false and misleading. Among the material omissions, were the following:

- a. That Westmoreland had no legitimate office at its principal place of business, 1650 Market Street, Philadelphia, PA 19103;
- b. That Ryan had no legitimate office at its principal place of business, 1650 Market Street, Philadelphia, PA 19103;
- c. That Sandy Hutchens had an interest in Westmoreland;
- d. That "Ed Ryan" was, in fact, Sandy Hutchens;
- e. That Sandy Hutchens was a known criminal with a lengthy record of fraud;
- f. That Bernard Feldman had an interest in Westmoreland;

- g. That American Escrow was the exclusive financial services company of Westmoreland.
- h. That Ryan did not exist and was a straw for Hutchens;
- i. Upon information and belief for reasons described above, that Underwood did not exist or was a straw for Hutchens.
- j. Upon information and belief for reasons described above, at Conti or Conte did not exist or was a straw for Feldman;
- k. That Feldman was disbarred as a lawyer in both Michigan and Florida and had been suspended from practice for the reasons described above;
- l. That the endorsements identified on its website had never occurred;
- m. That Westmoreland lacked the capacity to make the loans it committed to make in its commitment letter.

199. Defendants made their omissions in their representations to Plaintiffs with the specific intent that Plaintiffs would rely upon the representations.

200. Plaintiffs relied upon Defendants' representations because of the omissions.

201. Plaintiffs have been damaged as a direct and proximate result of the fraudulent actions described above.

SECOND CLAIM FOR RELIEF**Conversion and Civil Theft****Plaintiffs v. All Defendants.**

Final Judgment has been entered on this claim against Westmoreland and “Ed Ryan”

202. Plaintiffs incorporate all the previous paragraphs of the Complaint.

203. Defendants deprived Plaintiffs of their right of property and use of the funds taken as fees without Plaintiffs’ consent having under false pretenses converted sums presented for the fees associated with a mortgage loan and converted such funds to their personal use after Plaintiffs wired those funds to accounts at J.P. Morgan Chase in Florida, to be held in connection with the transaction of Westmoreland.

204. Defendants did not use the funds Plaintiffs had wired to the account to service Plaintiffs’ loan, but, after it was deposited to be held for such purpose, Defendants appropriated the funds by subsequently wiring them to other accounts without the Plaintiffs’ authorization.

205. Defendants retain Plaintiffs’ money and exercise unauthorized dominion and control over such money.

206. Plaintiffs have been damaged as a direct and proximate result of the conversion and civil theft described above.

THIRD CLAIM FOR RELIEF

Fraud and Misrepresentation:

Plaintiffs v. Leuin and Sofia

207. Plaintiffs incorporate all the previous paragraphs of the Complaint.

208. Defendants held themselves out as expert mortgage brokers who could advise Plaintiffs regarding the refinancing of their property, refer them to carefully vetted lenders and serve as their advisor and agent throughout the transaction.

209. Defendants did not carefully vet any lenders, but, in fact referred Plaintiffs to a sham organization with no adequate lending capacity, that had no appropriate references, and perpetrated a fraud upon by Plaintiffs.

210. Defendants made at least the following false representations to Plaintiffs with the specific intent that Plaintiffs would rely on the representations:

- a. That they would carefully vet any lender to whom they referred Plaintiffs;
- b. That they had experience with Westmoreland as a result of a number of prior transactions they had completed with it;
- c. That Westmoreland was a legitimate lender appropriate for Plaintiffs' borrowing needs;

- d. That they knew Ed Ryan and his family personally and could vouch for their integrity; and
- e. That they would bring their expertise to bear and represent Plaintiffs' interests throughout the transaction.

211. Plaintiffs relied on Defendants' misrepresentations and were induced to sign the loan commitment giving rise to this action based upon such reliance.

212. Plaintiffs' reliance was justified;

213. Plaintiffs have been damaged as a direct and proximate result of the fraudulent actions described above.

FOURTH CLAIM FOR RELIEF

Civil Conspiracy

Plaintiffs v. All Defendants.

Final Judgment has been entered on this claim against Westmoreland and "Ed Ryan"

214. Plaintiffs incorporate all previous paragraphs of the Complaint.

215. Defendants consciously conspired with each other and with others, and have pursued an ongoing common plan and design through one or more unlawful acts as alleged herein.

216. Specifically, and without limitation, the common plan and design included five essential elements (1) an entity to serve as the face of the conspiracy and persons to operate that entity, (2) finders to find and refer victims to the

scheme, (4) a corrupt financial agent to collect funds from victims and distribute funds among the conspirators, and (5) a corrupt legal entity to provide legal cover to provide an aura of legitimacy to the scheme and provide the corrupt legal services needed to perpetuate the scheme.

217. The common plan and design included, inter alia: (a) creating a loan scam by, among other things, giving Plaintiffs the appearance of legitimate lenders and other people and entities who were able to fund a legitimate loan transaction and perform appropriate due diligence; (b) inducing Plaintiffs to pay significant advance lender fees as the object of the common plan and design with the intent not to return the lender fees advanced and not to fund the loan; (c) concocting grounds for terminating the loan, and justifying keeping the funds advanced; (d) using the funds they knew, or should have known, were stolen through the scheme to fund payouts to complaining victims; (e) in the case of Lydecker Diaz, among other things enumerated above, (1) allowing the fraudulent scheme to use its name to provide an aura of legitimacy to it, (2) entering formal appearances on behalf of persons they knew, or should have known, were fictitious persons in legal proceedings, (3) negotiating and obtaining releases of persons they knew, or should have known, were fictitious persons in settlement negotiations to conceal and perpetuate the ongoing fraud, while actively negotiating “transactions” with new victims, (4) offering arrangements on behalf of persons they knew or should have

known were fictitious persons, (5) referring victims to scheme, and (6) transmitting and receiving proceeds of the unlawful scheme; and (f) in the case of Leuin and Sofia, referring victims to the scheme and making false statements enumerated above. All of these actions were taken with purpose, and/or with the knowledge, that such actions were perpetuating an ongoing illegal fraud scheme.

218. Defendants and their co-conspirators had a meeting of the minds and an express or tacit consent on their course of action constituting their civil conspiracy as alleged herein.

219. The conspirators joined and carried out the conspiracy through telephone communications and email over a period of years between 2014 and at least May of 2017

220. Pursuant to their unity of interest, conspiracy, and concerted action, Defendants and their co-conspirators acted with actual malice and pursued a course of action, for the sole purpose of injuring Plaintiffs and other victims and without any legitimate purpose, that was predicated on fraudulent inducement and subsequent fraudulent concealment of the conspiratorial scheme.

221. Defendants committed numerous unlawful covert acts in furtherance of the conspiracy, including among other things, making false representations, concealing material information, and engaging in repeated acts of mail and wire fraud and money laundering.

222. Plaintiffs have been damaged as a direct and proximate result of the fraudulent actions described above.

FIFTH CLAIM FOR RELIEF

Breach of Contract

Plaintiff 1174365 Alberta Limited v. Sofia and Leuin

223. Plaintiffs incorporate all previous paragraphs of the Complaint.

224. Plaintiff 1174365 Alberta Limited and Leuin and Sofia entered into an express contract for Sofia to serve as Plaintiffs' agent to obtain either directly or through a cooperating agent, a funding commitment and to facilitate communication between Plaintiff and said potential funding sources through the completion of funding, as required. (A copy of the contract is attached hereto as Exhibit A).

225. Defendants breached the agreement. They did not obtain a funding commitment but rather secured a fraudulent document purporting to be a commitment which had no genuine substance.

226. Sofia and Leuin also had an implied obligation of good faith and fair dealing under the agency agreement.

227. Sofia and Leuin breached their obligations of good faith and fair dealing by, among other things, failing to properly perform due diligence with regard to the lender to whom they referred Plaintiffs, misleading Plaintiffs

regarding their prior experience with the lender, falsely advising Plaintiffs that the lender was a lender appropriate to their borrowing needs, and, if a recent letter from Defendants' counsel is accurate, failing to properly provide materials to the lender.

228. Plaintiffs have been damaged as a direct and proximate result of the breach of contract actions described above.

SIXTH CLAIM FOR RELIEF

Negligence and Malpractice

Plaintiffs v. Sofia and Leuin

229. Plaintiffs incorporate all previous paragraphs of the Complaint.

230. Leuin and Sofia held themselves out to be experts in the field of real estate financing and particularly non-bank financing transactions.

231. Leuin and Sofia failed to conform to the most basic norms of experts in the field of real estate financing and particularly non-bank financing transactions. In at least the following ways:

- a. They performed no due diligence regarding Westmoreland;
- b. Alternatively, the due diligence they performed was so perfunctory and negligent that they failed to discover:
 - i. Westmoreland had no genuine office;

- ii. Westmoreland had no presence at the address provided as its headquarters;
- iii. Westmoreland lacked any genuine employees;
- iv. Westmoreland lacked the assets sufficient to meet Plaintiffs' loan requirements;
- v. Upon information and belief, Westmoreland had not funded any actual loans or none approaching the size required by Plaintiffs;
- vi. That American Escrow and, upon information and belief, Westmoreland was controlled by a disbarred lawyer, Feldman, who, during the time of his dealings with Plaintiffs had been charged with criminal fraud;
- vii. That American Escrow had no genuine office or employees.

232. Plaintiffs have been damaged as a direct and proximate result of the breach of contract actions described above.

SEVENTH CLAIM FOR RELIEF

Aiding and Abetting

Plaintiffs v. All Defendants except Westmoreland

233. Plaintiffs incorporate all the previous paragraphs of the Complaint

234. Each of the Defendants above undertook tortious acts described above in concert with the other or pursuant to a common design with him or her.

235. Plaintiffs have been damaged as a direct and proximate result of the aiding and abetting described above

EIGHTH CLAIM FOR RELIEF

Violation of 18 U.S.C. § 1962(c)

Plaintiffs v. All Defendants

236. Plaintiffs incorporate all the previous paragraphs of the Complaint.

237. American Escrow & Settlement Services, LLC, Bernard Feldman PA, and Westmoreland Equity Fund, LLC (“Westmoreland Enterprise”) is an enterprise as that term is used in 18 U.S.C. § 1961(4). The Westmoreland Enterprise had longevity sufficient to pursue the enterprise’s purposes of devising or intending to devise schemes or artifices to defraud the Plaintiffs and others. The enterprise existed for at least five years and harmed multiple persons in addition to Plaintiffs.

238. Elias Correa, Alan Feldman, Bernard Feldman, Jennifer Hutchens, Sandy Hutchens, Tanya Hutchens, Matthew Kovce, Barbara Leuin, Lydecker, Lee, Berga & De Zayas, LLC, Ed Ryan, Sofia Capital Ventures, LLC, and Jason Underwood is each a “person” as that term is used in 18 U.S.C. § 1961(3). Each participated in the operation, management, and control of the Westmoreland Enterprise through a pattern of racketeering activity.

239. Beginning at least as early as 2013 and continuing until 2017, the Westmoreland Enterprise conducted mail and wire fraud in violation of 18 U.S.C.

§ 1341 and 18 U.S.C. § 1343, and unlawful monetary transactions, in violation of 18 U.S.C. § 1956 and § 1957, which are predicate offenses for purposes of 18 U.S.C. § 1962(c).

240. Specifically, the Westmoreland Enterprise made affirmative misrepresentations of present or past material facts to Plaintiffs and other victims via the mail and wires, including, but not limited to the following:

- a. That Westmoreland was a legitimate lender;
- b. That the extensive representations and presentations on its website were true, providing the illusion that it was a genuine lender;
- c. That Westmoreland had funded a large number of prior loans;
- d. That Westmoreland was willing to lend money to Plaintiffs pursuant to the loan commitments;
- e. That Westmoreland would conduct due diligence in good faith with the intent of closing the loan and funding the loan;
- f. That Westmoreland had participated in many prior transactions;
- g. That the various endorsements contained on its website were true statements of natural persons;
- h. That Westmoreland had a lending capacity of \$475,000,000;
- i. That American Escrow had reviewed bank records of Westmoreland to verify Westmoreland's lending capacity;

- j. That Feldman was an independent inspector retained by Westmoreland;
- k. That Ed Ryan was a managing member of Westmoreland;
- l. That Jason Underwood was the “manager of assets and valuations” of Westmoreland.

241. The proposed loan transactions were a sham intended to induce Plaintiffs and others to advance substantial lender fees to Defendants. The representations made to Plaintiffs were false. At the time of the representations and at the time of contracting, the Westmoreland Enterprise had the present intent never to make any loan to Plaintiffs and then to retain the fees paid by Plaintiffs on pretextual grounds as part of their plan and secret and undisclosed intent.

242. The Westmoreland Enterprise made material omissions in their representations to Plaintiffs via the mail and wires, rendering their representations to Plaintiffs false and misleading. Among the material omissions, were the following:

- a. That Westmoreland had no legitimate office at its principal place of business, 1650 Market Street, Philadelphia, PA 19103;
- b. That Ryan had no legitimate office at its principal place of business, 1650 Market Street, Philadelphia, PA 19103;
- c. That Bernard Feldman had an interest in Westmoreland;

- d. That American Escrow was not independent but organized by Feldman;
- e. That American Escrow had no legitimate office;
- f. That “Ed Ryan” as an alias for Hutchens;
- g. That Sandy Hutchens was a notorious criminal known for engaging in precisely the type of fraud alleged herein;
- h. Upon information and belief for reasons described above, that Underwood did not exist or was a straw for Hutchens;
- i. Upon information and belief for reasons described above, that Conti or Conte did not exist or was a straw for Feldman;
- j. That Bernard Feldman was disbarred as a lawyer in both Michigan and Florida and had been suspended from practice for the reasons described above;
- k. That the endorsements identified on Westmoreland’s website had never occurred;
- l. That Westmoreland lacked the capacity to make the loans it committed to make in its commitment letter.

243. The Westmoreland Enterprise, and the persons named above, conducted numerous financial transactions knowing that they represented the proceeds of unlawful activity with the intent of carrying on the unlawful activities

of the enterprise and with the intent of concealing the nature, location, source, ownership and control of the proceeds of the unlawful activity, in violation of 18 U.S.C. § 1956.

244. The Westmoreland Enterprise, and the persons named above, conducted numerous financial transactions of greater than \$10,000 knowing that they represented the proceeds of unlawful activity, in violation of 18 U.S.C. § 1957.

245. Plaintiffs suffered domestic injury as a direct and proximate result of the fraudulent and unlawful actions described above, including appropriation of funds in excess of \$50,000 from bank accounts in Florida and loss of their home in Arizona.

246. The activities of the Westmoreland Enterprise affected interstate and foreign commerce.

NINTH CLAIM FOR RELIEF

Violation of 18 U.S.C. § 1962(d)

Plaintiffs v. All Defendants

247. Plaintiffs incorporate all the previous paragraphs of the Complaint.

248. Defendants, in violation of 18 U.S.C. § 1962(d), conspired with the persons managing, operating, and/or controlling the Westmoreland Enterprise to violate 18 U.S.C. § 1962(c).

249. Plaintiffs were the intended targets of the scheme to violate RICO, 18 U.S.C. § 1962(c) alleged herein, and the participation Defendants in a conspiracy to facilitate that scheme, in violation of 18 U.S.C. § 1962(d), caused financial injury to plaintiff and the members of the Class which was a reasonably foreseeable consequence of such conduct.

250. Specifically, and without limitation, the common plan and design included: (a) creating a loan scam by, among other things, giving Plaintiffs the appearance of legitimate lenders and other people and entities who were able to fund a legitimate loan transaction and perform appropriate due diligence; (b) inducing Plaintiffs to pay significant advance lender fees as the object of the common plan and design with the intent not to return the lender fees advanced and not to fund the loan; (c) concocting grounds for terminating the loan, and justifying keeping the funds advanced; (d) using the funds they knew, or should have known, were stolen through the scheme to fund payouts to complaining victims; (e) providing means of hiding the ill-gotten gains; (f) providing fictitious names; (g) concealing the true identity of the operators of the schemes and representing that Hutchens's proxies and aliases were the operators of the scheme; (h) upon information and belief, negotiating and obtaining releases of persons they knew, or should have known, were not the operators of the scheme in order to conceal and perpetuate the ongoing fraud; and (i) offering arrangements on behalf of persons

they knew or should have known were fictitious persons and/or fronts for the true operators or the schemes. These actions were taken with purpose, and/or with the knowledge, that such actions were perpetuating an ongoing illegal fraud scheme.

251. Defendants and their co-conspirators had a meeting of the minds and an express or tacit consent on their course of action constituting their civil conspiracy as alleged herein.

252. Pursuant to their unity of interest, conspiracy, and concerted action, Defendants and their co-conspirators pursued a course of action that was predicated on fraudulent inducement and subsequent fraudulent concealment of the conspiratorial scheme.

253. Defendants committed numerous unlawful covert acts in furtherance of the conspiracy, including among other things, making false representations, concealing material information, and engaging in repeated acts of mail and wire fraud.

254. Plaintiffs suffered domestic injury as a direct and proximate result of the fraudulent actions described above, including appropriation of funds in excess of \$50,000 from accounts in Florida and loss of their home in Arizona.

TENTH CLAIM FOR RELIEF**Violation of 18 U.S.C. § 1962(c)****Plaintiffs v. All Defendants**

255. Plaintiffs incorporate all the previous paragraphs of the Complaint.

256. Westmoreland Equity Fund, LLC, Canadian Funding Corporation, 308 Elgin Street, Inc., First Central Mortgage Funding Inc., and the Great Eastern Investment Fund are an “enterprise” as defined in 18 U.S.C. § 1961(4) (the “Advance Fee Enterprise”). The Advance Fee Enterprise had longevity sufficient to pursue the enterprise’s purposes of devising or intending to devise schemes or artifices to defraud the Plaintiffs and others. The enterprise existed for at least five years and harmed multiple persons in addition to Plaintiffs.

257. American Escrow & Settlement Services, LLC; Elias Correa; Alan Feldman; Bernard Feldman; Bernard Feldman PA; Jennifer Hutchens; Sandy Hutchens; Tanya Hutchens; Shannon Hutchens; Matthew Kovce; Barbara Leuin; Lydecker, Lee, Berga & De Zayas, LLC; Ed Ryan; Sofia Capital Ventures, LLC; and Jason Underwood is each a “person” as that term is used in 18 U.S.C. § 1961(3). Each participated in the operation, management, and control of the Advance Fee Enterprise through a pattern of racketeering activity.

258. Beginning at least as early as January, 2004, and continuing at least until 2017, the Advance Fee Enterprise routinely conducted mail and wire fraud in

violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343, and unlawful monetary transactions, in violation of 18 U.S.C. § 1956 and § 1957, which are predicate offenses for purposes of 18 U.S.C. § 1962(c).

259. Specifically, the Advance Fee Enterprise made affirmative misrepresentations of present or past material facts to Plaintiffs and others victims via the mail and wires, including, but not limited to the following:

- a. That Westmoreland Equity Fund LLC, Canadian Funding Corporation, 308 Elgin Street, Inc., First Central Mortgage Funding Inc., and the Great Eastern Investment Fund were legitimate lenders;
- b. That the extensive representations and presentations on their websites were true, providing the illusion that they were genuine lenders;
- c. That they had funded a large number of prior loans;
- d. That they were willing to lend money to Plaintiffs and other victims pursuant to the loan commitments;
- e. That they would conduct due diligence in good faith with the intent of closing the loan and funding the loan;
- f. That they had participated in many prior transactions;

- g. That the various endorsements contained on its website were true statements of natural persons;
- h. That they had hundreds of millions of dollars in lending capacity;
- i. That other actors had reviewed their financials to ensure solvency and legitimacy;

260. The proposed loan transactions were a sham intended to induce Plaintiffs to advance substantial lender fees to the enterprise. The representations made to Plaintiffs were false. At the time of the representations and at the time of contracting, Defendants had the present intent never to make any loan to Plaintiffs and then to retain the fees paid by Plaintiffs on pretextual grounds as part of their plan and secret and undisclosed intent.

261. Defendants operated a completely fraudulent up-front fee scheme designed to bilk potential borrowers of fees on loans which Defendants had no intention or capacity of completing.

262. The Advance Fee Enterprise made material omissions in their representations to Plaintiffs and other victims via the mail and wires, rendering their representations to Plaintiffs false and misleading. Among the material omissions, were the following:

- a. That Westmoreland had no legitimate office at its principal place of business, 1650 Market Street, Philadelphia, PA 19103;

- b. That Ryan had no legitimate office at its principal place of business, 1650 Market Street, Philadelphia, PA 19103;
- c. That Bernard Feldman had an interest in Westmoreland;
- d. That American Escrow was not independent but organized by Feldman;
- e. That American Escrow had no legitimate office;
- f. That “Ed Ryan” as an alias for Hutchens;
- g. That Sandy Hutchens was a notorious criminal known for engaging in precisely the type of fraud alleged herein;
- h. Upon information and belief for reasons described above, that Underwood did not exist or was a straw for Hutchens;
- i. Upon information and belief for reasons described above, that Conti or Conte did not exist or was a straw for Feldman;
- j. That Bernard Feldman was disbarred as a lawyer in both Michigan and Florida and had been suspended from practice for the reasons described above;
- k. That the endorsements identified on Westmoreland’s website had never occurred;
- l. That Westmoreland lacked the capacity to make the loans it committed to make in its commitment letter.

263. The Advance Fee Enterprise, and the person named above, conducted numerous financial transactions knowing that they represented the proceeds of unlawful activity with the intent of carrying on the unlawful activities of the enterprise and with the intent of concealing the nature, location, source, ownership and control of the proceeds of the unlawful activity, in violation of 18 U.S.C. § 1956.

264. The Advance Fee Enterprise, and the person named above, conducted numerous financial transactions of greater than \$10,000 knowing that they represented the proceeds of unlawful activity, in violation of 18 U.S.C. § 1957.

265. Plaintiffs suffered domestic injury as a direct and proximate result of the fraudulent and unlawful actions described above, including appropriation of funds in excess of \$50,000 from accounts Plaintiffs established in Florida and loss of their home in Arizona.

266. The activities of the Westmoreland Enterprise affected interstate and foreign commerce.

ELEVENTH CLAIM FOR RELIEF

Violation of 18 U.S.C. § 1962(d)

Plaintiffs v. All Defendants

267. Plaintiffs incorporate all the previous paragraphs of the Complaint.

268. Defendants, in violation of 18 U.S.C. § 1962(d), conspired with the persons managing, operating, and/or controlling the Advance Fee Enterprise to violate 18 U.S.C. § 1962(c).

269. Plaintiffs were the intended targets of the scheme to violate RICO, 18 U.S.C. § 1962(c) alleged herein, and the participation of Defendants in a conspiracy to facilitate that scheme, in violation of 18 U.S.C. § 1962(d), caused financial injury to Plaintiffs which was a reasonably foreseeable consequence of such conduct.

270. Specifically, and without limitation, the common plan and design included: (a) creating a loan scam by, among other things, giving Plaintiffs the appearance of legitimate lenders and other people and entities who were able to fund a legitimate loan transaction and perform appropriate due diligence; (b) inducing Plaintiffs to pay significant advance lender fees as the object of the common plan and design with the intent not to return the lender fees advanced and not to fund the loan; (c) concocting grounds for terminating the loan, and justifying keeping the funds advanced; (d) using the funds they knew, or should have known, were stolen through the scheme to fund payouts to complaining victims; (e) entering formal appearances on behalf of persons they knew, or should have known, were fictitious persons in legal proceedings; (f) upon information and belief, negotiating and obtaining releases of persons they knew, or should have

known, were fictitious persons in settlement negotiations to conceal and perpetuate the ongoing fraud; (g) offering arrangements on behalf of persons they knew or should have known were fictitious persons. These actions were taken with purpose, and/or with the knowledge, that such actions were perpetuating an ongoing illegal fraud scheme.

271. Defendants had a meeting of the minds and an express or tacit consent on their course of action constituting their civil conspiracy as alleged herein.

272. Pursuant to their unity of interest, conspiracy, and concerted action, Defendants pursued a course of action that was predicated on fraudulent inducement and subsequent fraudulent concealment of the conspiratorial scheme.

273. Defendants committed numerous unlawful covert acts in furtherance of the conspiracy, including among other things, making false representations, concealing material information, and engaging in repeated acts of mail and wire fraud.

274. Plaintiffs suffered domestic injury as a direct and proximate result of the fraudulent actions described above, including appropriation of funds in excess of \$50,000 from bank accounts in Florida and loss of their home in Arizona.

WHEREFORE, Plaintiffs demand judgment against Defendants and each of the them, jointly and severally, and respectfully requests that the Court enter judgment:

- a. awarding compensatory damages in excess of \$50,000;
- b. awarding punitive damages;
- c. trebling on judgment for damages recoverable under the RICO claims;
- d. awarding prejudgment interest, attorneys' fees and litigation expenses;
- e. awarding such other and further relief as the Court deems just and proper,

Jury Trial Demand

Plaintiffs demand trial by jury on all issues so triable.

Dated: March 15, 2018

Respectfully submitted,

By: 

Howard Langer

Edward Diver

Peter Leckman

LANGER GROGAN & DIVER, P.C.

Three Logan Square, Ste. 4130

1717 Arch Street

Philadelphia, PA 19103

Tele: (215) 320-5660

APPENDIX 7

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-cv-01012-RBJ

CGC HOLDING COMPANY, LLC, a Colorado limited liability company,
HARLEM ALGONQUIN LLC, an Illinois limited liability company, and
JAMES T. MEDICK, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SANDY HUTCHENS, a/k/a Fred Hayes, a/k/a Moishe Alexander, a/k/a Moshe Ben Avraham,
TANYA HUTCHENS, and
JENNIFER HUTCHENS,

Defendants.

SECOND AMENDED and FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Amended and Final Judgment is hereby entered.

This action was tried before a jury of six after illness of a seventh juror, duly sworn to try the issues herein with U.S. District Judge R. Brooke Jackson presiding, and the jury has rendered a verdict. The jury rendered verdicts in favor of the plaintiffs (meaning the named plaintiffs and members of the certified plaintiff class) and against defendants Sandy Hutchens, Tanya Hutchens and Jennifer Hutchens, finding as to each defendant that he or she violated both 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d), and awarding damages in the total amount of \$8,421,367.00. Pursuant to 18 U.S.C. § 1964(c), those damages are trebled. After trebling, the amount of pretrial settlements is deducted. Accordingly, it is

ORDERED that judgment is entered on behalf of the plaintiffs, CGC HOLDING COMPANY, LLC, a Colorado limited liability company, HARLEM ALGONQUIN LLC, an Illinois limited liability company, JAMES T. MEDICK, and class members, and against the defendants, SANDY HUTCHENS, a/k/a Fred Hayes, a/k/a Moishe Alexander, a/k/a Moshe Ben Avraham, TANYA HUTCHENS and JENNIFER HUTCHENS, jointly and severally, with compensatory damages in the amount of \$8,421,367, trebled, minus pretrial settlements in the amount of \$1,025,000, for a total of \$24,239,101. It is

FURTHER ORDERED that a constructive trust is imposed on the following corporations and properties located in Ontario, Canada such that Sandy Hutchens, or Tanya Hutchens, or Jennifer Hutchens, or any other family member of any of Sandy, Tanya or Jennifer Hutchens are holding the following in trust for the plaintiffs:

a) Shares/Assets of the following Corporations/Entities:

1. 29 Laren Street Inc.
2. 3415 Errington Avenue Inc.
3. 3419 Errington Avenue Inc.
4. 331 Regent Street Inc.
5. 110-114 Pine Street Inc.
6. 15-16 Keziah Court Inc.
7. 193 Mountain Street Inc.
8. 625 Ash Street Inc.
9. 101 Service Road Inc.
10. 146 Whittaker Street Inc.
11. Estate of Judith Hutchens. No less than \$615,000 appears to be traceable to this

asset.

12. 364 Morris Street Inc. No less than \$4,000 is traceable to this asset.

13. 367-369 Howey Drive Inc. No less than \$4,000 is traceable to this asset.

14. 720 Cambrian Heights Inc. No less than \$1,500 is traceable to this asset.

15. JBD Holding and/or JBD Family. No less than \$400,000 is traceable to this asset.

b) The following Real Property:

	Registered Owner	Property Address	Legal Description of Real Property
1.	29 Laren Street Inc.	29 Laren Street Sudbury, Ontario	PIN #73481-0001 (LT); PCL 12042 SEC SES; PT LT 31 BLK B PL M9 DRYDEN & PT LT 32 BLK B PL M9 DRYDEN AS IN LT67718; PT LT 33 PL M9 DRYDEN PT 1 53R64589; GREATER SUDBURY
2.	29 Laren Street Inc.	29 Laren Street Sudbury, Ontario	PIN #73481-0006 (LT); PCL 12115 SEC SES; LT 30 BLK B PL M9 DRYDEN; GREATER SUDBURY
3.	29 Laren Street Inc.	29 Laren Street Sudbury, Ontario	PIN #73481-0008 (LT); PLC 12201 SEC SES; LT 29 BLK B PL M9 DRYDEN; PT PINE ST PL M9 DRYDEN; PT LANE PL PL M9 DRYDEN (NOW CLOSED) PARTS 3- 5, 53R9050 SAVE & EXPECTING THEREFROM THE CANADIAN PACIFIC RAILWAY COMPANY PROPERTY, & THAT PORTION OF THE WAHNAPIAE RIVER; S/T LT567345; GREATER SUDBURY
4.	29 Laren Street Inc.	29 Laren Street Sudbury, Ontario	PIN #73481-0493 (LT); PCL 3816 SEC SES; LT 5-6 BLK B PL M9 DRYDEN; S/T LT567345; GREATER SUDBURY
5.	29 Laren Street Inc.	29 Laren Street Sudbury, Ontario	PIN #73481-0446 (LT); PCL 12386 SEC SES; LT 1-3 BLK B PL M9 DRYDEN; GREATER SUDBURY

	Registered Owner	Property Address	Legal Description of Real Property
6.	29 Laren Street Inc.	29 Laren Street Sudbury, Ontario	PIN #73481-0512 (LT); PLC 198 SEC SES; LT 4 BLK B PL M9 DRYDEN; GREATER SUDBURY
7.	3415 Errington Avenue Inc.	3415 Errington Avenue Sudbury, Ontario	PIN: 73349-1569 (LT) PCL 10618 SEC SWS; LT 215 BLK 6 PL M91 BALFOUR; GREATER SUDBURY
8.	3419 Errington Avenue Inc.	3419 Errington Avenue Sudbury, Ontario	PIN: 73349-0720 (LT) PCL 21629 SEC SWS; LT 222 BLK 6 PL M91 BALFOUR; GREATER SUDBURY
9.	331 Regent Street Inc.	331 Regent Street Sudbury, Ontario	PIN #73586-0638 (LT) LT 297 PL 4SC MCKIM; GREATER SUDBURY
10.	110-114 Pine Street Inc.	110-114 Pine Street Sudbury, Ontario	PIN #02135-0246 (LT); LTS 48, 49, PT LT 50, BLK B PLAN 3SA; PTS 2, 4, 5, 6 53R11500 SUBJECT TO S94352 CITY OF SUDBURY
11.	193 Mountain Street Inc.	193 Mountain Street Sudbury, Ontario	PIN #02132-0942 (LT); PCLS 2388, 3113 AND 21292 SEC SES LTI PLAN M28B EXCEPT COMM AT THE S ELY ANGLE OF LT1; THENCE S 37 DEG 16'W ALONG THE SLY LIMIT OF LT1 A DISTANCE OF 42FT 3INCHES TO THE SLY ANGLE OF SAID LT1; THENCE S 73 DEG 04"W ALONG THE SLY LIMIT OF SAID LT1 A DISTANCE OF 10FT, 6INCHES TO THE SW ANGLE OF LT1; THENCE N 52DEG 10"W ALONG THE W LIMIT OF LT1 A DISTANCE OF 10FT, 6INCHES TO A POINT; THENCE N 64DEG 29'E A DISTANCE OF 11 FT MORE OR LESS TO A POINT BEING 11.0FT N 25DEG 31'W OF THE SLY ANGLE OF LT1; THENCE N 52 DEG 00' E A DISTANCE OF 38FT MORE OR LESS TO THE POC, PLAN ATTACHED IN 33273, NOW PCL 5776 SES; LT2 PLAN M28B EXCEPT COMMENCING AT THE S ELY ANGLE OF LT2, THENCE S 73

Registered Owner	Property Address	Legal Description of Real Property
		DEGREES 04'W ALONG THE SLY LIMIT OF LT2 A DISTANCE OF 63'2" TO THE S WLY ANGLE OF LT2, THEN N64 DEGREES 29' EA DISTANCE OF 62' MORE OR LESS TO A POINT ON THE ELY LIMIT OF LT2, THENCE S 52 DEGREES E ALONG THE ELY LIMIT OF LT2 A DISTANCE OF 10'6" MORE OR LESS TO THE POC; PLAN ATTACHED IN 33273, NOW PLC 5776 SES; EXCEPT COMM AT A POINT IN THE S WESTERN LIMIT OF SAID LT2 DISTANT 95.0FT FROM THE MOST SLY ANGLE OF SAID LT; THENCE N 45DEG 23'W TO A POINT IN THE HIGHWATER MARK OF THE EASTERN BANK OF JUNCTION CREEK; THENCE S WLY FOLLOWING ALONG SAID HIGHWATER MARK TO THE MOST WLY ANGLE OF SAID LT; THENCE S 54DEG 42'E ALONG THE AFORESAID S WESTERN LIMIT 95.0 FT MORE OR LESS TO THE POC, NOW PCL 21291 SES; EXCEPT PT1 53R8264; PT LT3 PLAN M28B COMM AT TA POINT IN THE N ELY ANGLE; THENCE S 70 DEG 32' W ALONG THE S EASTERN LIMIT OF SAID LT 18.0FT; THENCE N 45DEG 23'W TO THE POC; EXCEPT PT 2 53R8264 SUBJECT TO 25265S/T LT868119 PART 6&7 ON PLAN 53R-16220 CITY OF SUDBURY
12.	Tanya Hutchens	1779 Cross Street Innisfil, Ontario PIN #58069-0150 (LT); PT N 1/2 LT 25 CON 6 INNISFIL AS IN R01093173; ST R01093173; INNISFIL
13.	367-369 Howey Drive Inc. No less than \$4,000 is traceable to this asset.	367-369 Howey Drive Sudbury, Ontario PIN #73583-0400 (LT); LT 1-2 BLK A PL 5SA MCKIM S/T & T/W S112782; S/T INTEREST IN S112782; GREATER SUDBURY
14.	Tatiana Hutchens No less than \$379,968 appears to be traceable to this asset.	33 Theodore Place Vaughan, Ontario PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593: Vaughan

	Registered Owner	Property Address	Legal Description of Real Property
15.	Tatiana Hutchens No less than \$379,968 appears to be traceable to this asset.	33 Theodore Place Vaughan, Ontario	PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593: Vaughan

c) Personal Property

1. Sea Doo Boat located at 33 Theodore Place, Vaughan, Ontario. No less than \$21,000 is traceable to this asset.

The constructive trust against these corporations and properties (unless specifically stated otherwise) is for the full amount of the Judgment entered by the Court and includes all monies resulting directly or indirectly from the use, lease or sale of the corporations and properties regardless of the title/ownership to the corporations and properties which are held in trust for the plaintiffs. The burden is on the plaintiffs to trace any additional application fees to specific corporations and properties beyond the tracing found above. It is

FURTHER ORDERED that the Court awards attorney's fees to the plaintiffs of one-third of the amounts collected on the common fund created by this Amended and Final Judgment (\$24,239,101 plus interest), to be taken proportionately out of funds as they are collected so that counsel and clients share the collections contemporaneously and proportionately as they are received. It is

FURTHER ORDERED that pursuant to 18 U.S.C. § 1964(c), Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1, plaintiff are awarded costs against Sandy Hutchens, Tanya Hutchens and Jennifer Hutchens, jointly and severally, in the amount of \$33,237.89. It is

FURTHER ORDERED that plaintiffs are awarded prejudgment interest on \$8,421,367 at the rate of 1.31% compounded annually from April 15, 2011 through September 26, 2017

against Sandy Hutchens, Tanya Hutchens and Jennifer Hutchens, jointly and severally, in the total amount of \$737,911.68. It is

FURTHER ORDERED that post-judgment interest at the federal rate of 1.31% will run on the unsatisfied portion of the judgment from September 27, 2017 until the judgment is satisfied.

Dated at Denver, Colorado this 16th day of July, 2018

FOR THE COURT:
JEFFREY P. COLWELL, CLERK

By: s/ J. Dynes
J. DYNES
Deputy Clerk

APPROVED BY THE COURT:
s/ R. Brooke Jackson
United States District Judge

APPENDIX 8



Sheraton Centre
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Toronto, ON M5H 3K6
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Email: eperitz@jaffeperitz.com
*practising as a professional corporation

BARRISTERS AND SOLICITORS

May 8, 2019

BY EMAIL dnaymark@naymarklaw.com

Daniel Naymark
Naymark Law
101 - 171 John Street
Toronto, ON
M5T 1X3

Dear Mr. Naymark:

Re: A. Farber & Partners Inc., Receiver of Hutchens et al. (the "Receiver")

You have requested our opinion concerning the Charge/Mortgages issued by Tanya (also known as Tatiana) Hutchens ("Tanya") to Meridian Credit Union Limited ("Meridian") and the Charge/Mortgage issued by Sandy Hutchens ("Sandy") to Ronald Henderson ("Ronald"). Tanya and Sandy are respondents in an Application with Court File No. CV-18-608271-00CL (the "Application").

In order to provide our opinion we reviewed and relied exclusively on copies of the following:

1. A Charge/Mortgage registered in the Simcoe land registry office as SC976633 on April 26, 2012 from Tanya to Meridian in the principal amount of \$85,000.00 (the "85K Mortgage") against the property with PIN 58069-0103 (LT) and legally described as LT 1 PL 978 INNISFIL; INNISFIL (the "1790 Cross Property"), obtained from Service Ontario;
2. A Charge/Mortgage registered in the Simcoe land registry office as SC1049629 on April 8, 2013 from Tanya to Meridian in the principal amount of \$300,000.00 (the "300K Mortgage") against the property with PIN 58069-0150 (LT) and legally described as PT N ½ LT 25 CON 6 INNISFIL AS IN RO1093173; S/T RO1093173; INNISFIL (the "1779 Cross Property"), obtained from Service Ontario;
3. A Charge/Mortgage registered in the Simcoe land registry office as SC1049631 on April 8, 2013 from Tanya to Meridian in the principal amount of \$200,000.00 (the "200K

Mortgage”) against the property with PIN 58072-0299 (LT) and legally described as LT 31, PL 657; INNISFIL (the “Simcoe Blvd. Property”), obtained from Service Ontario;

4. A Charge/Mortgage registered in the York Region land registry office as YR1844133 on June 27, 2012 from Tanya to Meridian in the principal amount of \$535,000.00 (the “535K Mortgage”) against the property with PIN 03251-0304 (LT) and legally described as PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593; VAUGHAN (the “Theodore Place Property”), obtained from Service Ontario; and
5. A Charge/Mortgage registered in the Sudbury land registry office as SD61982 on October 11, 2006 from Sandy to Ronald in the principal amount of \$100,000.00 (the “100K Mortgage”) against the property with PIN 73588-0383 (LT) and legally described as PCL 7614 SEC SES; LT 278 PL M128 MCKIM; GREATER SUDBURY (the “Clemow Property”), which you provided.

(Collectively, the “Mortgages”).

6. Parcel Registers obtained on April 29, 2019, provided by Service Ontario, Simcoe Land Registry Office (#51) for the 1790 Cross Property;
7. Parcel Registers obtained on April 26, 2019, provided by Service Ontario, Simcoe Land Registry Office (#51), for the 1779 Cross Property;
8. Parcel Registers obtained on April 26, 2019, provided by Service Ontario, Simcoe Land Registry Office (#51), for the Simcoe Blvd. Property;
9. Parcel Registers obtained on April 29, 2019, provided by Service Ontario, York Region Land Registry Office (#65), for the Theodore Place Property; and
10. Parcel Registers obtained on April 26, 2019, provided by Service Ontario, Sudbury Land Registry Office (#53), for the Clemow Property. The Parcel Register discloses a Land Registry Order on March 9, 2007 amending Owners’ Name Field by adding Judith Anne Hutchens – Estate ASIN.

(Collectively, the “Searches”).

The Searches discloses various Certificates of Pending Litigation.

In accordance with your instructions, we have not conducted the usual supplemental searches that are ordinarily conducted in real estate transactions; for instance, municipal work orders, realty tax arrears, writ searches, etc.

We express no opinion as to the priority of any of the Mortgages, the enforceability of any loans or obligations secured by the Mortgages, the specific payment provisions of the Mortgages, or title to the properties secured by the Mortgages. We express no opinion on the Application.

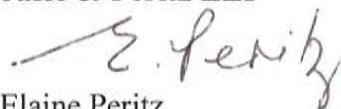
In our opinion, subject to the foregoing qualifications and the assumptions and qualifications set out in Schedule "A", attached hereto, each of the Mortgages is a valid and enforceable Charge/Mortgage against the Receiver to the extent of all monies advanced thereunder.

We have no reason to believe that any assumptions and qualifications set out in Schedule "A" may specifically apply with respect to the Mortgages. We invite your questions or comments should you have any concerns in this regard.

The opinions expressed herein are provided to and are for the sole purpose of A. Farber & Partners Inc. and may not be released to any other person or used for any other purpose without our express written consent.

Yours truly,

Jaffe & Peritz LLP

A handwritten signature in dark ink, appearing to read "E. Peritz", is written over the printed name.

Elaine Peritz

ESP:rb

SCHEDULE "A"

Assumptions and Qualifications:

1. In rendering our opinion we have assumed the following:

- (a) the genuineness of all signatures on documents examined by us, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photostatic copies;
- (b) the legal capacity of natural persons and the truth of the factual statements contained in all documents submitted to us;
- (c) the accuracy and currency of the indices and filing systems maintained at the public offices where we have searched or inquired;
- (d) the due execution, authorization and delivery of the documentation referred to herein by all parties and as of the date of this opinion no steps or actions have been taken to revoke, rescind or modify any such authorizations;
- (e) that the debtors have no legal defence against any of the secured parties for, without limitation, absence of legal capacity, fraud, by or to the knowledge of any of the secured parties, misrepresentation, undue influence or duress.

2. We express no opinion with respect to the debtors' title to assets.

3. All opinions with regard to the enforceable nature of the obligations evidenced by any agreement or document, which are the subject matter hereof, are subject to the following qualifications:

- (a) enforcement of an agreement may be restricted by any laws affecting or limiting the right of creditors to enforce any remedies available to them;
- (b) enforcement of an agreement might be affected or limited by any collateral agreements or arrangements relating thereto entered into among the parties thereto, of which we are not aware;
- (c) no opinion is given with respect to the availability of any particular remedy, equitable or otherwise. Without limiting the generality of the foregoing, no opinion is given that any particular provision of any of the agreement or document the subject matter hereof, may be specifically enforced; the enforceability of a party's obligations thereunder being

subject to the general principles of equity regardless of whether such enforceability is considered in a proceeding in equity or at law;

- (d) enforcement of an agreement may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law (including the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA")) affecting the enforcement of creditors' rights generally from time to time; and
 - (e) since specific performance and injunctive relief are equitable remedies and may only be granted in the discretion of a court of competent jurisdiction, such remedies may not be available where damages are considered adequate.
4. The security documents are only enforceable to the extent that monies have been advanced by the secured parties and/or other obligations owed by the debtors to the secured parties have been incurred.
 5. The opinions expressed herein are provided to and are for the sole purpose of A. Farber & Partners Inc. and may not be released to any other person or used for any other purpose, other than to the Superintendent as defined in the BIA.

APPENDIX 9

LAND
REGISTRY
OFFICE #66

11595-0289 (LT)

PAGE 1 OF 3
PREPARED FOR Borrelli01
ON 2019/04/18 AT 12:33:02

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION:

UNIT 62, LEVEL A, METROPOLITAN TORONTO CONDOMINIUM PLAN NO. 595, LOTS 462, 463, 464, 465, 466, 481, 482, 483, 484, 485 AND PARTS OF LOTS 461 AND 486 ON PLAN M407 AND PART OF BURNETT AVENUE ON SAID PLAN M407 AS DESCRIBED IN SCHEDULE 'A' OF DECLARATION B762963. TWP OF YORK/NORTH YORK , CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
1989/12/11

OWNERS' NAMES
BRIK, DINA

CAPACITY SHARE
BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1989/12/11 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1989/12/11						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1989/09/07 **						
B762963	1982/12/30	DECLARATION CONDO			CAM-NEST DEVELOPMENTS LIMITED	C
B765031	1983/01/12	BYLAW				C
REMARKS: BY-LAW #1.						
B765032	1983/01/12	BYLAW				C
REMARKS: BY-LAW #2.						
B765033	1983/01/12	BYLAW				C
REMARKS: BY-LAW #3.						
B765034	1983/01/12	BYLAW				C
REMARKS: BY-LAW #4.						
B766386	1983/01/27	BYLAW				C
REMARKS: BY-LAW #5.						
B766484	1983/01/27	ORDER				C
REMARKS: RE: AMENDING DECLARATION						
B771324	1983/03/03	TRANSFER		*** COMPLETELY DELETED ***	500759 ONTARIO LIMITED	
B771325	1983/03/03	CHARGE		*** COMPLETELY DELETED ***	CAM-NEST DEVELOPMENTS LIMITED	
B819253	1984/04/16	BYLAW				C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND
REGISTRY
OFFICE #66

11595-0289 (LT)

PAGE 2 OF 3
PREPARED FOR Borrelli01
ON 2019/04/18 AT 12:33:02

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
C254807	1985/12/18	CHARGE		*** DELETED AGAINST THIS PROPERTY *** THE CONSUMERS' GAS COMPANY LTD. 05745 A905745 SHOULD BE A907873	CANADA PERMANENT TRUST COMPANY	
				REMARKS: SUPPLEMENTAL CHARGE OF MULTIPLE EASEMENTS. A905745 A905745 SHOULD BE A907873 CORRECTIONS: 'CHARGOR: THE CONSUMERS' GAS COMPANY' ADDED ON 1989/09/11 BY TOM STADNISKY. 'CHARGOR' CHANGED FROM 'THE CONSUMERS' GAS COMPANY LTD.' ON 1990/08/29 BY PATTY ANNE VALENTI.		
B920988	1986/09/05	NOTICE AGREEMENT		*** COMPLETELY DELETED ***	CAM-NEST DEVELOPMENTS LIMITED	
				REMARKS: RE: B771325		
B920999	1986/09/05	TRANSFER OF CHARGE		*** COMPLETELY DELETED ***	ROYAL TRUST CORPORATION OF CANADA	
				REMARKS: RE: MULTIPLE CHARGES		
D291920	1991/11/08	BYLAW		METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 595		C
				REMARKS: SPECIAL BY-LAW NO. 7		
D307234	1992/02/06	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** CANNON WATER BLAST SYSTEMS INC.		
D314506	1992/03/16	CERTIFICATE		*** COMPLETELY DELETED *** CANNON WATER BLAST SYSTEMS INC.		
				REMARKS: COMMON ELEMENTS-D307234		
D331534	1992/06/22	RELEASE		*** COMPLETELY DELETED *** CANNON WATER BLAST SYSTEMS INC.		
				REMARKS: LIEN NO. D307234 AND CERTIFICATE OF ACTION D314506		
E204004	1998/10/15	TRANSFER	\$230,000	500759 ONTARIO LIMITED	BRIK, DINA	C
E204005	1998/10/15	CHARGE		*** COMPLETELY DELETED *** BRIK, DINA	THE TORONTO-DOMINION BANK	
D641765	1999/02/08	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL TRUST CORPORATION OF CANADA		
				REMARKS: RE: B771325		
D787842	2001/07/05	CONDO LIEN/98		*** COMPLETELY DELETED *** METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 595		
AT11333	2002/10/04	DISCH OF CHARGE		*** COMPLETELY DELETED ***		

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT70276	2002/12/30	DIS CONDO LIEN		THE TORONTO-DOMINION BANK *** COMPLETELY DELETED ***	METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 595	
AT970879	2005/11/04	NO CHNG ADDR CONDO		METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 595		C
AT1184433	2006/06/30	CONDO BYLAW/98 # 8		METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 595		C
AT1645431	2007/11/27	DISCH PART CHARGE		*** COMPLETELY DELETED *** MONTREAL TRUST COMPANY OF CANADA		
AT1887179	2008/09/04	CONDO BYLAW/98 NO. 9		METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 595		C
AT2237612	2009/11/25	CONDO BYLAW/98 NO. 10		METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 595		C
AT3744160	2014/11/19	LR'S ORDER		LAND REGISTRAR, TORONTO LAND REGISTRY OFFICE		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

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BROKER REPORT

Report Date: 03-27-2019

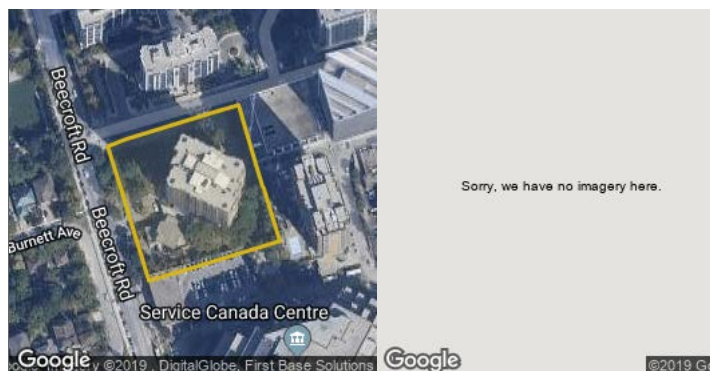
Prepared By:

ANGELA LOCK

A Farber & Partners Ltd
 4710 Kingsway Ste 1418
 Burraby, British Columbia V5H 4N2
 P:587-747-7598
 alock@afarber.com

Property Information

Property PA062 - 131 BEECROFT RD
Owner BRIK, DINA
Description UNIT 62, LEVEL A, METROPOLITAN TORONTO CONDOMINIUM PLAN NO. 595, LOTS 462, 463, 464, 465, 466, 481, 482, 483, 484, 485 AND PARTS OF LOTS 461 AND 486 ON PLAN M407 AND PART OF BURNETT AVENUE ON SAID PLAN M407 AS DESCRIBED IN SCHEDULE 'A' OF DECLARATION B762963, TWP OF YORK/NORTH YORK, CITY OF TORONTO
Perimeter 359 m
Area 8069 m²
PIN 115950289
Registration Type LT
Property Type Undefined

**Ownership and Sales History****Ownership Information**

Party To: BRIK, DINA

Consideration Value: \$ 230,000

Sales History

Party To	Registration Date	Consideration Value	Instrument Type
BRIK, DINA	10-15-1998	\$ 230,000	Transfer
500759 ONTARIO LIMITED	03-03-1983	\$ 0	Transfer

Estimated Value

Could not compute value (unsupported property type).

Your report count was not affected.

Neighbourhood Profile

Range: N/A - N/A

Average: N/A

Median: N/A

Equity Estimate

Equity Estimate		Estimated Value		Registered Mortgages (Total Face Value)
N/A	=	N/A	less	\$ 0
				0 Mortgages

Comparable Sales

Neighbourhood Index

Total LRO Sales: 951,071

Total Block Sales: 303

+ Subject Property
Sales Price(s)

○ Average Block Sales Price

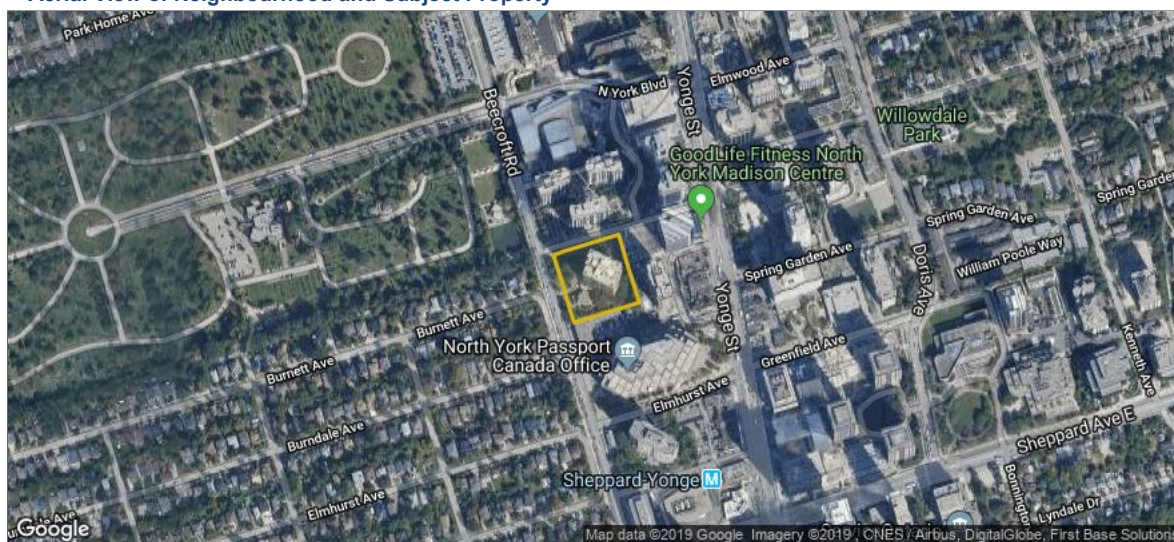


Historical Comparable Sales

Street Address	Consideration Value	Registration Date	Area (m ²)	Distance (m)	PIN
1904 - 131 BEECROFT RD	\$ 247,000	03-02-1998	N/A	N/A	115950171
606 - 131 BEECROFT RD	\$ 240,000	07-14-1998	N/A	N/A	115950053
PB014 - 131 BEECROFT RD	\$ 262,500	07-06-1998	N/A	N/A	115950372
PB092 - 131 BEECROFT RD	\$ 265,000	06-01-1998	N/A	N/A	115950450
PB139 - 131 BEECROFT RD	\$ 235,000	03-23-1998	N/A	N/A	115950497
1204 - 131 BEECROFT RD	\$ 240,000	02-09-1998	N/A	N/A	115950111
PA009 - 131 BEECROFT RD	\$ 240,000	07-14-1998	N/A	N/A	115950236
PB025 - 131 BEECROFT RD	\$ 247,000	03-02-1998	N/A	N/A	115950383
705 - 131 BEECROFT RD	\$ 230,000	10-15-1998	N/A	N/A	115950062
1804 - 131 BEECROFT RD	\$ 252,500	05-08-1998	N/A	N/A	115950161
1104 - 131 BEECROFT RD	\$ 240,000	01-30-1998	N/A	N/A	115950101
510 - 131 BEECROFT RD	\$ 235,000	03-23-1998	N/A	N/A	115950047
PA062 - 131 BEECROFT RD	\$ 230,000	10-15-1998	N/A	N/A	115950289
LA117 - 131 BEECROFT RD	\$ 240,000	01-30-1998	N/A	N/A	115950344
PA037 - 131 BEECROFT RD	\$ 240,000	02-09-1998	N/A	N/A	115950264
1809 - 131 BEECROFT RD	\$ 262,500	07-06-1998	N/A	N/A	115950166
PA038 - 131 BEECROFT RD	\$ 240,000	01-30-1998	N/A	N/A	115950265
1701 - 131 BEECROFT RD	\$ 265,000	06-01-1998	N/A	N/A	115950148
LA119 - 131 BEECROFT RD	\$ 265,000	06-01-1998	N/A	N/A	115950346
PB109 - 131 BEECROFT RD	\$ 252,500	05-08-1998	N/A	N/A	115950467

Comparable Sales (At Valuation Date)

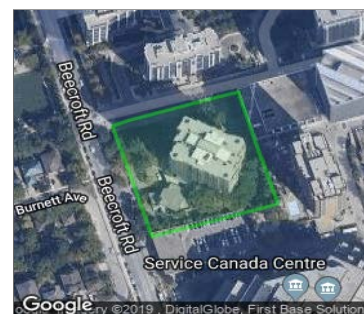
Street Address	Consideration Value	Registration Date	Area (m ²)	Distance (m)	PIN
2304 - 131 BEECROFT RD	\$ 748,000	09-27-2018	N/A	N/A	115950211
PB117 - 131 BEECROFT RD	\$ 748,000	09-27-2018	N/A	N/A	115950475
2309 - 131 BEECROFT RD	\$ 770,000	08-30-2018	N/A	N/A	115950253
2309 - 131 BEECROFT RD	\$ 770,000	08-30-2018	N/A	N/A	115950216
LA121 - 131 BEECROFT RD	\$ 785,000	11-27-2018	N/A	N/A	115950348
PB056 - 131 BEECROFT RD	\$ 770,000	08-30-2018	N/A	N/A	115950414
PA031 - 131 BEECROFT RD	\$ 785,000	11-27-2018	N/A	N/A	115950258
1401 - 131 BEECROFT RD	\$ 785,000	11-27-2018	N/A	N/A	115950118

Aerial View of Neighbourhood and Subject Property**Aerial View of Closest Comparables**

Address: 2304 - 131 BEECROFT RD
 Consideration Value: \$ 748,000
 Registration Date: 09-27-2018
 Meters from S.P.: 0



Address: PB117 - 131 BEECROFT RD
 Consideration Value: \$ 748,000
 Registration Date: 09-27-2018
 Meters from S.P.: 0



Address: 2309 - 131 BEECROFT RD
 Consideration Value: \$ 770,000
 Registration Date: 08-30-2018
 Meters from S.P.: 0

Broker Report Information

Valuation Date 03-27-2019
AVM Model: Teranet AVM Model
AVM Model ID: 0
AVM Model Type: Block Model

Report ID: 3393903
Report Date: 03-27-2019 3:08 PM
User ID: 78880
Company ID: 30840

Terms And Conditions

Reports Not the Official Record. Reports other than the Parcel Register, obtained through Purview™ Risk Management Services are not the official government record and will not necessarily reflect the current status of interests in land.

Currency of Information. Data contained in the Purview reports are not maintained real-time. Data contained in reports, other than the Parcel Register, may be out of date ten business days or more from data contained in POLARIS.

Coverage. Data, information and other products and services accessed through the Purview Risk Management Services are limited to certain land registry offices in the areas identified on the [coverage map](#).

Completeness of the Sales History Report. Some Sales History Reports may be incomplete due to the amount of data collected during POLARIS title automation. Subject properties may also show nominal consideration or sales price (e.g. \$2) in cases such as transfers between spouses or in tax exempt transfers.

The Property Information Services, reports and information are provided "as is" and your use is subject to the applicable Legal Terms and Conditions. Some information obtained from the Land Registry Information Services is not the official government record and will not reflect the current status of interests in land. Use of personal information contained herein shall relate directly to the purpose for which the data appears in land registry records and is subject to all applicable privacy legislation in respect of personal information. Such information shall not be used for marketing to a named individual.

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APPENDIX 10

Report On Hutchens Buildings

This is an overall report on the state of building and issues viewed over the last week.

- All buildings are in a state of bad repair and have been neglected for many years.
- Pine St. has a bug and rodent problem; it seems to be out of control.
- All buildings have garbage outside including beds, furniture and garbage.
- Three buildings have had bins removed and garbage outside on ground (Howey, Regent and Serpentine). Howey and Regent have had by-law officers called to the buildings by neighbours. I received another call today April 7th, 2019. After speaking with the by-law officers, they have given till weds to have bins returned and remove beds at Regent St. I will remove beds Monday for by-law officers on Regent.
- The remaining bins are with the City of Sudbury. I will contact them to make sure they don't remove the bins.
- Moving forward the buildings should have the garbage in the hallways and outside removed.
- All hallways (including walls) should be cleaned as it appears they have not been cleaned in years. Also, the extra garbage (clothes, items, toys, old doors) should be removed. This is over and above just regular garbage clean up. The smell on Pine St. and Howey is overwhelming.
- Many vacant units are far from rentable and some have garbage and furniture still in units from past tenants.
- The first week has been a little difficult with hesitation from tenants and poor rent roll. It is believed within the week many more tenants will be paying their rent.
- For tenants that have not paid rent a N4-(Notice to evict for Non-payment of rent) should be given. This is just the start of the eviction process; it gives the tenants 14 days to pay after which we will have to take tenant to tribunal.
- Overall Howey should be sold first as it may not have any tenants in next few months and needs repair.
- It is recommended that tenant acknowledgements should be done for each unit.

See Below for Each Building

Thank you, Quentin Seeley

(705) 562- 7925

northkeyproperty@gmail.com



110 Pine St

- Bug and Rodent problem throughout the building.
- Garbage outside gathering in piles.
- Smell in hallways overwhelming.
- Hallways need huge amount of cleaning and garbage removal.
- Vacant units need repair and removal of old tenants garbage and furniture, this may be partial problem with the smell in the building.
- All Units have issues ranging from floors, doors, plumbing, electrical, kitchen cupboards, missing drywall, leaking sewage pipes in units and many other issues.
- It is believed this building is not to fire code or has not had a fire check company there in sometime.

To understand issues, a full report for building can be done. If requested it can include all units or just vacant ones. Pictures of garbage will be sent Monday or Tuesday.

367 & 369 Howey

- Cast Iron pipes for toilets leaking into lower apartments.
- Garbage outside gathering in piles.
- Smell in hallways overwhelming, carpets removed over the years.
- Hallways need huge amount of cleaning and garbage removal.
- Vacant units need repair and removal of old tenants garbage and furniture. Vacant units have striped bathrooms, need of repair and missing floors.
- All Units have issues ranging from floors, doors, plumbing, electrical, kitchen cupboards, missing drywall, leaking sewage pipes in units and many other issues.
- It is believed this building is not to fire code or has not had a fire check company there in sometime. Rear door closed with wood to prevent break-ins.
- All tenants are claiming to move within 2 months or sooner. It is believed by us that tenants are moving because tenants being forced to pay rent to live in a building that needs lots of work. One tenant also disturbs the rest of tenants and refuses to pay rent because of condition of his unit.

To understand issues a full report for building can be done. If requested it can include all units or just vacant. Pictures of garbage will be sent Monday or Tuesday.

331 Regent St

- Garbage outside gathering in piles.
- Building in better shape than many.
- Upstairs are three units and one unit refuses to contact us.
- Hallways are in need of cleaning and garbage removal outside.
- The basements rooms are dorm like with make shift rooms and steel doors. The rooms have no unit numbers on them and it appears only 3 people live in the 12 rooms. There is a common washroom and kitchen for tenants in basement. Some vacant rooms have belonging or furniture to be removed.
- All units have issues ranging from floors, doors, plumbing, electrical, kitchen cupboards, missing drywall, and other issues.
- It is believed this building is not to fire code or has not had a fire check company there in sometime.

Overall this is the better building with fewer issues.

To understand issues a full report for building can be done. If requested it can include all units or just vacant. Pictures of garbage will be sent Monday or Tuesday.

3415-3419 Errington

- Garbage outside gathering in piles.
- Smell in hallways and cleaning needed.
- Vacant units need repair and removal of old tenants garbage and furniture. Vacant apartments need of repair to missing floors, one has spray painted walls.
- All units have issues ranging from floors, doors, plumbing, electrical, kitchen cupboards, missing drywall, window issues (missing panes or cracked) and many other issues. Also water seepage for outside wall.
- It is believed this building is not to fire code or has not had a fire check company there in sometime.

Note: After inspection and interviews with tenants, Unit #5 at 3415(basement unit) has taken on water from foundation. The tenant has requested to move to a front vacant unit at 3419. Also unit #5 at 3419 has requested to move to the other vacant unit at front of 3419. This is due to issues in his apartment. To add to this, the police are there frequently because of disputes between Unit # 5 and Unit #7 at 3419. The issue would be resolved if Unit #5 move to front of building. Both vacant unit may not need as much work to occupy and would prevent losing two tenants for future sale.

To understand issues a full report for building can be done. If requested it can include all units or just vacant. Pictures of garbage will be sent Monday or Tuesday.

29 Laren St

- Garbage outside gathering in piles.
- Hallways need cleaning.
- All units have issues ranging from floors, doors, plumbing, electrical, kitchen cupboards, missing drywall; Units 11-18 (Town Houses) have reported electrical problems, the roof leaked in some units and tenants concerned of mold that may appear due to water damage.
- It is believed this building is not to fire code but maybe close.

Note: The list of repairs could be high for the amount of units but issues may be quick to resolve in most units. This Location is most profitable.

To understand issues a full report for building can be done. If requested it can include all units or just vacant. Pictures of garbage will be sent Monday or Tuesday.

42 Clemow st

- Hot water tank not working needs repair. Tenant has no hot water.
- Tenant promises to pay rent before end of the month. It is believed by us that late rent will cause tenant to be late again in May.
- An inspection of house would be quickly done with 24 hr. notice to tenant for more detail report.
- Property should be sold soon if possible.
- Advised to issue N4 (notice to evict for non-payment).

Thank you, Quentin Seeley

(705) 562-7925

northkeyproperty@gmail.com



APPENDIX 11

Consolidated Projected Cash Flow Statement
Hutchens et al. - Additional Saleable Properties
For the 13-week period ending August 23, 2019

	Notes	W/E	Actual	Projected											Total	
			31-May-19	7-Jun-19	14-Jun-19	21-Jun-19	28-Jun-19	5-Jul-19	12-Jul-19	19-Jul-19	26-Jul-19	2-Aug-19	9-Aug-19	16-Aug-19	23-Aug-19	
Receipts																
Rental Income			1,050	15,739	-	-	-	16,239	-	-	-	16,239	-	-	-	64,050
Real Property Sales			-	-	-	-	-	-	-	-	-	-	-	-	-	-
Provision for Non-Paying Tenants			-	(6,295)	-	-	-	(6,495)	-	-	-	(6,495)	-	-	-	(19,286)
HST Collected			-	-	-	-	-	-	-	-	-	-	-	-	-	-
HST Refund			-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts			1,050	9,443	-	-	-	9,743	-	-	-	9,743	-	-	-	44,763
Disbursements																
Insurance			-	(1,845)	(1,042)	-	-	(1,845)	-	-	-	(1,845)	-	-	-	(16,292)
Maintenance and Repairs			(1,048)	(10,000)	(21,000)	-	-	(400)	-	-	-	(400)	-	-	-	(33,048)
Property Tax			-	(3,520)	-	-	-	(6,045)	-	-	-	(6,045)	-	-	-	(15,611)
Cleaning			-	(4,000)	(9,000)	-	-	-	-	-	-	-	-	-	-	(13,000)
Waste			(185)	(7,733)	(16,062)	-	-	(600)	-	-	-	(600)	-	-	-	(25,365)
Utilities - Hydro			(64)	(2,900)	(1,000)	-	-	(3,900)	-	-	-	(3,900)	-	-	-	(11,764)
Utilities - Water			-	(1,120)	(664)	-	-	(1,784)	-	-	-	(1,784)	-	-	-	(5,351)
Utilities - Gas/HVAC			-	(1,600)	(1,000)	-	-	(2,600)	-	-	-	(2,600)	-	-	-	(7,800)
Condo Fees			-	-	-	-	-	-	-	-	-	-	-	-	-	-
Property Management and General Expense			-	-	-	(4,030)	-	-	-	(4,030)	-	-	-	(4,030)	-	(17,205)
Interest and Bank Charges			(4,665)	-	-	-	-	(155)	-	-	-	(155)	-	-	-	(4,975)
Tools and Supplies			-	-	-	-	-	(46)	-	-	-	(46)	-	-	-	(93)
HST Credits Paid			-	(3,556)	(6,334)	(524)	-	(1,187)	-	(524)	-	(1,187)	-	(524)	-	(13,836)
HST Remitted			-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ascend Fees			(622)	-	(311)	-	-	-	-	-	-	-	-	-	-	(2,175)
Total Disbursements			(6,584)	(36,274)	(56,413)	(4,554)	-	(18,562)	-	(4,554)	-	(18,562)	-	(4,554)	-	(166,514)
Net Cash Flow from Operations			(5,534)	(26,830)	(56,413)	(4,554)	-	(8,819)	-	(4,554)	-	(8,819)	-	(4,554)	-	(121,751)
Consolidated Opening Balance			4,800	(734)	(27,564)	(83,977)	(88,531)	(88,531)	(97,350)	(97,350)	(101,904)	(101,904)	(110,723)	(110,723)	(115,277)	
Consolidated Closing Balance			(734)	(27,564)	(83,977)	(88,531)	(88,531)	(97,350)	(97,350)	(101,904)	(101,904)	(110,723)	(110,723)	(115,277)	(115,277)	OK

Disclaimer:

This forecast model was created exclusively for A. Farber & Partners Inc., in its capacity as court-appointed receiver (the "Receiver") over the assets, undertakings and property (the "Property") of Hutchens et al. (the "Debtors"). It is for the Receiver's sole benefit and use. Any work product, schedules, reports or documents that the Receiver may produce are not intended for general circulation or publication, nor should they be reproduced, relied upon by any party or used for any purpose, without the Receiver's prior written consent.

The Receiver's scope does not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of internal controls or other attestation or review services in accordance with standards established by the Canadian Institute of Chartered Accountants ("CICA"). Accordingly, the Receiver does not express an opinion or any other form of assurance on the cash flow forecasts of the Debtors or any financial or other information, or operating and internal controls of the Debtors. The cash flow forecast is based primarily on the limited information supplied by the Debtors. The Debtors' information is not complete and the Receiver does not represent that the Debtors' information provided is accurate. The Debtor's information is not subject to checking or verification procedures, except to the extent expressly stated to form part of the scope of work.

The Receiver accepts no duty, obligation, liability or responsibility to any party. The Receiver makes no representation regarding the sufficiency of the cash flow forecast for any purpose.

With respect to prospective financial information relative to the Debtors, the Receiver did not examine, compile or apply agreed-upon procedures to such information in accordance with standards established by the CICA, and the Receiver expresses no assurance of any kind on such information. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. The Receiver takes no responsibility for the achievement of predicted results.

STEVENS *et al.*
Applicants

-and-

HUTCHENS *et al.*
Respondents

Court File No. CV-18-608271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

THIRD REPORT OF THE RECEIVER

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Lawyers for the Receiver,
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STEVENS *et al.*
Applicants

-and-

HUTCHENS *et al.*
Respondents

Court File No. CV-18-608271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

MOTION RECORD OF THE RECEIVER
(Motion Returnable June 7, 2019)

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