

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

– and –

TANYA HUTCHENS

Respondent

**APPLICATION RECORD
(VOLUME 1 of 2)**

April 10, 2019

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CORPORATION**

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*Court Appointed Interim Receiver of Hutchens et al. And Not In Its Personal Or
Corporate Capacity*

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TAB A

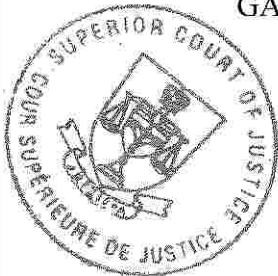
Court File No. CN-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants



– and –

TANYA HUTCHENS

Respondent

APPLICATION UNDER Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing at 10:00 a.m. on _____ before a judge presiding over the Commercial List at 330 University Avenue, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Nov 5, 2018

Issued by 
Local registrar

Address of
court of fice: 330 University Avenue, 7th Floor
Toronto, Ontario M5G 1R7

TO: Tanya Hutchens
33 Theodore Place,
Thornhill ON L4J 8E2

APPLICATION

1. The Applicants, Gary Stevens, Linda Stevens and 1174365 Alberta Ltd., make application for:
 - (a) a judgment recognizing and enforcing in Ontario the judgment of the United States District Court for the Eastern District of Pennsylvania, entered on October 11, 2018 in Case Civ. No. 18-692 in favour of the Applicants and against the Respondent Tanya Hutchens, in which damages were assessed against the Respondent in the amount of US\$26,774,736.09 (the "US Judgment");
 - (b) an order requiring the Respondent to pay to the Applicants an amount in Canadian dollars sufficient to purchase US\$26,774,736.09 at a bank in Ontario listed in Schedule I to the *Bank Act*, R.S.C. 1991, c. 46 at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of U.S. dollars before the day payment of the obligation is received by the Applicants;
 - (c) an order requiring the Respondent to prepare and provide to the Applicants a sworn statement describing the nature, value, and location of her assets worldwide, whether in her own name or not and whether solely or jointly owned;
 - (d) an interim and interlocutory *Mareva* injunction restraining the Respondent and her servants, employees, agents, assigns and anyone else acting on her behalf or in conjunction with her, and any and all persons with notice of such injunction, from directly or indirectly, by any means whatsoever:
 - i. selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Respondent, wherever situated;
 - ii. instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
 - iii. facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.
 - (e) an interim and interlocutory order appointing a receiver under section 101 of the *Courts of Justice Act*;

- (f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) the costs of this proceeding, plus all applicable taxes; and
- (i) such other relief as the Court may deem just.

2. The grounds for this Application are:

The Parties

- (a) The individual Applicants Gary and Linda Stevens are residents of Mayerthorpe, Alberta. The Applicant 1174365 Alberta Ltd. is an Alberta corporation, of which Gary and Linda are the sole shareholders. The Applicants are the judgment creditors of the Respondent under the US Judgment.
- (b) The Respondent Tanya Hutchens is a resident of Ontario. Tanya Hutchens is the judgment debtor of the Applicants under the US Judgment.

The Fraudulent Scheme Giving Rise to the US Judgment

- (c) The Applicants were defrauded by the Respondent and others as part of an elaborate fraudulent conspiracy disguised as a financing enterprise for real estate transactions.
- (d) In October 2014, the Applicants sought refinancing for mortgage loans on property they were developing in Saskatchewan. The Applicants contacted mortgage brokers, Sofia Capital Ventures, LLC and Barbara Leuin, who referred them to Westmoreland Equity Fund, LLC ("Westmoreland"). Westmoreland is a corporation incorporated under the laws of Delaware whose principal place of business was registered as 1650 Market Street, Philadelphia, Pennsylvania.

- (e) On October 30, 2014, the Applicants received a letter of intent from Westmoreland offering a development loan of \$13,400,000 CDN. To secure the loan, Westmoreland required the Applicants to pay advance fees. The Applicants paid these fees by mortgaging another property in Arizona.
- (f) The Applicants were also provided with a letter from American Escrow and Settlement Services LLC, which they were led to believe was an independent company, assuring the Applicants that Westmoreland had a loan capacity of US\$475,000,000. The Applicants would only later discover that American Escrow and Settlement Services was actually an entity run by Bernard Feldman, a convicted fraudster who served as Westmoreland's exclusive American financial agent.
- (g) On November 10, 2014, Westmoreland gave the Applicants a commitment letter for a loan of \$13,900,000 CDN. On February 23, 2015, Westmoreland dropped that offer to \$5,700,000 CDN. On March 23, 2015, Westmoreland again changed the terms of the loan commitment to \$7,500,000 CDN, conditioned on the Applicants meeting certain novel funding requirements, which Westmoreland knew the Applicants could not meet.
- (h) When Westmoreland repeatedly failed to honour its funding commitment, the Applicants' original lender foreclosed on the Applicants' Saskatchewan property that they had sought to refinance with Westmoreland's funding. The Applicants were also unable to repay the debt on their Arizona property that they had mortgaged to obtain the funding fees demanded by Westmoreland. The Applicants subsequently lost the Arizona property through foreclosure.
- (i) The Applicants had been victimized by a fraud that operated as follows. Westmoreland, serving as a front for the fraud, would require victims to pay large advance fees to issue the loan commitments that they urgently sought. It would then issue the loan commitments, even though it had neither the financial ability nor the intent to fund the loans. Its loan commitments provided that, as a condition for closing, substantial additional fees needed to be paid. Westmoreland

then created a pretext to find fault with the loan applications and materials submitted, which it then used to justify the imposition of further terms and conditions, which often included a demand for additional fees. In time, Westmoreland asserted that the victims had failed to satisfy these new terms and conditions and relied on these trumped-up defects in the victims' applications as grounds for terminating the loan application process. Upon its termination of the loan process, Westmoreland kept all the monies advanced.

- (j) The Respondent actively participated in the fraudulent scheme in numerous ways, including by preparing many of the loan commitment letters and helping to launder the funds derived from the fraudulent scheme. She also used hundreds of thousands of dollars stolen from the victims of the scheme to pay her legal fees for the defence of another lawsuit brought by other Hutchens fraud victims.
- (k) The Respondent's husband— Sandy Hutchens — was also an active participant in the fraudulent scheme. Sandy held himself out to the Applicants as "Ed Ryan", and represented that he was an executive at Westmoreland. Sandy is a notorious fraudster who has used numerous aliases and corporations to conduct fraudulent schemes in a variety of jurisdictions in Canada and the United States. He was most recently convicted on three counts of fraud in April 2005. To disguise his criminal past, Sandy has used numerous aliases, including "Ed Ryan", "Fred Hayes", "Moishe Alexander", "Moshe Ben Avraham", "Alexander MacDonald", "Frederick Merchant", "Matthew Kovce" and others.
- (l) This was not the first time that Tanya and Sandy were involved in a fraudulent scheme disguised as a financial lending business whereby they deceived victims into paying advance fees for loans that never materialized. In September 2017, the United States District Court for the District of Colorado issued a judgment under the *Racketeer Influenced and Corrupt Organizations Act* ("RICO") finding Tanya and Sandy liable in a class action for the early period in which the fraudulent scheme was in operation (the "Colorado Action"). The Colorado Action was brought on behalf of US residents who were issued loan commitments from

January 1, 2005 to April 7, 2013 by entities controlled by the Hutchenses. Westmoreland, the entity through which plaintiffs were victimized, was organized shortly after the period covered in the Colorado case and operated while that case was being prosecuted. The Applicants were victimized in 2014.

- (m) The Colorado Action proceeded by jury trial, and the case was certified against Tanya as well as Sandy. Tanya claimed to have minimal involvement in the fraud and tried to decertify the action against her. The Court rejected her arguments, holding that there was an ample evidentiary basis for the jury to find she was liable since: (i) based on witness testimony, Tanya had been heavily involved in past mortgage businesses operated by Sandy, being described as an “equal partner in the business”, (ii) in previous mortgage businesses operated by Sandy, Tanya was actively involved in structuring mortgage deals and also assisted with banking arrangements, (iii) Tanya was involved in setting up the website for First Central Mortgage Company, one of the corporations used in the fraudulent scheme, (iv) there was evidence that the funds fraudulently received from the plaintiffs in the Colorado Action were transferred to Tanya and used by her to invest in various properties in Ontario, (v) the court found that these transfers of funds were made as “a cover for getting plaintiffs’ funds out of the hands of Sandy Hutchens and his companies and into the potentially safer hands of Tanya”, and (vi) Tanya’s testimony to the contrary was not credible.

The US Judgment

- (n) The US Judgment arose from a lengthy legal process in the courts of Pennsylvania and the United States District Court.
- (o) The Applicants brought a claim in the Pennsylvania Court of Common Pleas of Philadelphia County (the “Pennsylvania State Court”) under Pennsylvania state law. That claim was brought against numerous defendants including Tanya, Sandy and Westmoreland, as well as other parties involved in the fraudulent scheme. The Pennsylvania State Court denied motions challenging its jurisdiction, finding that an action in Pennsylvania State Court was appropriate as (i)

Westmoreland was registered with the Pennsylvania Secretary of State as a foreign corporation operating in Pennsylvania, (ii) in those filings, Westmoreland's principal place of business was declared as 1650 Market Street, Philadelphia, Pennsylvania, and (iii) Westmoreland was a necessary vehicle for the conspiracy, and defendants not resident in Pennsylvania were properly subject to Pennsylvania jurisdiction due to their status as co-conspirators aware of the Pennsylvania nexus of the fraud.

- (p) The Pennsylvania State Court then issued a judgment as against Westmoreland and Ed Ryan under state law and common law in favour of the Applicants in the amount of US\$9,117,817.97. "Ed Ryan" and Westmoreland were represented by counsel before the Pennsylvania State Court and allowed judgments to be entered against them.
- (q) The complaint was subsequently amended to include claims under the federal *Racketeer Influenced and Corrupt Organizations Act* ("RICO") and to add additional defendants. Due to the addition of federal claims, several of the defendants then removed the claim from the Pennsylvania State Court to the United States District Court for the Eastern District of Pennsylvania on the basis that the claim should be heard in a federal court rather than a state court pursuant to 28 U.S. Code § 1441.
- (r) Following the removal of the claim to the United States District Court (the "Federal Court"), the Applicants filed an Amended Complaint which was served on all of the defendants, including Tanya and Sandy. As against "Ed Ryan" and Westmoreland, the Amended Complaint only included RICO claims for treble damages as the judgment in the Court of Common Pleas had resolved the state and common law claims against those two defendants.
- (s) Sandy Hutchens filed a response to the Amended Complaint and specifically requested that he be served by e-mail at sandyhutchens0@gmail.com as well as at 1779 Cross Street, Innisfil, Ontario, L9S 4L9. He filed two responses to the

Amended Complaint raising affirmative defences, one on his own behalf and one on behalf of Westmoreland.

Orders made against Tanya Hutchens

- (t) The Applicants brought a motion before the Federal Court to confirm how Tanya could be served. The Applicants led evidence of multiple prior efforts to serve Tanya Hutchens at 33 Theodore Place, Thornhill, Ontario L4J 8E2 –which she had acknowledged to be her residence – by personal service in Ontario under the Hague Convention, through a private process server, and by the Clerk of the United States District Court. On April 10, 2018, after reviewing the evidence filed, the Federal Court determined that Tanya was resident at 33 Theodore Place, Thornhill, Ontario L4J 8E2 and that service could be effected by mail to that address. The Federal Court also ordered that service be made on Gary Caplan, Tanya’s counsel, at Mason Caplan Roti LLP in Toronto, and that, given Tanya’s involvement in Sandy’s business affairs, the Applicants were to also serve Tanya at Sandy’s address at 1779 Cross Street, Innisfil, Ontario, L9S 4L9 as an additional means of providing actual notice to Tanya (the “Tanya Hutchens Service Order”).
- (u) The Amended Complaint was served on Tanya in accordance with the Tanya Hutchens Service Order on or around April 13, 2018.
- (v) Under Rule 12(a)(1)(A)(i) of the United States Federal Rules of Civil Procedure, defendants must respond to a complaint within 21 days. In late August, more than four months after service of the Amended Complaint, Tanya had still not filed a response. Therefore, on August 22, 2018, the Applicants filed an initial motion for default judgment against Tanya which was served upon her in accordance with the Tanya Hutchens Service Order but to which she did not respond. This motion was initially denied by the Federal Court without prejudice because the Clerk of the Court had not entered a default by Tanya. The Applicants then filed a request to the Clerk of the Court for entry of default on August 24, 2018, which was

granted on August 27, 2018. The request to enter the default was also served upon Tanya and she again took no action.

- (w) The Applicants then reapplied for a default judgment against Tanya on or around August 27, 2018. Tanya was served with the Applicants' motion materials in accordance with the Tanya Hutchens Service Order.
- (x) On August 31, 2018, the Applicants amended their motion for default judgment to seek treble damages against Tanya in accordance with the applicable laws. The amended motion materials were served on Tanya in accordance with the Tanya Hutchens Service Order.
- (y) On September 26, 2018 the Federal Court issued an Order requesting, *inter alia*, that Applicants further describe the basis for damages sought in the default motion and the evidence regarding Tanya Hutchens.
- (z) On October 11, 2018, after considering the evidence detailing the Applicants' damages as well as the evidence that copies of all relevant motions and court filings had been served on Tanya as ordered, the Federal Court granted default judgment against Tanya. On considering the applicable law, the Federal Court ordered that the Applicants were entitled to damages in the amount of US\$26,774,763.09.
- (aa) On or around October 22, 2018, Tanya challenged the US Judgment before the Federal Court under the United States Federal Rules of Civil Procedure. Extraordinary circumstances must be demonstrated to justify such relief.
- (bb) On October 26, 2018 the Federal Court issued a detailed order denying Tanya's motion to vacate and considering all of Tanya's submissions. It concluded: "The default judgment against Mrs. Hutchens is the result of her own considered choice to ignore Plaintiffs' suit. Her appearance now—only after default has been entered—is telling." The Federal Court found, among other things, that "Mrs. Hutchens' statement—that she did not receive any pleadings in the case—is simply untrue. Mrs. Hutchens was lawfully served with all pleadings in this

lawsuit, beginning with Plaintiffs' Amended Complaint on April 16, 2018. It is doubly incredible that Mrs. Hutchens has received no pleadings, given that the return address she supplied in filing her current briefs is the very same address at which she was served."

- (cc) The Federal Court also found that, "[s]ignificantly, Mrs. Hutchens has not presented a meritorious defense; she has filed no Answer to Plaintiffs' Amended Complaint. To the extent that Mrs. Hutchens' Affidavits or Reply constitute an Answer, they offer little more beyond blanket denials. Mrs. Hutchens alleges no facts to contest Plaintiffs' claims against her, other than broad denials, labeling the witness who testified against her in another matter a liar. Furthermore, while Mrs. Hutchens asserts she was legally separated from her husband Sandy in 2011, she offers no reason as to why this exculpates her alleged conduct."

Recognition of the US Judgment

- (dd) The Ontario legal requirements for recognition of the US Judgment have been satisfied:
- i. this Court has jurisdiction to recognize and enforce judgment as against Tanya as she is an Ontario resident;
 - ii. the US Judgment was issued by a court of competent jurisdiction as there was a real and substantial connection between Pennsylvania and the Applicants' claim, which related to fraudulent transactions conducted via a corporation carrying on business in Pennsylvania;
 - iii. the Federal Court properly assumed jurisdiction over Tanya, as she was a necessary party to the claim against Westmoreland and was found to be an active participant in the fraudulent transactions executed by Westmoreland while carrying on business in Pennsylvania;
 - iv. the US Judgment is final and conclusive; and
 - v. the US Judgment is for a definite sum of money.

- (ee) The US Judgment was obtained in the absence of any fraud and without any breach of natural justice. Tanya was properly served and was provided with a fair, full and complete opportunity to defend the Applicants' claim in the Federal Court.
 - (ff) The recognition and enforcement of the US Judgment would not be contrary to Canadian public policy.
 - (gg) This matter is appropriate for determination by application on the basis of Rules 14.05(3)(g) and (h).
3. The following documentary evidence will be used at the hearing of this Application:
- (a) The affidavit of Howard Langer to be sworn; and
 - (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 5, 2018

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Lawyers for the Applicants

GARY STEVENS et al. v. TANYA HUTCHENS
Applicants Respondent

Court File No. CN-18-68271-88A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

NOTICE OF APPLICATION

**NECPAL LITIGATION PROFESSIONAL
CORPORATION**

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Lawyers for the Applicants

TAB B

AMENDED THIS Feb. 25/19 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

☐ RULE/LA RÈGLE 26.02
☒ THE ORDER OF Justice Patillo
L'ORDONNANCE DU Feb. 21, 2019
DATED / FAITE

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

C. Irwin
Registrar
REGISTRAR
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

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

APPLICATION UNDER Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing at 10:00 a.m. on _____ before a judge presiding over the Commercial List at 330 University Avenue, Toronto.

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APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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Date Nov. 05, 2018

Issued by "M. Sawka"
Local registrar

Address of
court office: 330 University Avenue, 7th Floor
Toronto, Ontario M5G 1R7

TO: Tanya Hutchens
33 Theodore Place
Thornhill ON L4J 8E2

AND TO: Sandy Hutchens
1779 Cross Street
Innisfil ON L9S 4L9

APPLICATION

1. The Applicants, Gary Stevens, Linda Stevens and 1174365 Alberta Ltd., make application for
 - (a) a judgment recognizing and enforcing in Ontario the judgments of the United States District Court for the Eastern District of Pennsylvania, entered on October 11, 2018 and December 19, 2018 in Case Civ. No. 18-692 in favour of the Applicants and against the Respondents Sandy Hutchens and Tanya Hutchens, in which damages were assessed against the Respondents Sandy Hutchens and Tanya Hutchens jointly and severally in the amount of US\$26,774,736.09 (the "US Judgments");
 - (b) an order requiring the Respondents Sandy Hutchens and Tanya Hutchens to pay to the Applicants an amount in Canadian dollars sufficient to purchase US\$26,774,736.09 at a bank in Ontario listed in Schedule I to the *Bank Act*, R.S.C. 1991, c. 46 at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of U.S. dollars before the day payment of the obligation is received by the Applicants;
 - (c) an order requiring the Respondents Sandy Hutchens and Tanya Hutchens to prepare and provide to the Applicants a sworn statement describing the nature, value, and location of their her assets worldwide, whether in their her own name or not and whether solely or jointly owned;
 - (d) an interim and interlocutory *Mareva* injunction restraining the Respondents Sandy Hutchens and Tanya Hutchens and their her servants, employees, agents, assigns and anyone else acting on their her behalf or in conjunction with them her, and any and all persons with notice of such injunction, from directly or indirectly, by any means whatsoever
 - i. selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Respondents Sandy Hutchens and Tanya Hutchens, wherever situated;

- ii. instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
 - iii. facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.
- (e) an interim, ~~and~~ interlocutory and permanent order appointing a receiver to investigate and preserve all of the Respondents' real property, personal property and any other assets for the benefit of the Applicants under section 101 of the *Courts of Justice Act*;
 - (f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (h) the costs of this proceeding, plus all applicable taxes; and
 - (i) such other relief as the Court may deem just.

2. The grounds for this Application are:

The Parties

- (a) The individual Applicants Gary and Linda Stevens are residents of Mayerthorpe, Alberta. The Applicant 1174365 Alberta Ltd. is an Alberta corporation, of which Gary and Linda are the sole shareholders. The Applicants are the judgment creditors of the Respondents under the US Judgments.
- (b) The Respondents Tanya Hutchens and Sandy Hutchens ~~are~~ is a residents of Ontario. Tanya and Sandy Hutchens ~~is~~ are the judgment debtors of the Applicants under the US Judgments.

The Fraudulent Scheme Giving Rise to the US Judgments

- (c) The Applicants were defrauded by the Respondents Sandy Hutchens and Tanya Hutchens and others as part of an elaborate fraudulent conspiracy disguised as a financing enterprise for real estate transactions.
- (d) In October 2014, the Applicants sought refinancing for mortgage loans on property they were developing in Saskatchewan. The Applicants contacted mortgage brokers, Sofia Capital Ventures, LLC and Barbara Leuin, who referred them to Westmoreland Equity Fund, LLC ("Westmoreland"). Westmoreland is a corporation incorporated under the laws of Delaware whose principal place of business was registered as 1650 Market Street, Philadelphia, Pennsylvania.
- (e) On October 30, 2014, the Applicants received a letter of intent from Westmoreland offering a development loan of \$13,400,000 CDN. To secure the loan, Westmoreland required the Applicants to pay advance fees. The Applicants paid these fees by mortgaging another property in Arizona.
- (f) The Applicants were also provided with a letter from American Escrow and Settlement Services LLC, which they were led to believe was an independent company, assuring the Applicants that Westmoreland had a loan capacity of US\$475,000,000. The Applicants would only later discover that American Escrow and Settlement Services was actually an entity run by Bernard Feldman, a convicted fraudster who served as Westmoreland's exclusive American financial agent.
- (g) On November 10, 2014, Westmoreland gave the Applicants a commitment letter for a loan of \$13,900,000 CDN. On February 23, 2015, Westmoreland dropped that offer to \$5,700,000 CDN. On March 23, 2015, Westmoreland again changed the terms of the loan commitment to \$7,500,000 CDN, conditioned on the Applicants meeting certain novel funding requirements, which Westmoreland knew the Applicants could not meet.

- (h) When Westmoreland repeatedly failed to honour its funding commitment, the Applicants' original lender foreclosed on the Applicants' Saskatchewan property that they had sought to refinance with Westmoreland's funding. The Applicants were also unable to repay the debt on their Arizona property that they had mortgaged to obtain the funding fees demanded by Westmoreland. The Applicants subsequently lost the Arizona property through foreclosure.
- (i) The Applicants had been victimized by a fraud that operated as follows. Westmoreland, serving as a front for the fraud, would require victims to pay large advance fees to issue the loan commitments that they urgently sought. It would then issue the loan commitments, even though it had neither the financial ability nor the intent to fund the loans. Its loan commitments provided that, as a condition for closing, substantial additional fees needed to be paid. Westmoreland then created a pretext to find fault with the loan applications and materials submitted, which it then used to justify the imposition of further terms and conditions, which often included a demand for additional fees. In time, Westmoreland asserted that the victims had failed to satisfy these new terms and conditions and relied on these trumped-up defects in the victims' applications as grounds for terminating the loan application process. Upon its termination of the loan process, Westmoreland kept all the monies advanced.
- (j) The Respondent Tanya Hutchens actively participated in the fraudulent scheme in numerous ways, including by preparing many of the loan commitment letters and helping to launder the funds derived from the fraudulent scheme. She also used hundreds of thousands of dollars stolen from the victims of the scheme to pay her legal fees for the defence of another lawsuit brought by other Hutchens fraud victims.
- (k) The Respondent Sandy Hutchens 's husband—~~Sandy Hutchens~~— was also an active participant in the fraudulent scheme. Sandy held himself out to the Applicants as "Ed Ryan", and represented that he was an executive at Westmoreland. Sandy is a notorious fraudster who has used numerous aliases and

corporations to conduct fraudulent schemes in a variety of jurisdictions in Canada and the United States. He was most recently convicted ~~of~~ of three counts of fraud in April 2005. To disguise his criminal past, Sandy has used numerous aliases, including “Ed Ryan”, “Fred Hayes”, “Moishe Alexander”, “Moshe Ben Avraham”, “Alexander MacDonald”, “Frederick Merchant”, “Matthew Kovce” and others.

- (l) This was not the first time that Tanya and Sandy were involved in a fraudulent scheme disguised as a financial lending business whereby they deceived victims into paying advance fees for loans that never materialized. In September 2017, the United States District Court for the District of Colorado issued a judgment under the *Racketeer Influenced and Corrupt Organizations Act* (“RICO”) finding Tanya and Sandy liable in a class action for the early period in which the fraudulent scheme was in operation (the “Colorado Action”). The Colorado Action was brought on behalf of US residents who were issued loan commitments from January 1, 2005 to April 7, 2013 by entities controlled by the Hutchenses. Westmoreland, the entity through which plaintiffs were victimized, was organized shortly after the period covered in the Colorado case and operated while that case was being prosecuted. The Applicants were victimized in 2014.
- (m) The Colorado Action proceeded by jury trial, and the case was certified against Tanya as well as Sandy. Tanya claimed to have minimal involvement in the fraud and tried to decertify the action against her. The Court rejected her arguments, holding that there was an ample evidentiary basis for the jury to find she was liable since: (i) based on witness testimony, Tanya had been heavily involved in past mortgage businesses operated by Sandy, being described as an “equal partner in the business”, (ii) in previous mortgage businesses operated by Sandy, Tanya was actively involved in structuring mortgage deals and also assisted with banking arrangements, (iii) Tanya was involved in setting up the website for First Central Mortgage Company, one of the corporations used in the fraudulent scheme, (iv) there was evidence that the funds fraudulently received from the plaintiffs in the Colorado Action were transferred to Tanya and used by her to

invest in various properties in Ontario, (v) the court found that these transfers of funds were made as “a cover for getting plaintiffs’ funds out of the hands of Sandy Hutchens and his companies and into the potentially safer hands of Tanya”, and (vi) Tanya’s testimony to the contrary was not credible.

The US Judgments

- (n) The US Judgments arose from a lengthy legal process in the courts of Pennsylvania and the United States District Court.
- (o) The Applicants brought a claim in the Pennsylvania Court of Common Pleas of Philadelphia County (the “Pennsylvania State Court”) under Pennsylvania state law. That claim was brought against numerous defendants including Tanya, Sandy and Westmoreland, as well as other parties involved in the fraudulent scheme. The Pennsylvania State Court denied motions challenging its jurisdiction, finding that an action in Pennsylvania State Court was appropriate as (i) Westmoreland was registered with the Pennsylvania Secretary of State as a foreign corporation operating in Pennsylvania, (ii) in those filings, Westmoreland’s principal place of business was declared as 1650 Market Street, Philadelphia, Pennsylvania, and (iii) Westmoreland was a necessary vehicle for the conspiracy, and defendants not resident in Pennsylvania were properly subject to Pennsylvania jurisdiction due to their status as co-conspirators aware of the Pennsylvania nexus of the fraud.
- (p) The Pennsylvania State Court then issued a judgment as against Westmoreland and Ed Ryan under state law and common law in favour of the Applicants in the amount of US\$9,117,817.97. “Ed Ryan” and Westmoreland were represented by counsel before the Pennsylvania State Court and allowed judgments to be entered against them.
- (q) The complaint was subsequently amended to include claims under the federal ~~Racketeer-Influenced and Corrupt Organizations Act~~ (“RICO”) Act and to add additional defendants. Due to the addition of federal claims, several of the

defendants then removed the claim from the Pennsylvania State Court to the United States District Court for the Eastern District of Pennsylvania on the basis that the claim should be heard in a federal court rather than a state court pursuant to 28 U.S. Code § 1441.

- (r) Following the removal of the claim to the United States District Court (the “Federal Court”), the Applicants filed an Amended Complaint which was served on all of the defendants, including Tanya and Sandy. As against “Ed Ryan” and Westmoreland, the Amended Complaint only included RICO claims for treble damages as the judgment in the Court of Common Pleas had resolved the state and common law claims against those two defendants.
- (s) Sandy Hutchens filed a response to the Amended Complaint and specifically requested that he be served by e-mail at sandyhutchens0@gmail.com as well as at 1779 Cross Street, Innisfil, Ontario, L9S 4L9. He filed two responses to the Amended Complaint raising affirmative defences, one on his own behalf and one on behalf of Westmoreland.

Orders made against Tanya Hutchens

- (t) The Applicants brought a motion before the Federal Court to confirm how Tanya could be served. The Applicants led evidence of multiple prior efforts to serve Tanya Hutchens at 33 Theodore Place, Thornhill, Ontario L4J 8E2 – which she had acknowledged to be her residence – by personal service in Ontario under the Hague Convention, through a private process server, and by the Clerk of the United States District Court. On April 10, 2018, after reviewing the evidence filed, the Federal Court determined that Tanya was resident at 33 Theodore Place, Thornhill, Ontario L4J 8E2 and that service could be effected by mail to that address. The Federal Court also ordered that service be made on Gary Caplan, Tanya’s counsel, at Mason Caplan Roti LLP in Toronto, and that, given Tanya’s involvement in Sandy’s business affairs, the Applicants were to also serve Tanya at Sandy’s address at 1779 Cross Street, Innisfil, Ontario, L9S 4L9 as an

additional means of providing actual notice to Tanya (the “Tanya Hutchens Service Order”).

- (u) The Amended Complaint was served on Tanya in accordance with the Tanya Hutchens Service Order on or around April 13, 2018.
- (v) Under Rule 12(a)(1)(A)(i) of the United States Federal Rules of Civil Procedure, defendants must respond to a complaint within 21 days. In late August, more than four months after service of the Amended Complaint, Tanya had still not filed a response. Therefore, on August 22, 2018, the Applicants filed an initial motion for default judgment against Tanya which was served upon her in accordance with the Tanya Hutchens Service Order but to which she did not respond. This motion was initially denied by the Federal Court without prejudice because the Clerk of the Court had not entered a default by Tanya. The Applicants then filed a request to the Clerk of the Court for entry of default on August 24, 2018, which was granted on August 27, 2018. The request to enter the default was also served upon Tanya and she again took no action.
- (w) The Applicants then reapplied for a default judgment against Tanya on or around August 27, 2018. Tanya was served with the Applicants’ motion materials in accordance with the Tanya Hutchens Service Order.
- (x) On August 31, 2018, the Applicants amended their motion for default judgment to seek treble damages against Tanya in accordance with the applicable laws. The amended motion materials were served on Tanya in accordance with the Tanya Hutchens Service Order.
- (y) On September 26, 2018 the Federal Court issued an Order requesting, *inter alia*, that Applicants further describe the basis for damages sought in the default motion and the evidence regarding Tanya Hutchens.
- (z) On October 11, 2018, after considering the evidence detailing the Applicants’ damages as well as the evidence that copies of all relevant motions and court filings had been served on Tanya as ordered, the Federal Court granted default

judgment against Tanya. On considering the applicable law, the Federal Court ordered that the Applicants were entitled to damages in the amount of US\$26,774,763.09.

- (aa) On or around October 22, 2018, Tanya challenged the judgment against her US ~~Judgment~~ before the Federal Court under the United States Federal Rules of Civil Procedure. Extraordinary circumstances must be demonstrated to justify such relief.
- (bb) On October 26, 2018 the Federal Court issued a detailed order denying Tanya's motion to vacate and considering all of Tanya's submissions. It concluded: "The default judgment against Mrs. Hutchens is the result of her own considered choice to ignore Plaintiffs' suit. Her appearance now—only after default has been entered—is telling." The Federal Court found, among other things, that "Mrs. Hutchens' statement—that she did not receive any pleadings in the case—is simply untrue. Mrs. Hutchens was lawfully served with all pleadings in this lawsuit, beginning with Plaintiffs' Amended Complaint on April 16, 2018. It is doubly incredible that Mrs. Hutchens has received no pleadings, given that the return address she supplied in filing her current briefs is the very same address at which she was served."
- (cc) The Federal Court also found that, "[s]ignificantly, Mrs. Hutchens has not presented a meritorious defense; she has filed no Answer to Plaintiffs' Amended Complaint. To the extent that Mrs. Hutchens' Affidavits or Reply constitute an Answer, they offer little more beyond blanket denials. Mrs. Hutchens alleges no facts to contest Plaintiffs' claims against her, other than broad denials, labeling the witness who testified against her in another matter a liar. Furthermore, while Mrs. Hutchens asserts she was legally separated from her husband Sandy in 2011, she offers no reason as to why this exculpates her alleged conduct."

Orders made against Sandy Hutchens

- (dd) The Applicants brought a motion before the Federal Court to confirm how Sandy Hutchens could be served. The Federal Court considered the applicable laws on service, the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents as well as Sandy Hutchens' request that he be served at 1779 Cross Street, Innisfil, Ontario, L9S 4L9 and by email at sandyhutchens0@gmail.com. On March 27, 2018, the Court ordered that Hutchens be served by mail at 1779 Cross Street, Innisfil, Ontario and also by email at sandyhutchens0@gmail.com (the "Sandy Hutchens Service Order").
- (ee) Sandy Hutchens was then served with the Amended Complaint as directed by the Federal Court in its Orders of March 27, 2018 and April 10, 2018. Subsequent documents filed with the Federal Court were similarly served on Sandy Hutchens.
- (ff) Sandy Hutchens filed two Responses to the Amended Complaint on April 24, 2018: one on his own behalf and one on behalf of Westmoreland. Those responses were sent to the Applicants' US counsel from the sandyhutchens0@gmail.com email address.
- (gg) After experiencing difficulties and delays obtaining required production of documents from Sandy Hutchens, the Applicants brought a motion before the Federal Court to compel Hutchens to comply with his discovery obligations by answering interrogatories and producing relevant documents. An order to that effect was granted by the Federal Court on August 28, 2018 requiring Sandy Hutchens to comply by September 3, 2018 (the "Discovery Order"). The Discovery Order prominently states that "FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE IMPOSITION OF SANCTIONS, INCLUDING THE ENTRY OF JUDGMENT IN PLAINTIFFS' FAVOUR" (emphasis in original).
- (hh) The Discovery Order was served on Sandy Hutchens, including by email on the day it was issued.

- (ii) Hutchens did not comply with the Discovery Order. Therefore, the Applicants moved on September 4, 2018 for a default judgment as a sanction for ignoring the Discovery Order. The Applicants also sought treble damages under the applicable laws for Hutchens' conduct. The Applicants' motion materials were served on Hutchens by email and first-class mail in accordance with the Sandy Hutchens Service Order. Hutchens ignored the motion.
- (ji) On September 26, 2018, the Federal Court ordered that Sandy Hutchens respond to the Applicants' motion in writing no later than October 17, 2018 and show cause as to why the motion should not be granted (the "Show Cause Order"). The Show Cause Order was served on Hutchens in accordance with the Sandy Hutchens Service Order.
- (kk) As of October 11, 2018, Hutchens had not responded to the Applicants' motion. On that date, after considering Hutchens' failure to respond to or comply with orders regarding discovery, the prejudice to the Applicants from Hutchens' refusal to engage in discovery and the meritorious nature of the Applicants' case, the Federal Court ordered judgment in the amount of US\$26,774,736.09. That judgment was served on Hutchens in accordance with the Sandy Hutchens Service Order.
- (ll) After receiving the October 11, 2018 default judgment, Hutchens then sent a response to the Federal Court's Show Cause Order. Hutchens claimed that he "did not receive all the various pleadings and Orders of the Court filed in this case" despite that (i) all relevant pleadings and orders were served on him in accordance with the Sandy Hutchens Service Order, (ii) those documents were served to the mailing address and email address that Hutchens requested, (iii) Hutchens' response to the Show Cause Order was sent from the same email account that was used to serve him, and (iv) no email or mail sent to him was ever returned as undeliverable.
- (mm) The Federal Court then vacated the default judgment, giving Hutchens until November 16, 2018 to comply with its prior orders.

- (nn) On November 16, 2018, the Applicants filed a motion asking the Federal Court to re-enter default judgment against Hutchens. On December 19, 2018, the Federal Court granted that motion and re-entered its default judgment. The Federal Court issued detailed reasons concluding 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."
- (oo) The Federal Court concluded that Hutchens had shown an "obstructive and fraudulent pattern of behavior during this litigation." Among other things, the Court pointed to Hutchens' pattern of refusing to comply with court orders and that "Hutchens continued to ignore this litigation and his corresponding obligations until after I entered Judgment against him." The Court also concluded that, while Hutchens' belated response to interrogatories refused to answer a number of appropriate questions, "[m]ore troubling, those responses Hutchens *did* provide are largely false or fraudulent."
- (pp) The Federal Court further noted that "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. Since then, Plaintiffs' counsel has verified service by email and regular mail at Hutchens' address per my Order for all pleadings. Hutchens undoubtedly was aware of the ongoing lawsuit because, on May 15, 2018, he filed an Answer to the Complaint. Hutchens has nonetheless repeatedly and consistently flouted my Orders to participate.... 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. His discovery responses [are] virtually non-existent and his discovery objections are frivolous. Moreover, they appear rife with inaccuracies and falsehoods, supported only by forged or fraudulent documents. 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. His actions are obviously both dilatory and taken in bad faith.”

(qq) On whether default judgment was an appropriate sanction for Sandy Hutchens’ conduct, the Federal Court concluded that: “[a]lternative 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.”

(rr) The Federal Court also considered the merits of the Applicants’ claim against Sandy Hutchens and concluded that “Plaintiffs also have a meritorious claim” and that “Hutchens has provided me with no reason to believe that he has a meritorious or even bona fide defense to Plaintiffs’ claims.”

Recognition of the US Judgments

(ss) (dd) The Ontario legal requirements for recognition of the US Judgments have been satisfied:

- i. this Court has jurisdiction to recognize and enforce judgment as against Tanya and Sandy as they are she-is-an Ontario residents;
- ii. the US Judgments were was issued by a court of competent jurisdiction as there was a real and substantial connection between Pennsylvania and the Applicants’ claim, which related to fraudulent transactions conducted via a corporation carrying on business in Pennsylvania;
- iii. the Federal Court properly assumed jurisdiction over Tanya and Sandy, as they wereshe-was-a necessary parties party to the claim against Westmoreland and were was found to be an active participants in the fraudulent transactions executed by Westmoreland while carrying on business in Pennsylvania;
- iv. the US Judgments are is final and conclusive; and

v. the US Judgments are is for a definite sum of money.

(tt) (ee) The US Judgments were was obtained in the absence of any fraud and without any breach of natural justice. Tanya and Sandy were was properly served and were was provided with a fair, full and complete opportunity to defend the Applicants' claim in the Federal Court.

(uu) (ff) The recognition and enforcement of the US Judgments would not be contrary to Canadian public policy.

(vv) (gg) This matter is appropriate for determination by application on the basis of Rules 14.05(3)(g) and (h).

2. The following documentary evidence will be used at the hearing of this Application:

(ss) The affidavit of Howard Langer to be sworn; and

(tt) Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 5, 2018
Amended February __, 2019

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Lawyers for the Applicants

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

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

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

Proceeding commenced at TORONTO

AMENDED NOTICE OF APPLICATION

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Lawyers for the Applicants

TAB C

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

– and –

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

Respondents

**AFFIDAVIT OF HOWARD LANGER
(sworn January 8, 2019)**

I, Howard Langer, of the City of Philadelphia, in the State of Pennsylvania, MAKE
OATH AND SAY:

1. I am an attorney and founding partner at Langer, Grogan & Diver P.C, a law firm in Philadelphia, Pennsylvania. I am the Applicants' counsel in proceedings against the Respondents in the State of Pennsylvania, both before the Pennsylvania Court of Common Pleas (the "Pennsylvania State Court") and before the United States District Court for the Eastern District of Pennsylvania (the "Federal Court"). As such, I have personal knowledge of the matters contained in this affidavit, except where facts are stated to be based on information and belief, in which case I have identified the source of my information and believe the information to be true.
2. I make this affidavit in support of the Applicants' motion for a receivership order and for no other or improper purpose.

A. Background

3. The individual Applicants, Gary and Linda Stevens, are residents of Mayerthorpe, Alberta. The corporate Applicant, 1174365 Alberta Ltd., is a corporation organized under the laws of Alberta, of which Gary and Linda Stevens are the sole shareholders.

4. The background facts and procedural history of the Applicants' long battle to recover the damages they suffered in the fraud perpetrated by the Respondents is set out in the Amended Federal Complaint filed by the Applicants in the Federal Court (attached hereto as **Exhibit "1"**).

5. As set out in the Amended Federal Complaint, in October 2014 the Applicants sought mortgage refinancing for property they were developing in Saskatchewan. They were referred by mortgage brokers to Westmoreland Equity Fund, LLC ("Westmoreland"), which required the Applicants to pay advance fees for the financing they sought. The Applicants funded these fees by mortgaging another property of theirs in Arizona.

6. Over the following months, Westmoreland reneged on its promises to provide financing, changing the amount it said it would loan from \$13,900,000 CDN to \$5,700,000 CDN, then to \$7,500,000 CDN, conditioned on the Applicants meeting certain novel financing requirements that Westmoreland knew the Applicants could not meet.

7. When Westmoreland repeatedly failed to honour its financing commitments, the Applicants' original lender foreclosed on the Applicants' Saskatchewan property. The Applicants were also unable to repay their debt on the Arizona property they had mortgaged to fund the fees demanded by Westmoreland, and subsequently lost the Arizona property which they had posted as collateral.

8. The Applicants would in time discover that they had been victims of a fraud.

9. The fraud operated as follows. Westmoreland, serving as a front, would require prospective borrowers to pay large advance fees to issue the loan commitments the borrowers urgently sought. It would then issue the loan commitments, even though it had neither the financial ability nor the intent to fund the loans. Its loan commitments provided that, as a condition for closing, the borrowers had to pay substantial additional fees. Westmoreland then

created a pretext to find fault with the borrowers' loan applications and materials, which it then used to justify the imposition of further terms and conditions, which often included a demand for additional fees. In time, Westmoreland asserted that its victims had failed to satisfy these new terms and conditions and relied on these trumped-up defects as grounds for terminating the loan application process. Upon its termination of the process, Westmoreland kept all the monies advanced.

B. The Pennsylvania Judgment against Tanya Hutchens

10. The Applicants initially brought a claim in the Pennsylvania Court of Common Pleas of Philadelphia County (the "Pennsylvania State Court") under Pennsylvania state law. The claim was brought against numerous defendants including Westmoreland and "Ed Ryan" – an alias the Applicants later learned was actually Sandy Hutchens. When the involvement of Sandy Hutchens and his family was revealed in a trial of a similar suit in Colorado (described below), the complaint was amended to include Tanya Hutchens and Sandy Hutchens, as well as other parties involved in the fraudulent scheme.

11. The Pennsylvania State Court denied motions challenging its jurisdiction, finding that an action in Pennsylvania State Court was appropriate as (i) Westmoreland was registered with the Pennsylvania Secretary of State as a foreign corporation operating in Pennsylvania, (ii) in those filings, Westmoreland's principal place of business was declared as 1650 Market Street, Philadelphia, Pennsylvania, and (iii) Westmoreland was a necessary vehicle for the conspiracy, and defendants not resident in Pennsylvania were properly subject to Pennsylvania jurisdiction due to their status as co-conspirators aware of the Pennsylvania nexus of the fraud.

12. The Pennsylvania State Court then issued judgment as against Westmoreland and Ed Ryan under state law and common law in favour of the Applicants in the amount of US\$9,117,817.97. "Ed Ryan", i.e. Sandy Hutchens, and Westmoreland were represented by counsel before the Pennsylvania State Court and allowed the judgments to be entered against

them.¹ The judgments of the Pennsylvania State Court in this regard are attached hereto as **Exhibit “2”**.

13. The Applicants’ complaint was later amended to include claims under the federal *Racketeer Influenced and Corrupt Organizations Act* (“RICO”) and to add additional defendants. Due to the addition of federal claims, several of the defendants then removed the claim from the Pennsylvania State Court to the United States Court for the Eastern District of Pennsylvania (the “Federal Court”) on the basis that the claim should be heard in federal court rather than state court pursuant to 28 U.S. Code §1441.

14. Following the removal of the claim to the Federal Court, and after their multiple efforts to serve Sandy and Tanya Hutchens through Ontario authorities pursuant to The Hague Convention, by personal service through a private process server, and by mail by the Clerk of the Federal Court had been frustrated by the Hutchenses, the Applicants obtained orders from the Federal Court directing how Sandy and Tanya Hutchens should be served. First, the Applicants obtained an order (the “Sandy Hutchens Service Order”) directing that service on Sandy Hutchens could be by mail at 1779 Cross Street, Innisfil, Ontario, L9S 4L9 and that, in addition to service by mail, all documents to be served on him were to be sent by email to sandyhutchens0@gmail.com. A copy of the Sandy Hutchens Service Order is attached hereto as **Exhibit “3”**.

15. In the Sandy Hutchens Service Order, the Federal Court considered the applicable U.S. law, Ontario law and treaty obligations on service, as well as the fact that Sandy Hutchens had previously requested that documents be sent to him by mail at 1779 Cross Street, Innisfil, Ontario and at the email address sandyhutchens0@gmail.com. Attached hereto as **Exhibit “4”** is email correspondence from Sandy Hutchens dated April 27, 2018, where he submitted a defence to the action in the Federal Court on behalf of Westmoreland and requested that service on him be made by mail at 1779 Cross Street, Innisfil, Ontario and to the email address sandyhutchens0@gmail.com.

¹ Counsel withdrew their appearance for “Ed Ryan” when they learned that Sandy Hutchens was using the Ed Ryan alias. Hutchens had previously duped his Pennsylvania counsel regarding his identity. They continued to represent Westmoreland and advised me that their contact for that representation was Sandy Hutchens.

16. The Applicants also obtained an order from the Federal Court directing how Tanya Hutchens should be served (the “Tanya Hutchens Service Order”, attached hereto as **Exhibit “5”**). As set out in the Tanya Hutchens Service Order, the Federal Court reviewed the evidence filed, treaty obligations and relevant law and concluded that Tanya Hutchens should be served by: (i) mail to her place of residence at 33 Theodore Place, Thornhill, Ontario L4J 8E2, (ii) on Gary Caplan, Tanya’s counsel, at Mason Caplan Roti LLP in Toronto, and (iii) given Tanya’s involvement in Sandy’s business affairs, at Sandy Hutchens’ address at 1779 Cross Street, Innisfil, Ontario, L9S 4L9 as an additional means of ensuring that she had actual notice of any relevant documents.

17. All relevant documents and pleadings were then served on Sandy and Tanya Hutchens in accordance with those orders.

18. Under Rule 12(a)(1)(A)(i) of the United States *Federal Rules of Civil Procedure*, defendants must respond to a complaint within 21 days. In late August 2018, more than four months after service of the Summons advising her of her obligation to respond and the Amended Complaint, Tanya Hutchens had still not filed a response. The Applicants therefore applied for default judgment against her. She was served with the Applicants’ motion materials in accordance with the Service Orders. A copy of the Applicants’ materials seeking default judgment are attached hereto as **Exhibit “6”**.

19. On October 11, 2018, after considering evidence of the Applicants’ damages, as well as the evidence that all relevant motions and court filings had been sent to Tanya Hutchens as ordered, the Federal Court granted default judgment against Tanya Hutchens. On considering the applicable law, the Federal Court ordered that the Applicants were entitled to damages in the amount of US\$26,774,763.09. A copy of the Federal Court judgment in this regard (the “First Pennsylvania Judgment”) is attached hereto as **Exhibit “7”**.²

² The disparity between the Pennsylvania State Judgments and this judgment was because the *RICO* statute provides for a remedy of treble damages.

20. On or around October 22, 2018, Tanya Hutchens sought to vacate the First Pennsylvania Judgment before the Federal Court under Rule 60(b)(6) of the *Federal Rules of Civil Procedure*. Extraordinary circumstances must be demonstrated to justify such relief.

21. On October 26, 2018, the Federal Court issued a detailed order denying her motion. A copy of the Federal Court's reasons is attached hereto as **Exhibit "8"**. On considering her submissions and the applicable law, the Federal Court found, among other things, that:

- (a) "Mrs. Hutchens' statement—that she did not receive any pleadings in the case—is simply untrue. Mrs. Hutchens was lawfully served with all pleadings in this lawsuit";
- (b) "Significantly, Mrs. Hutchens has not presented a meritorious defense; she has filed no Answer to Plaintiffs' Amended Complaint. To the extent that Mrs. Hutchens' Affidavits or Reply constitute an Answer, they offer little more beyond blanket denials. Mrs. Hutchens alleges no facts to contest Plaintiffs' claims against her, other than broad denials, labeling the witness who testified against her in another matter a liar";
- (c) "The default judgment against Mrs. Hutchens is the result of her own considered choice to ignore Plaintiffs' suit. Her appearance now—only after default has been entered—is telling."

22. On November 21, 2018, Tanya Hutchens filed another motion seeking relief from judgment, relying on Rules 59 and 60 of the *Federal Rules of Civil Procedure*. On November 29, 2018, the Federal Court issued a detailed order denying that motion. In its order, a copy of which is attached hereto as **Exhibit "9"**, the Federal Court noted that it had construed her motion "liberally" and held, among other things, that:

- (a) Rule 59(e) permits a party to file a motion "to alter or amend a judgment" within twenty-eight days of the entry of judgment, and that deadline had already expired when Tanya Hutchens filed her motion;

- (b) In her submissions, Tanya Hutchens “repeats the same arguments I rejected in my October 26, 2018 Order... Mrs. Hutchens continues to insist that she is excused from participating in this case because she was not personally served with the Complaint”;
- (c) “Mrs. Hutchens’ “belief” notwithstanding, she was legally and validly served with Plaintiffs’ Amended Complaint. Mrs. Hutchens nonetheless chose to ignore the case pending against her. Her current situation is thus no one’s fault but her own”;
- (d) “Mrs. Hutchens otherwise argues that Plaintiffs’ have not offered sufficient evidence to prove her direct involvement in the RICO scheme perpetrated by Westmoreland. The evidence that Plaintiffs have been able to obtain—despite the utter lack of discovery cooperation from Mrs. Hutchens and others in the fraud—refutes Mrs. Hutchens’ protests”;
- (e) “The Rule 60(b)(1) factors, which I have twice considered (in granting default judgment against Mrs. Hutchens and again in denying her previous Motion to Vacate), still weigh in favor of denying relief. Mrs. Hutchens offers no new reasons or changed circumstances in her current Motion that would affect my prior analysis of the Rule 60(b)(1) factors.”

23. The First Pennsylvania Judgment is final as it is not subject to further alteration by the Federal Court.

24. Tanya Hutchens has served a Notice of Appeal; however, it was not filed within the timelines required by the Federal Court Rules. Under those Rules, “the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from.” While an initial motion for reconsideration filed within ten days of the entry of the final judgment tolls the period in which a litigant must file a Notice of Appeal, a *further* motion for reconsideration served within ten days of the order denying the *initial* motion for reconsideration (but more than ten days after the entry of the original judgment) does not toll the time limit for an appeal. Therefore, Tanya Hutchens needed to file a Notice of Appeal within 30 days of the denial of her motion for reconsideration – or by

November 26, 2018. She did not do so and is therefore out of time to appeal the First Pennsylvania Judgment. In any event, Ms. Hutchens has not sought a stay of execution of the judgment pending appeal. Such a stay would require the posting of a bond securing the judgment.

C. The Pennsylvania Judgment Against Sandy Hutchens

25. The Applicants also sought judgment against Sandy Hutchens before the Federal Court.

26. Sandy Hutchens filed pleadings on his own behalf and on behalf of Westmoreland in the Federal Court, copies of which are attached hereto as **Exhibit “4”** and **Exhibit “10”**. However, he repeatedly failed to follow the Court’s orders requiring compliance with his discovery obligations and production of documents, including details of his financial affairs.

27. After experiencing difficulties and delays obtaining discovery from Sandy Hutchens, the Applicants brought a motion before the Federal Court to compel him to comply with his discovery obligations by answering interrogatories and producing relevant documents. An order to that effect was granted by the Federal Court on August 28, 2018, requiring him to comply by September 3, 2018 (the “Discovery Order”). A copy of the Discovery Order is attached hereto as **Exhibit “11”**.

28. The Discovery Order was served on Sandy Hutchens, including by email, on the day it was issued.

29. Sandy Hutchens did not comply with the Discovery Order. Therefore, the Applicants moved on September 4, 2018 for a default judgment as a sanction. The Applicants also sought treble damages under the applicable laws for Hutchens’ conduct. A copy of the Applicants’ materials seeking default judgment is attached hereto as **Exhibit “12”**. The Applicants’ motion materials were served on Sandy Hutchens by email and first-class mail in accordance with the Service Orders as evidenced by my certificate of service, attached hereto as **Exhibit “13”**. Hutchens ignored the motion.

30. On September 26, 2018, the Federal Court ordered that Sandy Hutchens respond to the Applicants’ motion in writing no later than October 17, 2018 and show cause as to why the

motion should not be granted (the “Show Cause Order”). A copy of the Show Cause Order is attached hereto as **Exhibit “14”**. The Show Cause Order was served on Sandy Hutchens in accordance with the Service Orders.

31. As of October 11, 2018, no response from Sandy Hutchens had been received. On that date, after considering Sandy Hutchens’ failure to respond to or comply with orders regarding discovery, the prejudice to the Applicants from Hutchens’ refusal to engage in discovery, and the meritorious nature of the Applicants’ case, the Federal Court entered judgment against him in the amount of US\$26,774,736.09. A copy of that judgment is attached hereto as **Exhibit “15”**. That judgment was served on Sandy Hutchens in accordance with the Service Orders.

32. After receiving the October 11, 2018 default judgment, Sandy Hutchens sent a response to the Federal Court’s Show Cause Order. Hutchens claimed that he “did not receive all the various pleadings and Orders of the Court filed in this case” despite the fact that (i) all relevant pleadings and orders were served on him in accordance with the Service Orders, (ii) those documents were served to the mailing address and email address that Hutchens requested, (iii) Hutchens response to the Show Cause Order was sent from the same email account that was used to serve him, and (iv) no email or mail sent to him was ever returned as undeliverable.

33. The Federal Court vacated the default judgment issued against Sandy Hutchens in order to consider his submissions and to allow him to make additional submissions. On November 16, 2018, the Applicants brought a motion asking that the judgment be reinstated as Sandy Hutchens had still not complied with previous orders against him, nor had he provided any valid reason for non-compliance.

34. On December 19, 2018, the Federal Court issued a detailed decision re-instating the default judgment against Sandy Hutchens (the “Second Pennsylvania Judgment”). A copy of the Court’s reasons and the order are attached hereto as **Exhibit “16”** and **Exhibit “17”**.

35. The Federal Court concluded 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.”

36. The Federal Court concluded that Hutchens had shown an “obstructive and fraudulent pattern of behavior during this litigation.” Among other things, the Court pointed to Hutchens’ pattern of refusing to comply with court orders and that “Hutchens continued to ignore this litigation and his corresponding obligations until after I entered Judgment against him.” The Federal Court also concluded that, while Hutchens’ belated response to interrogatories refused to answer a number of appropriate questions, “[m]ore troubling, those responses Hutchens did provide are largely false or fraudulent.”

37. The Federal Court further noted that “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. Since then, Plaintiffs’ counsel has verified service by email and regular mail at Hutchens’ address per my Order for all pleadings. Hutchens undoubtedly was aware of the ongoing lawsuit because, on May 15, 2018, he filed an Answer to the Complaint. Hutchens has nonetheless repeatedly and consistently flouted my Orders to participate.... 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. His discovery responses [are] virtually non-existent and his discovery objections are frivolous. Moreover, they appear rife with inaccuracies and falsehoods, supported only by forged or fraudulent documents. 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. His actions are obviously both dilatory and taken in bad faith.”

38. On whether default judgment was an appropriate sanction for Sandy Hutchens’ conduct, the Federal Court concluded that: “[a]lternative 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.”

39. The Federal Court also considered the merits of the Applicants’ claim against Sandy Hutchens and concluded that “Plaintiffs also have a meritorious claim” and that “Hutchens has

provided me with no reason to believe that he has a meritorious or even bona fide defense to Plaintiffs' claims."

D. Other Claims against Tanya and Sandy Hutchens for Fraud

40. After commencing their claim in the Pennsylvania State Court, the Applicants discovered that Westmoreland was a continuation of an earlier fraudulent scheme by Sandy and Tanya Hutchens that had numerous victims across Canada and the United States. A nationwide class action had also been brought in Colorado on behalf of US residents who were victims of the same fraudulent scheme over an earlier period (the "Colorado Class Action"). The Colorado Class Action was brought on behalf of US residents who were issued loan commitments from January 1, 2005 to April 7, 2013 by so-called "lending" entities owned and/or controlled by the Hutchenses.

41. The Colorado Class Action was certified as a class action against Tanya and Sandy in 2013. In 2014, the US Court of Appeals for the Tenth Circuit affirmed that certification ruling. After extensive pre-trial proceedings, the case went to trial on May 1, 2017, before a jury in the United States District Court for the District of Colorado in Denver (the "Colorado District Court"). On May 15, 2017, the jury returned a unanimous verdict finding Sandy and Tanya to be liable for substantive and conspiracy violations of RICO.

42. During and after the jury trial, Tanya claimed to have minimal involvement in the fraud and she tried to decertify the class action against her. In post-trial rulings issued on September 26, 2017, and December 18, 2017, the Colorado District Court rejected her arguments, holding that there was an ample evidentiary basis for the jury to find she was liable under RICO because: (i) based on fact witness testimony, Tanya Hutchens had been heavily involved in past mortgage businesses operated by Sandy, being described as an "equal partner in the business", (ii) in previous mortgage businesses operated by Sandy, Tanya was actively involved in structuring mortgage deals and also assisted with banking arrangements, (iii) Tanya was involved in setting up the website for First Central Mortgage Company, one of the corporations used in the fraudulent scheme, (iv) there was evidence that the funds fraudulently received from the plaintiffs and class members in the Colorado Class Action were transferred to Tanya and used by her to invest in various properties in Ontario, (v) the Colorado District Court found that these

transfers of funds were made as “a cover for getting plaintiffs’ funds out of the hands of Sandy Hutchens and his companies and into the potentially safer hands of Tanya”, and (vi) Tanya’s testimony to the contrary was not credible.

43. During cross-examination under oath in the Colorado Class Action, Sandy Hutchens admitted to using “Ed Ryan” as an alias, to doing business under the name of Westmoreland Equity LLC, and to hiding his criminal past from borrowers. The transcript of Sandy Hutchens’ cross-examination is attached hereto as **Exhibit “18”**.

44. The Colorado Class Action resulted in a unanimous jury verdict that Tanya Hutchens, Sandy Hutchens and their adult daughter, Jennifer Hutchens, were jointly and severally liable for damages under RICO. The jury verdict awarded plaintiffs and class members compensatory damages in the amount of \$8,421,367.00. As a result of post-trial motions, 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. This is set out in the Second Amended and Final Judgment in the Colorado Class Action, attached hereto as **Exhibit “19”**.

45. The details of the Colorado Class Action are set out in the following documents from that Action:

- (a) The Judgment issued on September 26, 2017 attached hereto as **Exhibit “20”**;
- (b) The Rulings on Post-Trial Motions issued on September 26, 2017 attached hereto as **Exhibit “21”**;
- (c) The Amended and Final Judgment issued on December 18, 2017, attached hereto as **Exhibit “22”**;
- (d) The Rulings on Additional Post-Trial Motions issued on December 18, 2017, attached hereto as **Exhibit “23”**;
- (e) The Second Amended and Final Judgment issued on July 16, 2018 (Exhibit “19”).

46. I understand from discussions with Kevin Roddy, counsel to the plaintiffs in the Colorado Class Action, that (i) Sandy and Tanya have not sought any stay of enforcement proceedings in

the Colorado District Court, and (ii) the plaintiffs in the Colorado Class Action have brought a proceeding in Ontario to recognize and enforce that judgment. At this time, no judgment has been issued in that proceeding. Copies of the pleadings in that Ontario proceeding are attached hereto as **Exhibits “24”, “25”, “26”, “27” and “28”**.

47. I understand that the Plaintiffs in the Colorado Class Action claim a proprietary interest in a number of properties in Ontario, based on the Second Amended and Final Judgment (Exhibit “19”), which declared that the plaintiffs hold a constructive trust over the properties. As set out in the Rulings on Post-Trial Motions (Exhibit “23”), this declaration was based on findings that funds fraudulently obtained from the plaintiffs in the Colorado Class Action were traceable to those properties.

48. The Colorado Class Action has revealed a pattern involving Tanya Hutchens whereby real properties are placed in the name of a corporation, with the corporate name being the address of the property, Tanya Hutchens being the director of the company and its registered place of business being her home address of 33 Theodore Place, Vaughan, Ontario. This is the case with the following properties:

- (a) 29 Laren Street, Sudbury, Ontario held by 29 Laren Street Inc.
- (b) 3415 Errington Avenue, Sudbury, Ontario held by 3415 Errington Avenue Inc.
- (c) 3419 Errington Avenue, Sudbury, Ontario held by 3419 Errington Avenue Inc.
- (d) 331 Regent Street, Sudbury, Ontario held by 331 Regent Street Inc.
- (e) 110-114 Pine Street, Sudbury, Ontario held by 110-114 Pine Street Inc.
- (f) 193 Mountain Street, Sudbury, Ontario held 193 Mountain Street Inc. and
- (g) 367-369 Howey Drive, Sudbury, Ontario held by 367-369 Howey Drive Inc.

49. The corporate profile reports for these entities are attached hereto as **Exhibits “29”, “30”, “31”, “32”, “33”, “34” and “35”**. In each case, Tanya Hutchens is listed as a director of

the company and its registered place of business is stated to be her home address of 33 Theodore Place, Vaughan, Ontario.

50. The jury in the Colorado Class Action found that these properties and other assets were transferred to shield them from creditors. As a result, I have reason to believe that there may be other properties that were transferred to shield them from creditors that have yet to be discovered.

E. Difficulties Tracking Funds

51. The Applicants' ability to track the funds fraudulently taken from them, and to investigate the assets held by Tanya and Sandy Hutchens that could provide a source of compensation for them, has been limited, because the Hutchenses have not complied with discovery procedures in the Federal Court. As set out above, Sandy Hutchens has failed to comply with the Discovery Order, and Tanya Hutchens has not engaged in discovery at all.

52. As a result, the Applicants have considerably incomplete knowledge of the assets currently held by the Hutchenses in Ontario. Canadian counsel has performed property searches based on the information that is available. These property searches are attached hereto as **Exhibit "36"**.

53. These property searches show several instances of unusual activity and registrations that merit further investigation as to their validity. For example, the property at 193 Mountain Street, which the Colorado Class Action determined was purchased in part with fraudulently obtained funds from victims, formerly had a charge registered on title from First National GP Corporation. That charge was transferred on April 20, 2018 to JDB Hutchens Financial Holdings Inc. – apparently the same corporation that the Colorado District Court held was owned by the Hutchenses. JDB Hutchens Financial Holdings Inc. then transferred that charge on November 16, 2018 – 11 days after the Notice of Application in this proceeding was issued.

F. Other Charges on the Properties and Notices of Sale

54. Ontario title searches performed on several of the properties show that they bear mortgages in favour of Meridian Credit Union ("Meridian"). Copies of those title searches are

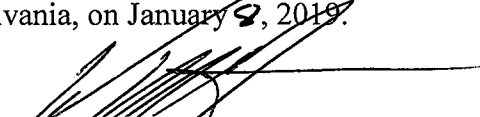
attached hereto as **Exhibit "37"**. On request, counsel to Meridian provided more information about its mortgages, including that it had sent out Notices of Sale for several properties and had entered into a forbearance agreement that will terminate on April 30, 2019. Copies of the Notices of Sale are attached hereto as **Exhibit "38"**.

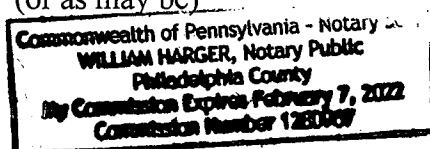
55. As set out in those Notices of Sale, Meridian claims a right to sell the following properties to satisfy loans made by Meridian:

- (a) LT 31, PL 657; INNISFIL, being all of PIN (58072-0299 (LT)) ("1889 Simcoe Blvd");
- (b) PT N ½ LT 25 CON 6 INNISFIL AS IN RO1093173, S/T RO1093173; INNISFIL, being all of PIN (58069-0150 (LT)) ("1779 Cross Street");
- (c) LT 1, PL 978; INNISFIL, being all of PIN (58069-0103 (LT)) ("1790 Cross Street");
- (d) LT 6, PL 642; INNISFIL, being all of PIN (58068-0102 (LT)) ("1479 Maple Road");
- (e) PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593; VAUGHAN, being all of PIN (03251-0304 (LT)) ("33 Theodore Place");

56. If these properties are sold and any residual proceeds are returned to Tanya Hutchens and Sandy Hutchens, there is a significant risk of dissipation that would threaten the Applicants' ability to recover the debts owing to them.

Sworn before me at Philadelphia, in the State of Pennsylvania, on January 2, 2019.


Commissioner for Taking Affidavits
(or as may be)



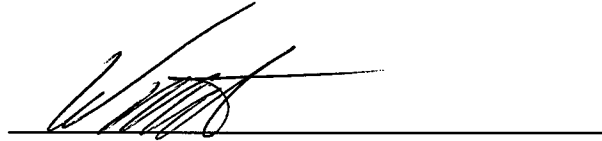


Howard Langer

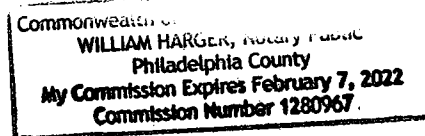
TAB

1

This is **Exhibit 1** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



**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 Intent 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 Habitube 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.

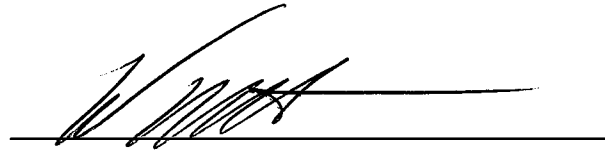
Dated: March 15, 2018

Respectfully submitted,

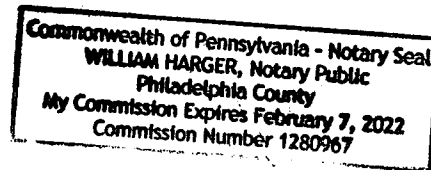
By: 
Howard Langer
Edward Diver
Peter Leckman
LANGER GROGAN & DIVER, P.C.
Three Logan Square, Ste. 4130
1717 Arch Street
Philadelphia, PA 19103
Tele: (215) 320-5660

TAB 2

This is **Exhibit 2** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



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

y.

Westmoreland Equity Fund LLC; Ed Ryan;
Jason Underwood; Bernard Feldman;
Sofia Capital Ventures; Barbara Leuin;
and John Does 1 through 20

Defendants

No. 2862

AUG 14 2017

R. POSTELL
COMMERCE PROGRAM

**ORDER AND JUDGMENT BY DEFAULT AGAINST
DEFENDANTS WESTMORELAND EQUITY FUND LLC AND ED RYAN**

AND NOW this 14th day of July, 2017 upon plaintiffs' motion pursuant to Rule

4019(c)(3), Pa.R.Civ. Pro. for entry of a judgment by default against defendants Westmoreland Equity Fund LLC (“Westmoreland”) and Ed Ryan, it is hereby Ordered and Decreed as follows

1. Plaintiffs' motion is granted.
2. On June 26, 2017 this Court entered an order granting plaintiffs' motion to

compel. That Order read as follows:

PLAINTIFFS' MOTION TO COMPEL IS GRANTED; WITHIN TEN (10) DAYS OF THIS ORDER, DEFENDANTS WESTMORELAND EQUITY FUND LLC AND ED RYAN SHALL SEPARATELY SERVE VERIFIED FULL AND COMPLETE ANSWERS TO PLAINTIFFS' INTERROGATORIES AND SHALL PRODUCE ALL DOCUMENTS RESPONSIVE TO PLAINTIFFS' DOCUMENT REQUESTS.

3. That Order was entered following the request of Defendant Westmoreland's

counsel for ten additional days to determine whether his client would respond to discovery.

4. No responses were filed in the period following the Order.

Stevens Etal Vs Westmor-ORDER



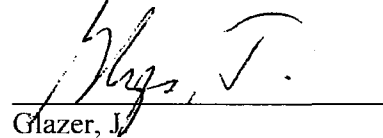
Case ID: 17010286

Control No. 1707116

5. Judgement Judgment of default is hereby entered against defendants Westmoreland Equity Fund, LLC and Ed Ryan.

6. Within twenty days of this Order plaintiffs shall file a declaration setting forth their damages in contemplation of entry of a final judgment against defendants Westmoreland Equity Fund, LLC and Ed Ryan.

BY THE COURT:


Glazer, J.

CONTROL NUMBER: 17071167

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

Plaintiffs

v.

Westmoreland Equity Fund LLC; Ed Ryan;
Jason Underwood; Bernard Feldman;
Sofia Capital Ventures; Barbara Leuin;
and John Does 1 through 20

Defendants

Court of Common Pleas

Philadelphia County

January Term, 2017

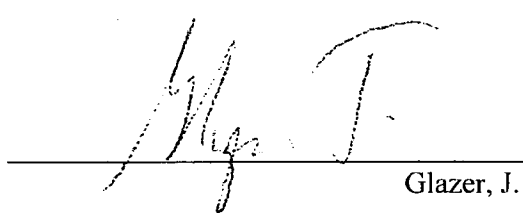
No. 2862

DOCKETED

AUG 23 2017

R. POSTELL
COMMERCE PROGRAM**FINAL JUDGMENT**

NOW, this 13th day of August, 2017, a final judgment on liability having been entered by this Court on August 14, 2017, defendants Westmoreland Equity Fund, LLC ("Westmoreland") and Ed Ryan ("Ryan"), having been represented by counsel in this action and Westmoreland having been served with process personally and having process also accepted by its counsel, and Ed Ryan having been served pursuant to this Court's Order of May 5, 2017, plaintiffs having subsequently filed a declaration setting forth their actual damages as directed in the Judgment of August 14, 2017, Final Judgment is hereby entered in favor of plaintiffs against defendants Westmoreland Equity Fund LLC and Ed Ryan, jointly and severally, awarding actual damages in the amount of \$ 9,117,817.92.


Glazer, J.

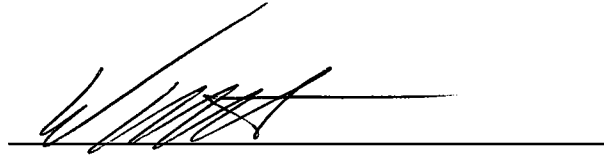
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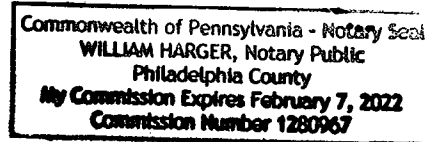
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TAB 3

This is **Exhibit 3** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



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

On February 15, 2018, Defendants Lydecker, Lee, Berga & De Zayas, LLC, Lydecker, LLP, Richard Lydecker, Alan Feldman, and Elias Correa Menendez removed this RICO action from the Philadelphia Common Pleas Court. (Doc. No. 1.) Before removal, Plaintiffs had not served several Defendants, including, *inter alia*, Canadian Defendants Sandy Hutchens, Tatyana Hutchens, Jennifer Hutchens, Shannon Hutchens, Matthew Kovce, and Ed Ryan. Plaintiffs move to serve these Defendants through under Rule 4(f)(2) and (3). (Doc. No. 28); see also Fed. R. Civ. P. 4(f)(2)–(3). I will grant the Motion in part.

Plaintiffs ask me to recognize prior service on Ed Ryan and Westmoreland Equity Fund, LLC, as adequate service on Sandy Hutchens. Additionally, Plaintiffs request leave to serve the Canada-based Defendants by: (1) certified mail sent to attorneys Gavin Lentz and Jeffrey Ogren of Bochetto & Lentz, P.C., and Steven Klenda of Klenda Gessler & Blue, LLC; (2) regular mail sent directly to the Canadian Defendants at Sandy's address in Ontario; and (3) by email to "sandyhutchens0@gmail.com."

I. Service on Sandy Through Ryan and Westmoreland

Plaintiffs ask me to recognize prior service on Ed Ryan and Westmoreland Equity Fund, LLC as adequate service on Sandy Hutchens. They allege that Ryan permitted Sandy to use

Ryan's name as an alias, and that Sandy has actual notice of the service on Westmoreland. Sandy has not, however, received service of process officially requiring him to respond. Accordingly, I will deny Plaintiffs' request to recognize service on Defendant Westmoreland Equity Fund, LLC, or Ryan as sufficient service on Sandy.

II. Ryan

Ryan defaulted in the Common Pleas Court, and Plaintiffs have not explained why it is necessary to serve him again. (Ren. Mot. for Alt. Serv. Ex. B, Doc. No. 28.) Accordingly, I will deny without prejudice Plaintiffs' Motion as to Ryan.

III. Service by Ordinary Mail, Email, and Counsel

Plaintiffs ask me to allow service by: (1) regular mail sent directly to the Canadian Defendants at Sandy's address in Ontario; (2) email sent to Sandy's personal email address; and (3) certified mail sent to counsel who have not appeared in this matter.

Canada and the United States are signatories to the Hague Convention. International service must comply with the Convention "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, Art. 1, Nov. 15, 1965, 20 U.S.T. 361; Eli Lilly Co. Roussel Corp., 23 F. Supp. 2d 460, 470 (D.N.J. 1998); see also Fed. R. Civ. P. 4(f)(1).

Although the Convention specifies methods for international service, it does not interfere with "the freedom to send judicial documents, by postal channels, directly to persons abroad." Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, Art. 10(a), Nov. 15, 1965, 20 U.S.T. 361. Nonetheless, service by international mail is effective only where: (1) "the receiving country [has not] objected to [service by international mail];" and (2) "the law of

the state where the action is pending authorize[s] the particular method of service employed.” The Knit With v. Knitting Fever, Inc., 2010 WL 2788203, at *7 (E.D. Pa. July 13, 2010). Canada has not objected to service by international mail. Murtech Energy Servs., LLC v. ComEnCo Sysys., Inc., 2014 WL 2863745, at *5 n.5 (E.D. Mich. June 24, 2014).

“[T]he law of the state where the action is pending” includes the Federal Civil Rule 4(f). See Mitchell v. Theriault, 516 F. Supp. 2d 450, 456 (M.D. Pa. 2007).

A. Rule 4(f)(2)

A plaintiff may serve a defendant in a foreign country: (1) “by any internationally agreed means of service reasonably calculated to give notice;” or (2) “if an international agreement allows but does not specify other means,” by, *inter alia*, “a method . . . prescribed by the foreign country’s laws for service in that country in an action in its courts of general jurisdiction.” Fed. R. Civ. P. 4(f)(1)–(2).

Rule 4(f)(2) does not permit service by ordinary mail on the Canada-based Defendants. In Ontario, “[w]here [Ontario’s Civil Rules] or an order of the court permit service by an alternative to personal service . . . [s]ervice of a document may be made by sending a copy of the document together with an acknowledgment of receipt card (Form 16A) by mail to the last known address of the person to be served.” R.R.O. 1990, O. Reg. 194, Rule 16.03(4) (Can.). That Rule does not authorize service by ordinary mail because service “is only effective as of the date the sender receives the [acknowledgment of receipt] card.” *Id.*; see also Ledroit Law v. Kim, 2015 COA 114, ¶ 33, 360 P.3d 247, 252 (Colo. Ct. App. 2015); Basham v. Tillaart, 2003 WL 21780974, at *4–5 (Tenn. Ct. App. July 31, 2003).

Ontario’s Civil Rules also provide that “the court may, on motion, make an order directing that the document be served by e-mail, on such terms as are just.” R.R.O. 1990, O.

Reg. 194, Rule 16.06.1(2) (Can.). Plaintiffs have not, however, argued that service by email would be “just” under Ontario law.

In these circumstances, service by ordinary mail and email is not permissible under Rule 4(f)(2) as to any of the Canada-based Defendants.

B. Rule 4(f)(3)

A plaintiff may also serve a defendant in a foreign country “by other means not prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). “Once a court is convinced that its intervention is necessary and alternate service is appropriate, the court must ascertain a method of service that will comport with constitutional notions of due process.” The Knit With v. Knitting Fever, Inc., No. 08-4221, 2010 WL 4977944, at *4 (E.D. Pa. Dec. 7, 2010). The method of service must provide “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). “[C]ourts have authorized a wide variety of alternative methods of service including publication, ordinary mail, mail to the defendant’s last known address, delivery to the defendant’s attorney, telex, and most recently, email.” Rio Props., Inc. v. Rio Int’l. Interlink, 284 F.3d 1007, 1016 (9th Cir. 2002).

Plaintiffs have attempted to serve Sandy, Tatyana, Shannon, Jennifer, and Mathew in Ontario through the Canadian government. (Decl. of Howard Langer Ex. A, Doc. No. 9-2.) Plaintiffs also hired a professional process server to serve personally those Defendants at Sandy’s home at 33 Theodore Place, Thornhill, Ontario, Canada L4J 8E2. (Decl. of Howard Langer ¶ 3(b), Doc. No. 9-2.) On three occasions, three different teenagers answered the door and told the server that Sandy and Tatyana “would not be home until late.” (Decl. of Howard

Langer Ex. B, Doc. No. 9-2.) That same process server “was previously able to perfect personal service on Sandy Hutchens in an unrelated case” at the same address. (*Id.*) Finally, Plaintiffs attempted to serve Sandy by mail pursuant to Pennsylvania Rule 403 and through the Clerk of this Court. (Decl. of Howard Langer ¶ 3(c)–(d), Doc. No. 9-2); see also Pa. R. Civ. P. 403. The mailings were returned unclaimed.

Shannon, Jennifer, and Mathew

Plaintiffs have not shown that any Defendant other than Sandy or Tatyana actually resided at 33 Theodore Place, or that Plaintiffs have otherwise attempted personal service on Shannon, Jennifer, or Mathew. (*See* Decl. of Howard Langer Ex. B ¶ 5, Doc. No. 9-2.) Moreover, if Shannon, Jennifer, or Mathew does not reside with Sandy, there is no reason to believe that service by mail sent to Sandy’s former or current addresses would provide him or her with notice of this suit. Accordingly, I will deny without prejudice Plaintiffs’ request for alternative service as to Shannon, Jennifer, and Mathew.

Sandy

Service on Sandy by ordinary mail is proper under Rule 4(f)(3). Sandy is aware of this lawsuit. He prepared an Answer to the Second Amended Complaint and, in a March 9 email, provided Plaintiffs with an address where he would like to be served, 1779 Cross Street, Innisfil, Ontario, L9S4L9. (Mot. for Alt. Serv. Ex. A, C, Doc. No. 28-2.) Accordingly, I will allow Plaintiffs to serve Sandy by ordinary mail sent directly to the Ontario address provided by Sandy.

In the Common Pleas Court, Plaintiffs properly served Defendant Westmoreland Equity Fund, LLC, which is allegedly managed by Sandy under various aliases. (Compl. ¶¶ 26–27, Doc. No. 1.) Lentz and Ogren entered their appearance on behalf of Westmoreland and Ed Ryan in this action before allowing a default judgment of \$9,200,000 to be entered against them.

Finally, Plaintiffs allege that before the default, Lentz and Ogren “negotiated with [P]laintiffs’ counsel and conveyed what they represented to be what Sandy Hutchens[’] positions were in the litigation.” (Pls.’ Mem. in Support of Mot. 5, Doc. No. 9-1.) Accordingly, I “will also require a copy of the Summons and [Second Amended] Complaint to be delivered by regular and certified mail to [Lentz and Ogren], solely for the purpose of providing another means of actual notice to the defendant.” Tinicum Props. Assocs. Ltd. P’ship v. Garnett, No. 92-860, 1992 WL 995590, at *2 (E.D. Pa. Apr. 29, 1992).

Tatyana

Sandy did not specify whether 1779 Cross Street is his residence or business address. Although Tatyana allegedly resides with Sandy, Plaintiffs have not shown that she has any connection with the address provided by Sandy. Because Sandy is not authorized to receive service on her behalf, service by ordinary mail at this address would not be reasonably calculated to provide Tatyana with notice. Similarly, service through Sandy’s email address is inappropriate because Plaintiffs have not shown that Tatyana has access to Sandy’s emails.

Plaintiffs do not allege that Tatyana has any connection to Lentz or Ogren. Accordingly, Plaintiffs cannot serve her through Lentz or Ogren.

Because Steven Klenda is in the United States, I cannot, under Rule 4(f)(3), authorize service through Klenda as the sole means of serving Tatyana. See Fed. R. Civ. P. 4(f) (“Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at *a place not within any judicial district of the United States . . .*”).

Moreover, in arguing that service is proper through Klenda, Plaintiffs rely on cases involving defendants with actual notice of the action, or whose attorney had previously accepted

service on their behalf. See Hydentra HLP INT. Ltd. v. Sagab Ltd., No. 16-1494, 2017 WL 490371, at *2 (D. Ariz. Feb. 7, 2017) (“Defendants clearly know of this action as shown by their retention of counsel and their filing of an objection to Plaintiffs’ motion.”); Forum Financial Grp. LLC v. President and Fellows of Harvard College, 199 F.R.D. 22, 24–25 (D. Maine 2001). Plaintiffs have presented no evidence, however, that Tatyana knows about this action. Accordingly, service through Klenda alone is not reasonably calculated to provide notice to Tatyana.

AND NOW, this 27th day of March, 2018, upon consideration of Plaintiffs’ Renewed Motion for Leave to Serve Certain Canadian Defendants Under Fed. R. Civ. P. 4(f)(3) (Doc. No. 28), it is hereby **ORDERED** that:

1. Plaintiffs’ Motion (Doc. No. 28) is **DENIED in part without prejudice** as to Defendants Tatyana Hutchens, Ed Ryan, Shannon Hutchens, Jennifer Hutchens, and Mathew Kovce;
2. Plaintiffs’ Motion (Doc. No. 28) is **GRANTED in part** as to Sandy Hutchens. Plaintiffs shall **SERVE** original process on Defendant Sandy Hutchens by sending: (a) the Summons and a copy of the Notice of Removal (Doc. No. 1), Second Amended Complaint (Doc. No. 1), and this Order to 1779 Cross Street, Innisfil, Ontario L9S4L9; (b) an email to Sandyhutchens0@gmail.com; and (c) a copy of the Summons, Notice of Removal (Doc. No. 1), Second Amended Complaint (Doc. No. 1), and this Order to Gavin Lentz and Jeffrey Ogren of Bochetto & Lentz, P.C. by certified mail; and
3. The **CLERK OF COURT** shall issue summonses as needed to carry out this Order.

AND IT IS SO ORDERED.

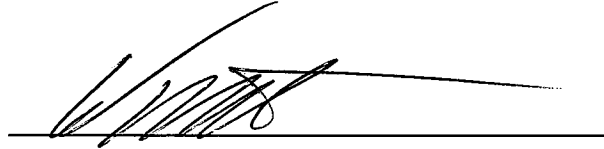
/s/ Paul S. Diamond

Paul S. Diamond, J.

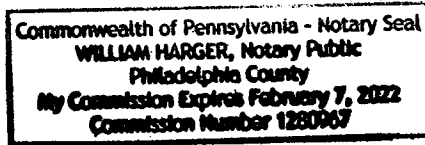
TAB

4

This is **Exhibit 4** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



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https://email05.godaddy.com/view_print_multi.php?uidArray=3535...[Print](#) | [Close Window](#)**Subject:** WML Defense/ Response to Plaintiffs Amended Claim dated March 15 2018**From:** Sandy Hutchens <sandyhutchens0@gmail.com>**Date:** Fri, Apr 27, 2018 2:09 pm**To:** Howard Langer <hlanger@langergrogan.com>

Cc: "bernie@bernardfeldmanpa.com" <bernie@bernardfeldmanpa.com>, "Shapiro, Peter" <Peter.Shapiro@lewisbrisbois.com>, "Bronstein, Eric" <Eric.Bronstein@lewisbrisbois.com>, "Datto Brett A. (brett.datto@weirpartners.com)" <brett.datto@weirpartners.com>, "Schwimmer, Lauren" <lschwimmer@weirpartners.com>

Attach: Lydecker Request for Discovery.pdf

WML Defence to March 15 18 amended claim.pdf

FILED
MAY 15 2018By KATE BARKMAN, Clerk
Dep. Clerk

Please find attached WML's response/ defense to your clients latest amended Claim dated March 15 2018, this will be filed with the court along with my defense that was previously served on you in due course. As you are aware you were provided with a letter from my former attorney, putting you personally on notice regarding legal costs that will be sought against you. This letter was provided in accordance with a statute enacted in your commonwealth, that deals with costs being sought when plaintiff's attorney has been provided documentation etc showing the claim to be frivolous and vexatious Inter Alia.

I will be providing the other defendants attorneys copies of this letter along with the supporting documentation, your client lied on his mortgage application and continued to mislead throughout the process. These actions by your client were in contravention of a federal statute regarding mortgage fraud and mortgage applications, therefore your client does NOT have clean hands which they must have to seek the relief they are seeking Inter Alia. Should the motion by the defendant Lydecker be successful and the court finds that your clients lack standing etc to bring this claim, I will be seeking an order that all legal fee's and costs paid to date be paid back by your clients and you personally along with your firm.

I am aware that given the fact that your clients have numerous outstanding judgments, (the ones your clients failed to disclose in there mortgage applications and ones since) the ability to collect will be challenging and therefore I will be looking to you and your firm. The attached response/ Defense is considered served on your clients and you.

Please note the address for service however I prefer email to this email address along with personal service, in compliance with the Federal rules regarding service .

Sandy Hutchens

On Fri, Apr 20, 2018 at 3:51 PM, Howard Langer <hlanger@langergrogan.com> wrote:

Dear Counsel,

Following the Court's Order of yesterday, attached is plaintiffs' initial request for production of documents directed to the Lydecker Defendants. I anticipate providing plaintiffs' initial disclosures pursuant to Rule 26(a) by a week from Monday and would ask for reciprocal responses from defendants by then to avoid the need for redundant interrogatories. Please get back to me on any comments relating to my letter earlier this week regarding a discovery plan.

Sincerely,

Howard Langer

Langer Grogan & Diver, P.C.

1717 Arch Street

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Philadelphia, PA 19103

215 320 5661

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

GARY STEVENS, LINDA STEVENS AND 1174365 ALBERTA LTD.,
Plaintiffs,

V

Civil Action No. 2:18-CV-00692-PD

WESTMORELAND EQUITY FUND, LLC, DEFENDANT, ED RYAN, TANYA HUTCHENS,
JENNIFER HUTCHENS, SHANNON HUTCHENS, MATTHEW KOVCE, JASON
UNDERWOOD, BERNARD FELDMAN, SOFIA CAPITAL VENTURES; BARBARA
LEUIN, AMERICAN ESCROW & SETTLEMENT SERVICES, LLC, ELIAS CORREA,
ALAN FELDMAN, LYDECKER, LEE, BERGA & DE ZAYES LLC, LYDECKER,
INDIVIDUALLY, LYDECKER, LEE, BERGA & DE ZAYES LLC D/B/A LYDECKER DIAZ,
LYDECKER LLP, RICHJARD LYDECKER AND JOHN DOES 1-20
Defendants.

_____/

RESPONSE TO AMENDED FEDERAL COMPLAINT DATED 3/15/2018

Westmoreland Equity Fund LLC hereby responds to the Amended Federal Complaint
dated 3/15/2018 filed in this matter as follows,

1. No response required except to offer that Plaintiffs suffered no damage whatsoever and are not entitled to any damages. Further Plaintiff's counsel has been put on notice of same by prior counsel.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Denied.
9. Denied.
10. Admit.
11. Denied.
12. Denied.
13. Admit.
- 14-16. Respondent neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
17. Admit Ed Ryan has a relationship with Shannon Hutchens however balance is Denied.
18. Respondent neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
19. Admit.
20. Admit.
21. Denied.

22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. The website speaks for itself.
27. The website speaks for itself.
28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied.
34. Denied.
35. Denied.
36. Denied.
37. Denied.
38. Denied.
39. Denied.
40. Denied.
41. It is admitted that the CGC and Antoniono cases have been pending. Neither is finalized being on appeal or subject to pending motions.
42. Denied.
43. Admit.
44. Denied.
45. Admit.
46. Admit.
47. Denied. Respondents were advised by counsel that there would be a hearing on damages which has not occurred. There are no damages that were suffered by Plaintiff's as a result of any actions of Westmoreland Equity Fund LLC or Defendant.
48. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
49. Denied.
50. Bernard Feldman was an independent agent who earned fees for bookkeeping, due diligence reports, site visits and consultation.
51. Denied.
52. Denied. AESS was not an escrow agent. It performed strictly bookkeeping/accounting functions for Westmoreland Equity Fund
53. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
54. Denied.
55. Denied.
56. Transcript of testimony will speak for itself.
57. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

58. Admit.
59. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
60. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
61. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
62. Consent Order speaks for itself but does not appear to have any relevance to activities performed for Westmoreland Equity Fund.
63. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
64. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
65. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
66. Press release speaks for itself.
67. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
68. Affidavit speaks for itself. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
69. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
70. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
71. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
72. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
73. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
74. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
75. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
76. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
77. Denied.
78. Admit.
79. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
80. Admit.
81. Denied.

- 82. Denied.
- 83. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 84. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 85. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 86. Denied.
- 87. Denied.
- 88. Denied.
- 89. Denied.
- 90. Denied.
- 91. Denied.
- 92. Denied.
- 93. Denied.
- 94. Denied.
- 95. Denied.
- 96. Denied.
- 97. Denied.
- 98. Admit.
- 99. Denied.
- 100. Denied.
- 101. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 102. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 103. Denied. Transactions were not funded as a result of failure to abide by the terms of the Commitment or the submission of fraudulent application materials or both.
- 104. Denied.
- 105. Denied.
- 106. Denied.
- 107. Denied.
- 108. Denied.
- 109. Denied.
- 110. Denied.
- 111. Denied.
- 112. Denied.
- 113. Denied.
- 114. Denied.
- 115. Denied.
- 116. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 117. Denied.

- 118. Denied.
- 119. Denied.
- 120. Denied.
- 121. Denied.
- 122. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 123. The testimony of record speaks for itself as does the record of the Judgment that is currently being appealed.
- 124. Denied.
- 125. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 126. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 127. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 128. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 129. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 130. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 131. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 132. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 133. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 134. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 135. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 136. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 137. Admit.
- 138. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 139. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 140. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 141. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

-
- 167 The Email transmission speaks for itself.
 - 168 The Email transmission speaks for itself.
 - 169 The Email transmission speaks for itself.
 - 170 The Email transmission speaks for itself.
 - 171 Defendant neither admits nor denies the allegations not being aware of facts to admit or

174 Admit funds were received. As to the balance of said allegation Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

175. Denied.

176. Denied.

177. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

178. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

179. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

180. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

181. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

182. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

183. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

184. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

185. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

186. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

187. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

188. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

189. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

190. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

191 Defendant re-allege and incorporate by reference the responses as set forth in foregoing paragraphs.

192-201. Denied.

7

paragraphs

268-274 Denied.

Wherefore, Defendant prays this Court enter its order of No Cause for Action and award appropriate costs and fees

Westmoreland Equity Fund LLC

By: 

Sandy Hutchens
1779 Cross Street
Innisfil, Ontario L9S4L9
Sandyhutchens0@gmail.com
215-960-6773

AFFIRMITIVE DEFENSES

1. Plaintiffs' claims are barred in that Plaintiffs' losses, if any, were the result of factors and conduct of persons over whom Responding Defendant had no control.
 2. No act or omission on the part of Responding Defendant was, or could have been, a legal cause of harm, if any, alleged to have been suffered by Plaintiffs.
 3. Plaintiffs are neither aggrieved nor suffered any damages as a result of any action on the part of Answering Defendants.
 4. Plaintiffs failed to mitigate their losses, if any.
 5. Plaintiffs' claims are barred by the applicable statute of limitations.
 6. Plaintiffs' claims are barred by their affirmation, consent and/or ratification.
 7. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.
 8. At all relevant times hereto, Responding Defendants acted in good faith.
 9. Plaintiffs' claims are barred in that Plaintiffs were in the best position to prevent the losses complained of, yet Plaintiffs failed to take any action to prevent those losses.
 10. Plaintiffs' claims are barred by their own comparative and/or contributory negligence and assumption of risk.
 11. Plaintiffs have failed to join indispensable parties.
 12. Responding Defendant were not in a conspiracy with the other defendants and never entered into an agreement with the other defendants to accomplish an unlawful goal.
 13. Responding Defendant did not breach any duty to the Plaintiffs.
 14. Plaintiffs' claims are barred by inability to prove damages.
 15. Plaintiffs are barred by equitable doctrine of unclean hands. Assertions on materials submitted to lender contained material omissions and misrepresentations (a federal crime under 18 U.S.C. § 1014), and thus gave them unclean hands, which barred their claims including civil RICO claims.
 16. Venue is inappropriate pursuant to US law, Court rules and practice.
 17. Jurisdiction has not been properly obtained against answering defendant pursuant to US Law, Court rules and practice.
 18. The RICO and related counts of the Complaint must fail because Plaintiff's are Canadian citizens and lack standing.
- The RICO Claims fail to to state any Claims for relief because:
- (i) They fail to plead a pattern of racketeering activity
 - (ii) They fail to plead with the necessary particularity
 - (iii) The Enterprise allegations are insufficient
 - (iv) Plaintiffs fail to sufficiently plead operation or management

- (v) Plaintiff's Conspiracy Claim is insufficient
- (vi) Plaintiff's Common law fraud claim is insufficient
- (vii) Plaintiff's Civil Conspiracy claim is insufficient

Westmoreland Equity Fund LLC

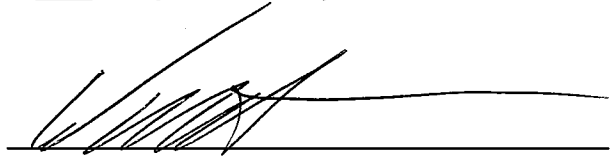
By: 

Sandy Hutchens
1779 Cross Street
Innisfil, Ontario L9S4L9
Sandyhutchens0@gmail.com
215-960-6773

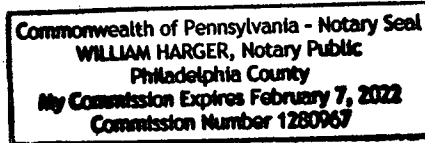
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This is **Exhibit 5** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'William Harger', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



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

GARY STEVENS, et al.,
Plaintiffs,

v.

WESTMORELAND EQUITY FUND, LLC,
et al.,
Defendants.

Civ. No. 18-692

APR 11 2018

ORDER

On February 15, 2018, Defendants Lydecker, Lee, Berga & De Zayas, LLC, Lydecker, LLP, Richard Lydecker, Alan Feldman, and Elias Correa Menendez removed this RICO action from the Philadelphia Common Pleas Court. (Doc. No. 1.) Before removal, Plaintiffs had not served several Defendants, *inter alia*, Canadian Defendants Sandy Hutchens, Tanya Hutchens, Jennifer Hutchens, Shannon Hutchens, Matthew Kovce, and Ed Ryan. On March 27, I granted in part Plaintiffs' motion to serve the Canada-based Defendants through alternative service under Rule 4(f)(3) only as to Sandy Hutchens. (Doc. No. 35.) Plaintiffs now renew their Motion to serve Tanya Hutchens under Rule 4(f)(3) by ordinary mail at her home and certified mail to Gary Caplan of Mason Caplan Dizgun Roti LLP, her counsel in another matter. (Doc. No. 38); see also Fed. R. Civ. P. 4(f)(3). I will grant Plaintiffs' Motion.

A plaintiff may serve a defendant in a foreign country "by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3). "Once a court is convinced that its intervention is necessary and alternate service is appropriate, the court must ascertain a method of service that will comport with constitutional notions of due process." The Knit With v. Knitting Fever, Inc., No. 08-4221, 2010 WL 4977944, at *4 (E.D. Pa. Dec. 7, 2010). The method of service must provide "notice reasonably calculated, under all the circumstances, to

apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). As I explained in my March 27 Order, Rule 4(f)(3) permits service by ordinary mail in Ontario, Canada. (Order 2–4, Doc. No. 35.)

I denied Plaintiffs’ previous Motion as to Tanya Hutchens because Plaintiffs had not shown that she resides at the address at which they sought to serve her. (Order 6, Doc. No. 35.) Such service thus was not reasonably calculated to provide Tanya with notice of this suit. In their Renewed Motion, however, Plaintiffs have established that Tanya Hutchens resides at 33 Theodore Place, Thornhill, Ontario, Canada L4J8E2. (See Decl. of Kevin P. Roddy, Esq. ¶¶ 6–11, Doc. No. 38-1.) Accordingly, I will permit Plaintiffs to serve her by ordinary mail at that address.

Moreover, I “will also require a copy of the Summons and [Second Amended] Complaint to be delivered by regular and certified mail to [Gary Caplan, Esquire], solely for the purpose of providing another means of actual notice to the defendant.” Tinicum Props. Assocs. Ltd. P’ship v. Garnett, No. 92-860, 1992 WL 995590, at *2 (E.D. Pa. Apr. 29, 1992); (see also Decl. of Kevin P. Roddy, Esq. ¶¶ 12–13, Doc. No. 38-1.)

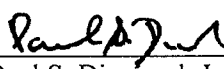
Finally, given Tanya’s involvement in Sandy’s business affairs, I will also order Plaintiffs to send by ordinary mail a copy of the Summons and Second Amended Complaint to Tanya at the address provided by Sandy, 1779 Cross Street, Innisfil, Ontario, Canada L9S4L9, as yet another means of providing actual notice to Tanya. (Decl. of Kevin P. Roddy, Esq. ¶¶ 3–5, Doc. No. 38-1.)

AND NOW, this 10th day of April, 2018, upon consideration of Plaintiffs’ Renewed Motion for Leave to Serve Tanya Hutchens Under Fed. R. Civ. P. 4(f)(3) (Doc. No. 38), it is

hereby **ORDERED** that Plaintiffs' Motion (Doc. No. 38) is **GRANTED**. Plaintiffs shall **SERVE** original process on Defendant Tanya Hutchens by sending: (a) the Summons and a copy of the Notice of Removal (Doc. No. 1), Second Amended Complaint (Doc. No. 1), and this Order by first-class mail to 33 Theodore Place, Thornhill, Ontario, Canada L4J8E2; (b) a copy of the Summons, Notice of Removal (Doc. No. 1), Second Amended Complaint (Doc. No. 1), and this Order by first-class mail to 1779 Cross Street, Innisfil, Ontario, Canada L9S4L9; and (c) a copy of the Summons, Notice of Removal (Doc. No. 1), Second Amended Complaint (Doc. No. 1), and this Order by certified mail to Gary Caplan of Mason Caplan Dizgun Roti LLP.

It is **FURTHER ORDERED** that the **CLERK OF COURT** shall **ISSUE** summonses as needed to carry out this Order.

AND IT IS SO ORDERED.

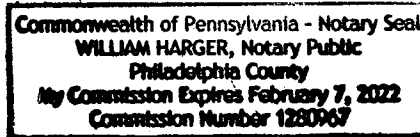
 4/10/18
Paul S. Diamond, J.

TAB 6

This is **Exhibit 6** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



GARY STEVENS, et al., :

Plaintiffs, :

:

v. : **Civ. No. 18-692**

:

WESTMORELAND EQUITY FUND, :

LLC, et al., :

Defendants. :

Plaintiffs amend their renewed motion for default judgment against defendant Tatyana (“Tanya”) Hutchens (hereinafter “Defendant”) pursuant to Rule 55, Fed. R. Civ. P., and in support thereof aver the following.

1. On August 22, 2018, plaintiffs filed an initial motion for default judgment against Defendant, (Doc. No. 96), which was denied by the Court on August 23, 2018, without prejudice as unripe because the Clerk of the Court had not entered a default by the Defendant, (Doc. No. 97).

2. In response, plaintiffs filed a request to the Clerk of the Court for entry of default on August 24, 2018, (Doc. No. 98), which the Clerk granted by entering a default by Defendant on August 27, 2018.

3. On February 15, 2018, this action was removed from the Pennsylvania Court of Common Pleas, Philadelphia County, to this Court. (Doc. No. 1).

4. On April 11, 2018, this Court granted plaintiffs' Motion for Service on Tatyana Hutchens Renewed Under Rule 4(f)(3) ordering plaintiffs to serve Defendant by ordinary mail at her Thornhill address, by certified mail to her counsel in Canada, Gary Caplan, Esq., and by ordinary mail to her husband Sandy Hutchens at his Innisfil address. (Doc. No. 42).

5. On April 16, 2018, plaintiffs filed an affidavit of service on Tanya Hutchens affirming that the mailings required by the Court's Order (Doc. No. 42) were made on April 13, 2018. (Doc. No. 43).

6. The summons and complaint sent by registered mail was received by Gary Caplan, Esq. on April 26, 2018. (Registered Mail Delivery Confirmation, Exhibit A).

7. Since April 13, 2018, Plaintiffs have sent copies of all relevant motions and court filings to Defendant at her Thornhill address.

8. It has been well over twenty-one days since Defendant was served with the summons and complaint. *See* Fed. R. Civ. P. 12(a)(1)(A)(i) ("A defendant must serve an answer within 21 days after being served with the summons and complaint.").

9. "The Civil Rules authorize entry of a default judgment only 'against a defendant who has been defaulted for not appearing.'" (Doc. No. 97) (quoting Fed.

R. Civ. P. 55(b)(1)). On August 27, 2018, the Clerk of the Court entered a default by Tanya Hutchens for failure to appear, plead, or otherwise defend.

10. “Rule 55 provides a ‘two-step’ proves for the entry of judgment against a party who fails to defend: first, the entry of a default, and second, the entry of a default judgment.” *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 128 (2d Cir. 2011). It is therefore now appropriate for the Court to exercise the power granted by Fed. R. Civ. P. 55(b)(2) to enter a default judgment for damages against Tanya Hutchens.

11. Attached hereto as Exhibit A is the affidavit of Gary Stevens dated August 21, 2017, submitted to the Court of Common Pleas, Philadelphia County, in the state action, which details the amount of damages to total \$9,117,817.92.

12. 18 U.S.C. § 1964(c) entitles the plaintiffs to threefold the damages sustained by the violation of 18 U.S.C. § 1962. Plaintiffs have alleged violations of 18 U.S.C. § 1962(c) and § 1962(d) against all defendants, including Tanya Hutchens, in the Eighth, Ninth, Tenth, and Eleventh Claims for Relief of the Amended Federal Complaint (Doc. No. 31). The plaintiffs are therefore entitled to damages of \$27,353,453.76.

For the above reasons, plaintiffs request that their amended motion be granted and an Order of Default Judgment be entered against Defendant Tatyana Hutchens in the amount of \$27,353,453.76.

Respectfully Submitted,

Dated: August 31, 2018

/s/Howard Langer

Howard Langer

Langer Grogan & Diver, P.C.

1717 Arch Street, Ste. 4020

Philadelphia, PA 19103

(215) 320-5660 Phone

(215) 320-5703 Fax

hlanger@langergrogan.com

Attorney for Plaintiffs

EXHIBIT A

CONTROL NUMBER 17071167

Attorneys for Plaintiffs

Howard Langer
 Attorney No. PA 25403
 Edward Diver
 Attorney No. PA 85011
 LANGER GROGAN & DIVER, P.C.
 Three Logan Square, Ste. 4130
 1717 Arch Street
 Philadelphia, PA 19103
 Tele: (215) 320-5660
Attorneys for Plaintiffs

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

Plaintiffs

v.

Court of Common Pleas

Philadelphia County

Westmoreland Equity Fund LLC; Sandy Hutchens;
 Ed Ryan; Tanya Hutchens; Jennifer Hutchens;
 Shannon Hutchens; Matthew Kovce;
 Jason Underwood; Bernard Feldman;
 Sofia Capital Ventures; Barbara Leuin; American
 Escrow & Settlement Services, LLC;
 and John Does 1 through 20

January Term, 2017

No. 2862

Defendants.

**DECLARATION OF GARY STEVENS
PURSUANT TO COURT ORDER OF AUGUST 14, 2017**

Gary Stevens, deposes and states:

1. I am one of the plaintiffs in this action. Except where otherwise specified, the statements in this declaration are made upon personal knowledge.
2. The purpose of this declaration is to set forth the damages the plaintiffs incurred as a result of defendants' conduct.
3. The formal appraisal furnished to Defendants with the application that gave rise to the Commitment Letter appraised the property at \$20,672,000 CDN. A copy of the summary appraisal is attached hereto Exhibit A.. When Westmoreland failed to perform on its

Commitment Letter refinancing the underlying mortgage, the underlying lender, which had granted repeated extensions during the period Westmoreland had delayed performance, commenced foreclosure proceedings. See Attachment B hereto. The total principal and interest due at the time of foreclosure was \$9,220,170.96 CDN with which we were credited as part of the foreclosure *id.*¹ Our loss was \$11,451,829.04 CDN which is \$9,038,342.92 at the current exchange rate.

4. In addition, we wired Westmoreland \$74,267 in fees (US dollars), and incurred additional appraisal and environmental fees required by Westmoreland in the amount of \$6,075 CDN which is \$4,848 at current exchange rates. Copies of the bank transfers are attached hereto Exhibit C.

5. Our total damages based on the above are therefore as follows:

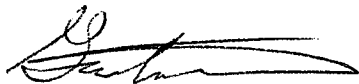
\$ 9,038,342.92

\$ 74,627.00

\$ 4,848

Total: \$ 9,117,817.92

I, verify subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities that the facts set forth herein are true and correct upon my personal knowledge.



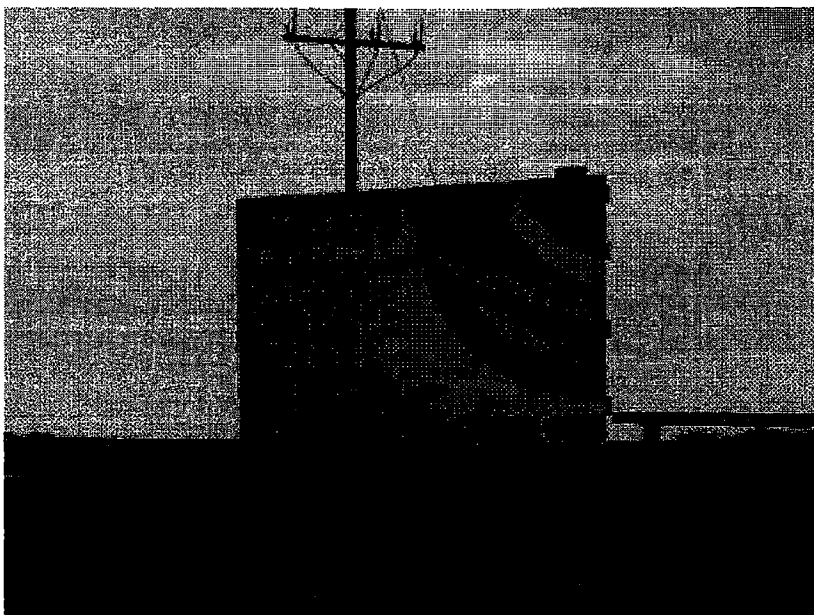
Gary Stevens

Dated: August 21, 2017

¹ In addition to the above, we invested significant additional sums in development of the project in reliance upon the Westmoreland commitment.

Exhibit A to Declaration of Gary Stevens

**REPORT ON APPRAISAL OF
BYPASS INDUSTRIAL PARK
R.M. OF ESTEVAN NO. 5, SASKATCHEWAN**



**AS AT
JULY 21, 2014**

**PREPARED BY
ROBIN JOHNSON, M.A. ECON., AACI, P. APP.
LAWREK JOHNSON BIRD REAL ESTATE APPRAISALS
2126 ROSE STREET
REGINA, SASKATCHEWAN
S4P 2A4**

LJB Lawrek Johnson Bird

REAL ESTATE APPRAISALS AND CONSULTING LTD.

COMMERCIAL - INDUSTRIAL - AGRICULTURAL - PROPERTY TAX ASSESSMENTS

2126 Rose Street
Regina, Saskatchewan S4P 2A4
www.ljbappraisals.com

Email: ljbappraisals@sasktel.net
Main Office (306) 721-5525
Fax (306) 721-5532

Robin Johnson, M.A. Econ., AACI, P.App.

Joanne Kydd, B.Admin, B.A. Econ, Candidate Appraiser

August 18, 2014

Bypass Industrial Park
Attention: Gary Stevens
Box 1559
Mayerthorpe, AB
T0E 1N0

Attention: Gary Stevens:

Re: Bypass Industrial Park (SW 29-2-7 W2), R.M. of Estevan No. 5, SK.

As per your instructions, an appraisal report on the above referenced property has been completed, which is legally described as:

Lot 1, Block 1, Plan No. 101974798
Lot 4, Block 1, Plan No. 101974798
Lot 5, Block 1, Plan No. 101974798
Lot 1, Block 2, Plan No. 101974798
Lot 2, Block 2, Plan No. 101974798
Lot 3, Block 2, Plan No. 101974798
Lot 8, Block 2, Plan No. 101974798
Lot 9, Block 2, Plan No. 101974798
Lot 12, Block 2, Plan No. 102100442
Lot 13, Block 2, Plan No. 102100442
Lot 14, Block 2, Plan No. 102100442
Lot 15, Block 2, Plan No. 102100442
Lot 16, Block 2, Plan No. 102100442
Lot 17, Block 2, Plan No. 102100442

The estimate of value of each of the subject lots is based on the assumption that:

- gravel road access is provided to each of the proposed lots as of the effective date of this appraisal; and
- water, sewer, natural gas and electrical services are provided to the property line of each proposed lot as of the effective date of this appraisal.

It is assumed that Lot 1, Block 1 is divided into four separate parcels.

The definition of "market value" is outlined in the attached report. The estimate of value assumes no duress on the part of either a purchaser or vendor, it does not take into consideration any existing mortgages against the property and it assumes a reasonable marketing time to find a purchaser, which in this case is estimated to be from three to 12 months for each subdivided lot. The estimate of value does not include any value for the minerals, if any.

LJB Lawrek Johnson Bird

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2126 Rose Street

Regina, Saskatchewan S4P 2A4

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Robin Johnson, M.A. Econ., AACI, P.App.

Email: ljbappraisals@sasktel.net

Main Office (306) 721-5525

Fax (306) 721-5532

Joanne Kydd, B.Admin, B.A. Econ, Candidate Appraiser

The estimate of market value of each subdivided lot as of the effective date, July 21, 2014 is as follows:

Lot #	Estimate of Value
Lot 1a Block 1	\$1,490,000
Lot 1b Block 1	\$1,490,000
Lot 1c Block 1	\$917,000
Lot 1d Block 1	\$917,000
Lot 4 Block 1	\$1,738,000
Lot 5 Block 1	\$1,738,000
Lot 1 Block 2	\$1,684,000
Lot 2 Block 2	\$1,684,000
Lot 3 Block 2	\$1,515,000
Lot 8 Block 2	\$873,000
Lot 9 Block 2	\$873,000
Lot 12 Block 2	\$1,347,000
Lot 13 Block 2	\$862,000
Lot 14 Block 2	\$875,000
Lot 15 Block 2	\$889,000
Lot 16 Block 2	\$900,000
Lot 17 Block 2	\$880,000
Total	\$20,672,000

Note: The total figure is not the total estimate of value of the entire subdivision. It is only the total of all individual subdivided lots.

The following report describes the methods of appraisal and contains data compiled in the investigation, which to the best of my knowledge is correct subject to the limiting conditions set out in this report.

Respectfully submitted,

LJB APPRAISALS

Per

Robin Johnson, M.A. Econ., AACI, P. App.

4.

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5.

Executive Summary

Type of Property: Industrial land

Location: R.M. of Estevan No. 5, SK.

Legal Description:

Lot 1, Block 1, Plan No. 101974798
Lot 4, Block 1, Plan No. 101974798
Lot 5, Block 1, Plan No. 101974798
Lot 1, Block 2, Plan No. 101974798
Lot 2, Block 2, Plan No. 101974798
Lot 3, Block 2, Plan No. 101974798
Lot 8, Block 2, Plan No. 101974798
Lot 9, Block 2, Plan No. 101974798
Lot 12, Block 2, Plan No. 102100442
Lot 13, Block 2, Plan No. 102100442
Lot 14, Block 2, Plan No. 102100442
Lot 15, Block 2, Plan No. 102100442
Lot 16, Block 2, Plan No. 102100442
Lot 17, Block 2, Plan No. 102100442

Effective Date of Appraisal: July 21, 2014

Date of Inspection: July 21, 2014

Zoning: C - Highway Commercial and Light Industrial 6

2014 Assessed Value: n/a

2013 Property Taxes: n/a

Highest and Best Use: Current Use

Site Size: 120.93 subdivided into 18 lots with 14 remaining for sale.

Improvements: Assumed gravel road access, truck route relocation and water and utility service.

Highest and Best Use: Industrial development.

6.

Final Estimate of Value:

Lot #	Lot Size (Acre)	Estimate of Value		Rounded
		Per Acre		
Lot 1a Block 1	6.55	\$227,500	\$1,490,125	\$1,490,000
Lot 1b Block 1	6.55	\$227,500	\$1,490,125	\$1,490,000
Lot 1c Block 1	6.55	\$140,000	\$917,000	\$917,000
Lot 1d Block 1	6.55	\$140,000	\$917,000	\$917,000
Lot 4 Block 1	9.93	\$175,000	\$1,737,750	\$1,738,000
Lot 5 Block 1	9.93	\$175,000	\$1,737,750	\$1,738,000
Lot 1 Block 2	9.62	\$175,000	\$1,683,500	\$1,684,000
Lot 2 Block 2	9.62	\$175,000	\$1,683,500	\$1,684,000
Lot 3 Block 2	9.62	\$157,500	\$1,515,150	\$1,515,000
Lot 8 Block 2	4.99	\$175,000	\$873,250	\$873,000
Lot 9 Block 2	4.99	\$175,000	\$873,250	\$873,000
Lot 12 Block 2	9.62	\$140,000	\$1,346,800	\$1,347,000
Lot 13 Block 2	6.16	\$140,000	\$862,400	\$862,000
Lot 14 Block 2	5.00	\$175,000	\$875,000	\$875,000
Lot 15 Block 2	5.08	\$175,000	\$889,000	\$889,000
Lot 16 Block 2	5.14	\$175,000	\$899,500	\$900,000
Lot 17 Block 2	5.03	\$175,000	\$880,250	\$880,000
Total	120.93		\$20,671,350	\$20,672,000

7.

PART TWO - BASIS OF THE APPRAISAL

Client and Intended Use

The report is intended for the use only by the client, Mr. Gary Stevens of Mayerthorpe, Alberta who is representing Bypass Industrial Park. The report is intended to assist the client for asset valuation purposes and for first mortgage financing. Use of this report by others is not intended by the appraiser and any liability in this respect is strictly denied.

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the subject properties located at in the R.M. of Estevan No. 5, SK, free and clear of all encumbrances, as of the effective date, July 21, 2014.

Property Rights Appraised

Fee simple interest subject to any lease agreements outlined in this report.

Type of Report

The report is a short narrative estimating current market value.

Definitions

Market Value: It is the most probable price in terms of money which a property should bring in an open and competitive market. Under these conditions, it is assumed that the buyer and seller are in an arms-length transaction, each acts prudently, knowledgeably and without compulsion. Most recently, it has been defined as "the most probable selling price of a property."

8.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) both buyer and seller are typically motivated;
- 2) both parties are well informed or well advised, and acting in what they consider their own best interests;
- 3) a reasonable time is allowed for exposure in the open market;
- 4) payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto; and
- 5) the price represents the normal consideration for the property sold unaffected by special creative financing or sales concessions granted by anyone associated with the sale.

Market value as defined by International Valuation Standards 2000:

“Market value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”

9.

Assumptions & Limiting Conditions

1. The client to whom this report is addressed may use it in deliberations affecting the subject property only, and in so doing, the report should not be extracted, but used in its entirety.
2. While expert in appraisal matters, the author is not qualified and does not purport to give legal advice. It is assumed that:
 - a) The legal description as furnished by Information Services Corporation (I.S.C.) is correct;
 - b) Title to the property is good and marketable;
 - c) There are no encroachments, encumbrances, restrictions, leases or covenants that would in any way affect the valuation, except as expressly noted herein;
 - d) The existing use is a legally conforming use which may be continued and the required building permits have been acquired for all improvements;
 - e) Rights of way, easements or encroachments over other real property and leases or other covenants noted herein are legally enforceable.

Because these assumptions have been made, no investigation, legal or otherwise, has been undertaken which would verify these assumptions except as expressly noted herein.

3. The author is not a qualified surveyor (and no legal survey concerning the subject property has been provided). Sketches, drawings, diagrams, photographs etc. are presented in this report for the limited purpose of illustration and are not to be relied upon in themselves.
4. The author is not qualified to give engineering advice. It is assumed that there are no patent or latent defects in the subject improvements, that no objectionable materials such as Urea Formaldehyde foam are present, that they are structurally sound and in need of no immediate repairs, unless expressly noted within this report. No soil tests have been done, nor have tests been done of the heating, plumbing, electrical, air-conditioning or other systems and, for the purpose of this opinion, they are assumed to be in good working order.
5. No investigation has been undertaken with the local zoning office, the fire department, the buildings inspector, the health department or any other government regulatory agency unless such investigations are expressly represented to have been made in this report. The subject property must comply with such government regulations and, if it does not comply, its non-compliance may affect market value. To be certain of compliance, further investigations may be necessary.

10.

6. Neither possession of this report nor a copy of it carries with it the right of publication. All copyright is reserved to the author and is considered confidential by the author and his client. It shall not be disclosed, quoted from or referred to, in whole or in part, or published in any manner, without the express written consent of the appraiser. This is subject only to confidential review by the Appraisal Institute of Canada.
7. Market data has been obtained, in part, from documents at the land registry office, or as reported by the real estate board. As well as using such documented and generally reliable evidence of market transactions, it was also necessary to rely on hearsay evidence. Except as noted herein, a reasonable attempt has been made to verify all such information.
8. Because market conditions, including economic, social and political factors, change rapidly and, on occasion, without warning, the market value expressed as of the date of this appraisal cannot be relied upon to estimate the market value as of any other date except with further advice of the appraiser.
9. The compensation for services rendered in this report does not include a fee for court preparation or court appearance, which must be negotiated separately. However, neither this nor any other of these limiting conditions is an attempt to limit the use that might be made of this report should it properly become evidence in a judicial proceeding. In such a case, it is acknowledged that it is the judicial body which will decide the use of the report which best serves the administration of justice.
10. The appraiser is not qualified to comment on environmental issues that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions that might give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past, present or future, that might affect the market value of the property appraised. If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such issues. We expressly deny any legal liability relating to the effect of environmental issues on the market value of the property appraised.
11. Extra-ordinary Limiting Condition: One or two of the three traditional approaches to value may have been excluded. The reasons for any exclusions are explained in this report.
12. Extra-ordinary Assumption: Refer to covering letter for discussion of extra-ordinary assumptions.

11.

Scope of Work

Inspection

We inspected the subject site on July 21, 2014. Our identification of the property also involved a review of mapping prepared by the local municipality, and our earlier files on the property. The photographs were taken on the date of inspection.

Type of Analysis

This appraisal complies with the Standards of the Appraisal Institute of Canada. We are competent in this type of appraisal analysis and have appraised this type of property previously.

Data Research

We received our instructions from the client who provided information on the property. Publications produced by the R.M. of Estevan No. 5 provided information on applicable land use controls. Sources of market evidence included, as appropriate, the local real estate board, I.S.C. - including those reported by local assessors, real estate agents, vendors and purchasers active in the market. I.S.C. provided information on the state of title.

Audits and Technical Investigations

We did not complete technical investigations such as:

- Detailed investigations or engineering review of the plans of the structure;
- An environmental review of the property;
- A site or building survey;
- Investigations into the bearing qualities of the soils; and
- Audits of financial and legal arrangements concerning the leases.

Verification

The analysis set out in this report relied on written and verbal information obtained from a variety of sources we considered reliable. Unless otherwise stated herein, we did not verify client-supplied information, which we believed to be correct. The mandate for the appraisal did not require a report prepared to the standard appropriate for court purposes or for arbitration, so we did not fully document or confirm by reference to primary sources all information herein.

Exhibit B to Declaration of Gary Stevens

From: Nathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:46 #989 P.003/007

386-634-9881

Trobett Law Firm

01:03:39 p.m.

05-28-2015

2/4

From: Nathiason Valkenburg 244-4423 To: 13066349881

05/27/2015 15:01 #989 P.003/005

Form 10-43A
(Subrule 10-43(3))COURT FILE
NUMBER

QB 47 OF 2015

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE ESTEVAN

PLAINTIFFS CALIDON FINANCIAL SERVICES INC.

DEFENDANTS

1174365 ALBERTA LTD., GARY STEVENS,
LINDA STEVENS, CALVEN DAVID
JOHNSON AND ASSOCIATED
ENGINEERING (SASK) LTD.

Clerk's Stamp

BEFORE THE HONOURABLE

Mr. Justice D. J. Brown

May 25, 2015

Date

IN CHAMBERS

ORDER NISI FOR FORECLOSURE

On the application of Counsel for the Plaintiff, on reading the Statement of Claim with proofs of service of them, the mortgage sued on in this action, the certified copy of title and the Affidavit of Default, Certificate of Search, Certificate of Lawyer, the Land Titles Registry Search Results and Writ Registry Search Result all filed, and on hearing Counsel for the Plaintiff and Counsel for the Defendants 1174365 Alberta Ltd., Gary Stevens and Linda Stevens.

The Court declares and orders that:

1. The full amount due for principal and interest under the mortgage:
 - between 1174365 Alberta Ltd., as mortgagor, and Calidon Financial Services Inc., as mortgagee;
 - dated the 16th day of September, 2012; and registered in the land titles registry on the 19th day of September, 2012 as Interest Register #118644396 covering the following land:

Lot 1, Blk/Par 1, Plan No. 101974798, Extension 0
Surface Parcel #164368569

Lot 4, Blk/Par 1, Plan No. 101974798, Extension 0
Surface Parcel #164368536

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47 #989 P.004/007

306-634-9881

Trobert Law Firm

From: Mathiason Valkenburg 244-4423 To: 13066349881

01:03:54 p.m.

05-28-2015

3/4

05/27/2015 15:01 #886 P.004/005

Lot 5, Blk/Par 1, Plan No. 101974798, Extension 0
 Surface Parcel #164368570
 Lot 1, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368648
 Lot 2, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368693
 Lot 3, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368581
 Lot 8, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368525
 Lot 9, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368660
 Lot 12, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215548
 Lot 13, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215629
 Lot 14, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215618
 Lot 15, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215595
 Lot 16, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215607
 Lot 17, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215641

on the 25th day of May, 2015 is \$9,463,461.51, and the amount due for arrears under the mortgage on the 25 day of May, 2015, is \$9,463,461.51.

2. The defendant 1174365 Alberta Ltd. shall pay into Court to the credit of this cause on or before the 31st day of August, 2015, the total amount claimed, namely the sum of \$9,220,170.96 with interest on \$9,220,170.96 at the rate of 10% per year from the 17th day of February, 2015, together with costs to be assessed.

3. Subject to paragraph 4, in default of payment into Court as required by paragraph 2, there will be foreclosure absolute, and, on application by the plaintiff:

(a) the title of the mortgaged lands shall vest and remain in the plaintiff absolutely freed from all right, title and interest of the defendant 1174365 Alberta Ltd.; and

(b) all persons claiming through or under the defendant 1174365 Alberta Ltd. in possession of the mortgaged lands, shall give up possession of those lands to the plaintiff within 21 days after service on them of a copy of the final order;

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47 #989 P.005/007

306-634-3981

Trobert Law Firm

01:04:02 p.m. 05-28-2015

4/4

From: Mathiason Valkenburg 244-4423 To: 13066349881

05/27/2015 15:01 #886 P.005/005

4. If on payment of the arrears mentioned in paragraph 1 of \$ 9,463,461.51 and any interest that may have accrued on the arrears to the date of payment, plus costs to be assessed, the defendant 1174365 Alberta Ltd. shall be relieved from immediate payment of so much of the money secured by the mortgage as may not have become payable by lapse of time.

5. A copy of this order must be served on 1174365 Alberta Ltd., Gary Stevens, Linda Stevens, Calvin David Johnson and Associated Engineering (SASK) Ltd.

6. The costs of and incidental to the application shall be costs in the cause.

ISSUED at Estevan, Saskatchewan, this 4 day of June, 2015.

"D. Cloughton"
D. Local Registrar

This within Order is hereby consented to
as to form and content this 27 day of
May A.D. 2015.

MATHIASON VALKENBURG & POLISHCHUK

Per: [Signature]
Perry G. Polishchuk
Solicitor for the Plaintiff
Calidon Financial Services Inc.

This within Order is hereby consented to
as to form and content this 28 day of
May A.D. 2015.

TROBERT LAW FIRM

Per: [Signature]
James G. Trobert
Solicitors for the Defendant,
1174365 Alberta Ltd.

THIS DOCUMENT WAS DELIVERED BY:

MATHIASON VALKENBURG & POLISHCHUK
Barristers and Solicitors
705-238-22nd Street East
Saskatoon, Saskatchewan
S7K 0E9

and the address for service is the same as above.
Lawyer in charge of file: Perry G. Polishchuk
Telephone: (306) 242-1282
Facsimile: (306) 242-2433

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47

#989 P.006/007

COURT FILE
NUMBER

Q.B.S. No. 47 of 2015

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE

ESTEVAN

PLAINTIFFS

CALIDON FINANCIAL SERVICES INC.

DEFENDANTS

1174365 ALBERTA LTD., GARY STEVENS,
LINDA STEVENS, CALVEN DAVID JOHNSON
AND ASSOCIATED ENGINEERING (SASK.)
LTD.

Clark's Stamp

ACKNOWLEDGEMENT OF SERVICE

You are asked to fill out and sign this form without delay, and to return it to Mathiason Valkenburg & Polishchuk by fax to Perry G. Polishchuk at (306) 244-4423. If you do not return this signed and completed Acknowledgement of Service without delay, you may not receive notice of any further proceedings or any documents may be personally served on you and you will be required to pay the costs of service.

I ACKNOWLEDGE SERVICE of the May 25, 2015 Order Nisi For Foreclosure as issued on June 4, 2015.

Signature

Date of Service

My name is:

James F. Trobert
Trobert Law Firm
Solicitor For: 1174365 Alberta Ltd., Gary Stevens and Linda Stevens

My address for service is:

305-1133 4th Street
Estevan, SK S4A 1E3

My telephone number is:

(306) 634-2616

My fax number is:

(306) 634-9881

My e-mail address is:

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47

#989 P.007/007

NOTICE

(1) You must include an address in Saskatchewan where documents may be mailed to or left for you if you wish to receive notice of subsequent proceedings in this matter.

(2) It is optional to include your fax number and e-mail address. If you include your fax number or e-mail address, documents may be served on you by fax or electronic transmission.

(3) The address, fax number or e-mail address that you give on this form will be used to serve you with documents until you serve on the other parties and file with the court written notice of a new address for service.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

Name of Firm:	MATHIASON VALKENBURG & POLISHCHUK
Name of Lawyer in charge of file:	Perry G. Polishchuk
Address of legal firm:	705-230-22 nd Street E. Saskatoon, SK S7K 0E9
Telephone number:	(306) 242-1202
Fax number:	(306) 244-4423
E-mail address :	pqp.mvplaw@sasktel.net

Exhibit C to Declaration of Gary Stevens

gary stevens

From: "Donald Smith" <donald@falconleasing.net>
Date: November-04-14 4:28 PM
To: "Colin Durward" <colin.durward@falconcreekindustries.com>
Cc: <garymbr@telus.net>
Subject: FW: Wire transfer receipt

Gentleman, below is the Confirmation I just received from my bank for the \$10,000 USD wire transfer

Donald H. Smith
 361 Marion St.
 Winnipeg, Manitoba
 R2H-0V4
 204-254-4702
donald@falconleasing.net

From: Roxanne Laxdal [mailto:rLaxdal@caisse.biz]
Sent: November-04-14 3:53 PM
To: donald@falconleasing.net
Subject: Wire transfer receipt

CAISSE POPULAIRE GROUPE FINANCIER -
Wire Transfer Receipt

Date	4-Nov-2014	Transfer Amount	10,000.00USD
Reference	2906911	USD Equivalent @ 1.00000000	10,000.00USD
Number		Charges	19.81USD
		Customer Total	10,019.81USD

Sender

Account Number 100731174
Name Wieland Management Corp
Street 361 Marion Street
City Winnipeg
Province/State Manitoba
Postal/Zip R2H 0V4
Country CANADA

Receiver

Account Number 639917918
Name American Escrow and Settlement
Srv
Street 21301 Powerline Road, no. 106
City Boca Raton
Province/State Florida
Postal/Zip 33433
Country USA

Payment Details

Line 1 re: 1174365 Alberta Ltd
Line 2 1st Mortgage and Westmoreland
Line 3 Equity Fund LLC
Line 4

Additional Information

Line 1
Line 2
Line 3
Line 4
Line 5
Line 6

From FI

Transit 081900507
Name CAISSE POPULAIRE GROUPE FINANCIER
Address 100-205, BOULEVARD

To FI

Routing Code 267084131
Name JPMorgan Chase Bank, NA
Address 5545 Sheridan St
City Hollywood, FL, 33021

09/10/2016

City	PROVENCHER	Country	United States
Country	WINNIPEG, MB, R2H 0G4		
	Canada		
Sender Correspondant		Receiver Correspondant	
Account		Account	
Line 1		Line 1	
Line 2		Line 2	
Line 3		Line 3	
Line 4		Line 4	
Intermediary		Account With FI	
Account		Account	
Name		Line 1	
Address 1		Line 2	
Address 2		Line 3	
		Line 4	

Bottom of Form

Customer Signature

Concours : Comparez pour gagner max de 5 000 \$ - participez au www.caisse.biz

Contest : Compare to Win up to \$5,000 – enter at www.caisse.biz

Roxanne Laxdal

Conseillère, services aux membres | Member Service Advisor

Caisse Groupe Financier | Caisse Financial Group

100 – 205 boulevard Provencher Boulevard

Winnipeg MB R2H 0G4

Tél/Tel: (204) 237-8874 Poste | Ext. 1065

Télec/Fax: (204) 257-3007

rlaxdal@caisse.biz | www.caisse.biz

Confidentiality Notice: This message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing this message. If you have received this communication in error, please delete it and immediately notify the sender. Thank you.

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Version: 2015.0.5557 / Virus Database: 4213/8554 - Release Date: 11/11/14

09/10/2016

Page 1 of 2

gary stevens

From: "Donald Smith" <donald@falconleasing.net>
Date: November-12-14 2:43 PM
To: <garymbr@telus.net>
Cc: "Colin Durward" <colin.durward@falconcreekindustries.com>
Subject: FW: Wire transfert receipt

Gentleman...ok I just got this Confirm of the wire transfer for \$51,750 + \$15 for a fee...the \$15 is to cover whoever is taking fees on the way to the Escrow company.

Donald H. Smith
 Falcon Auto Leasing Inc.
 361 Marion St.
 Winnipeg, Manitoba
 R2H-0V4
 204-254-4702
donald@falconleasing.net

From: Roxanne Laxdal [mailto:rLaxdal@caisse.biz]
Sent: November-12-14 2:32 PM
To: donald@falconleasing.net
Subject: Wire transfert receipt

CAISSE POPULAIRE GROUPE FINANCIER -
Wire Transfer Receipt

Date	12-Nov-2014	Transfer Amount	51,765.00USD
Reference		USD Equivalent @ 1.00000000	51,765.00USD
Number	2911700	Charges	19.81USD
		Customer Total	51,784.81USD

Sender

Account Number 100731174
 Name Wieland Managment Corp
 Street 361 Marion Street
 City Winnipeg
 Provice/State Manitoba
 Postal/Zip R2H 0V4
 Country CANADA

Receiver

Account Number 639917918
 Name American Escrow and Settlement
 Srv
 Street 21301 Powerlind Road no. 106
 City Boca Raton
 Provice/State Florida
 Postal/Zip 33433
 Country USA

Payment Details

Line 1 Escrow File no. 14-10005
 Line 2 F no. WML 014
 Line 3
 Line 4

Additional Information

Line 1
 Line 2
 Line 3
 Line 4
 Line 5
 Line 6

From FI

Transit 081900507
 Name CAISSE POPULAIRE GROUPE FINANCIER

To FI

Routing Code 267084131
 Name JPMorgan Chase Bank, NA
 Address 5545 Sheridan St

10/10/2016

Address	100-205, BOULEVARD PROVENCHER	City	Hollywood, FL, 33021
City	WINNIPEG, MB, R2H 0G4	Country	United States
Country	Canada		
Sender Correspondant		Receiver Correspondant	
Account		Account	
Line 1		Line 1	
Line 2		Line 2	
Line 3		Line 3	
Line 4		Line 4	
Intermediary		Account With FI	
Account		Account	
Name		Line 1	
Address 1		Line 2	
Address 2		Line 3	
		Line 4	

Bottom of Form

Customer Signature

Concours : Comparez pour gagner max de 5 000 \$ - participez au www.caisse.biz
Contest : Compare to Win up to \$5,000 – enter at www.caisse.biz

Roxanne Laxdal
 Conseillère, services aux membres | Member Service Advisor

Caisse Groupe Financier | Caisse Financial Group
 100 – 205 boulevard Provencher Boulevard
 Winnipeg MB R2H 0G4
 Tél/Tel: (204) 237-8874 Poste | Ext. 1065
 Téléc/Fax: (204) 257-3007
rlaxdal@caisse.biz | www.caisse.biz

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No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.5577 / Virus Database: 4223/8646 - Release Date: 11/28/14

10/10/2016

ATB Customer Transfer

Originating Transit: 876

Date: January 13, 2015

Please transfer at my/our risk.

Wire To

Transfer Information

Wire Transfer Destination: USA

Effective Date: January 13, 2015

Transfer Amount/Currency: 12500.00 USD

Payment Amount/Currency: 15387.50 CAD

Exchange Rate: 1.215

Charges/Currency: 50.00 CAD

Ordering Customer Information

Business Partner Number: 543847

Customer Name: GARY STEVENS

Account Number: 0000000201564101

Address: PO Box 1559
MAYERTHORPE, Alberta
T0E 1N0
Canada

Telephone: 7807860166

Date of Birth:

Individual Occupation/Nature of Business:

Receiving Institution Information

Institution Name: JPMORGAN CHASE BANK NA

Bank/Transit Number:

SWIFT/BIC Code:

FedWire Number: 267084131

Sort Code:

Account Number:

Address: BEVERLY HILLS, CA
US

Beneficiary Payment Instructions

☒ Credit Account

Notify and Pay To

Beneficiary Name: AMERICAN ESCROW AND SETTLEMENT

Account Number: 639917918

Address: 21301 POWERLINE ROAD 108
BOCA RATON, FL
33433
US

Telephone:

Details of Payment

AMERICAN ESCROW AND SETTLEMENT SERVICES LLC SWIFT CODE CHASUS33

Bank to Bank Information

BANK INFORMATION 5545 SHERIDAN STREET HOLLYWOOD FL 33021

The applicant hereby agrees to the attached conditions. Alberta Treasury Branch is hereby authorized to charge the account of the undersigned, or any of them if more than one, for the requested wire transfer payment including any charges.

Signature of Applicant

GARY STEVENS
Name of ApplicantJanuary 13, 2015
Date

Fee Payments

Paid CBRE- Westmoreland Appraiser \$5,040 CAD

Paid Keneco Phase 1 Environmental for Westmoreland \$1,035.50 CAD

----- Forwarded message -----

From: **B.R. Gaffney & Associates** <gaffney.assoc@sasktel.net>

Date: Tue, Jan 6, 2015 at 5:20 PM

Subject: RE: Proposed First Mortgage Loan on 29-2-7-W2 Saskatchewan (Southwest Quarter section 29 27w2), Our File No. WML-014, AESS No. 14-10005 - Appraisal - Wiring Instruction Request

To: Ed Ryan <westmorelandequityfundllc@gmail.com>

Ed,

Below is the required information.

Company Name: 101184290 Saskatchewan Ltd. (B.R. Gaffney and Associates is our registered operating name)

Address: 2330 15th Avenue, Regina, SK S4P 1A2

Branch Address: TD Bank - 1904 Hamilton Street, Regina, SK, S4P 3N5

Transit Number: 75448

Institution Number: 004

Account Number: 5232371

Swift Code: TDOMCATTOR

The total fee including GST is \$5,040.00.

Should you require anything further please contact us.

Thanks,
Blaise Clements

Page 1 of 1
https://portal.enterprise.insidealb.net/webdynpro/dispatcher/atb.com/wd-transfer/OneTimeTransfer/1/7/2015

Transfer Confirmation

Posting lock 2030 has been determined.
Payment item check loaded correctly.
From: Freedom Account (875-00201581101) CAD
To: 0004 (75445-5232371) 101184290 Saskatchewan Ltd.
Amount: \$5,000.00 CAD
Transfer Date: Jan-07-2015
Payment Method: Filer VAL-014
Reference: 000534223044
Make another Copy of this Transfer

Money Transfer

From: Pay As You Go Account (876-80201578501) CAD

To: 0005 (14051-0084226) Keneco Environmental Services

Amount: \$1,035.53 CAD

Transfer Date: Dec 15, 2014

Payment Notes:

0005 (14051-0084226) Keneco Environmental Services

\$1,035.53 CAD

Dec 15, 2014

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

A. Plaintiffs' motion is granted;

B. In accordance with the Court's Order of April 11, 2018 (Doc. No. 42), Plaintiffs effected service upon Tanya Hutchens by, at the latest, April 26, 2018.

C. Over twenty-one (21) days have elapsed since service was effected, and Defendant Tanya Hutchens has failed to plead or otherwise defend this action in accordance with Fed. R. Civ. P. 12.

D. Pursuant to Fed. R. Civ. Pro. 55(a), on August 27, 2018, the Clerk of the Court entered a Default by Tanya Hutchens for failure to appear, plead, or otherwise defend.

E. Judgment on liability by default is entered against Defendant Tanya Hutchens pursuant to Rule 55(b)(2).

F. Plaintiffs are entitled to treble damages under 18 U.S.C. § 1964(c) for injuries sustained in violation of 18 U.S.C. § 1962(c) and § 1962(d).

G. Final judgment is hereby entered in favor of the Plaintiffs against Defendant Tanya Hutchens, jointly and severally, awarding actual damages in the amount of \$27,353,453.76.

AND IT IS SO ORDERED

Paul S. Diamond J.

CERTIFICATE OF SERVICE

I, Howard Langer, counsel for the Plaintiffs, hereby certify that on this date I caused to be served a true and correct copy of the foregoing Amended Motion for Default Judgment Against Tanya Hutchens via this Court's Electronic Case Filing System on all interested parties and upon Defendant Sandy Hutchens by email to sandyhutchens0@gmail.com, and by first class mail to 1779 Cross Street, Innisfil, Ontario L9S4L9 Canada and to Defendant Tanya Hutchens at 33 Theodore Place, Thornhill, Ontario L4J 8E2 Canada

Date: August 31, 2018

/s/ Howard Langer
Howard Langer

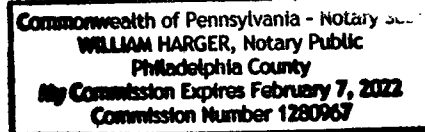
TAB

7

This is **Exhibit 7** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to read 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



Civ. No. 18-692

Plaintiffs brought this RICO action to recover damages they suffered as a result of a purportedly fraudulent advance fee loan scheme carried out by Mrs. Hutchens, her husband Sandy Hutchens, Westmoreland Equity Fund, and others. (Am. Compl. ¶¶ 1, 11, Doc. No. 31.) As pled, Westmoreland's scheme targeted persons and entities who needed financing for real estate transactions. (Id. ¶ 33.) Mortgage brokers, such as Defendants Barbara Leuin and Sofia Capital Ventures, LLC, referred potential borrowers to Westmoreland, describing the enterprise

as a legitimate business. (*Id.* ¶¶ 33, 127.) Westmoreland would then issue loan commitment letters, despite having no resources or intent to fund the promised loans. (*Id.* ¶ 34.) These commitments required the borrowers to pay substantial up-front fees as a condition for closing. (*Id.* ¶¶ 34–35.) Westmoreland then terminated the loan application process and kept the fees. (*Id.* ¶ 35.) In falling victim to this fraudulent scheme, Plaintiffs lost over \$50,000 in advance fees, their Arizona home, and commercial property in Canada. (*Id.* ¶¶ 150, 155, 171, 190.)

Plaintiffs allege that Mrs. Hutchens was “intimately involved in the original operations” of the Westmoreland scheme. (Interim Rep. 5, Doc. No. 117.) As alleged, Mrs. Hutchens wrote and prepared Westmoreland loan commitment letters, as well as laundered funds that Westmoreland collected from the scheme. (Am. Compl. ¶¶ 11, 36.) Moreover, Mrs. Hutchens used hundreds of thousands of dollars stolen from the victims of the scheme to pay her legal fees for the defense of another lawsuit brought by other Westmoreland fraud victims. (*Id.* ¶ 43; Interim R. 4–5; Ex. E to Interim R. 101–130, Doc. No. 117-1.) Mrs. Hutchens thus “benefitted from the scheme” throughout its existence. (Interim R. 5.)

II. DISCUSSION

Under Rule 55, I may enter default judgment against a party after the Clerk of the Court has entered a default. Fed. R. Civ. P. 55(a); (b)(1)–(2); Broadcast Music, Inc. v. Spring Mountain Area Bavarian Resort, Ltd., 555 F. Supp. 2d 537, 541 (E.D. Pa. 2008) (“The decision as to whether to enter a judgment by default is left to the sound discretion of the district court.”).

My decision is guided by these factors: “(1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant’s delay is due to culpable conduct.” Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000) (*citing*

United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984); see also Broadcast Music, 555 F. Supp. 2d at 541 (using *Chamberlain* factors to evaluate whether Rule 55(b)(2) entry of default judgment is appropriate). But see Butler v. Experian Info. Sols., No. 17-07346, 2016 WL 4699702, at *1 (E.D. Pa. Sept. 7, 2016) (“However, if a defendant does not appear, ‘the district court . . . is authorized to enter a default judgment based solely on the fact that the default has occurred.’” (quoting Anchorage Assocs. v. Virgin Islands Bd. of Tax Rev., 922 F.2d 168, 177 n.9 (3d Cir. 1990))).

All three of the *Chamberlain* factors weigh in favor of default judgment. First, Plaintiffs will be prejudiced if default is denied. Mrs. Hutchens has not answered Plaintiffs’ Amended Complaint, nor engaged in discovery. Plaintiffs’ ability to vindicate their rights is thus at risk. Second, as Mrs. Hutchens has not answered Plaintiffs’ claims, it appears that she has no litigable defense. Last, Mrs. Hutchens’ complete failure to defend herself—even refusing to provide any evidence to contradict Plaintiffs’ allegations—suggests that her conduct is culpable. Accordingly, default judgment is appropriate.

My next “inquiry is ‘whether the unchallenged facts constitute a legitimate cause of action.’” Joe Hand Promotions, Inc. v. Yakubets, 3 F. Supp. 3d 261, 270 (E.D. Pa. 2014) (citing 10A Charles Alan Wright, Arthur R. Miller, et al., Federal Practice and Procedure § 2688). As a result of the entry of default, “the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990). I need not accept as true the moving party’s legal conclusions. Id.

In their Amended Complaint, Plaintiffs’ allege that Mrs. Hutchens’ wrongful actions constituted racketeering. (Am. Compl. ¶¶ 236–46, 247–54, 255–66, 267–74); 18 U.S.C. § 1962(c); (d). To make out a viable claim under § 1962(c), Plaintiffs must allege that Mrs.

Hutchens was “employed by or associated with” an enterprise engaged in “a pattern of racketeering activity” that affected interstate commerce. Under § 1962(d), Plaintiffs must allege that Mrs. Hutchens conspired with another person to violate § 1962(c). Plaintiffs here alleged that Mrs. Hutchens worked for Westmoreland, an enterprise engaged in a pattern of racketeering activity through its ongoing mail and wire fraud and illegal monetary transactions. (Doc. No. 31); 18 U.S.C. §§ 1341, 1343 1956, 1957; see id. § 1961(1) (listing predicate offenses of “racketeering activity” for the purposes of 18 U.S.C. § 1962(c)). Plaintiffs here also alleged that Mrs. Hutchens conspired with many others, including Defendants Sandy Hutchens, Bernard Feldman, and Westmoreland, to violate § 1962(c). (Am. Compl., Doc. No. 31.) These uncontested factual allegations, taken as true, make out viable claims under 18 U.S.C. § 1962(c) and (d). In these circumstances, I will grant Plaintiffs’ Motion for Default Judgment.

Finally, I must determine appropriate damages. “When a plaintiff prevails by default, he or she is not automatically entitled to the damages they originally demanded.” Rainey v. Diamond State Port Corp., 354 Fed. Appx. 722, 724 (3d Cir. 2009). Instead, “defaults are treated as admissions of the facts alleged, but a plaintiff may still be required to prove that he or she is entitled to the damages sought.” Id. Plaintiffs here submitted a detailed affidavit in which they calculate their losses, as well as an extensive record of supporting evidence. (Doc. Nos. 31, 117, 117-1.) I thus find that an award of damages in the amount of \$26,774,763.09, subject to any offsets, is appropriate.

In sum, I will grant Plaintiffs' Motion and enter judgment in favor of Plaintiffs and against Defendant Tanya Hutchens. An appropriate Judgment follows.

AND IT IS SO ORDERED.

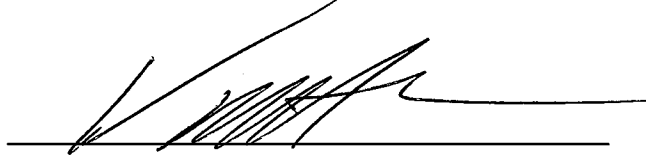
/s/ Paul S. Diamond

October 11, 2018

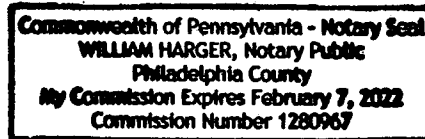
Paul S. Diamond, J.

TAB 8

This is **Exhibit 8** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



Civ. No. 18-692

Plaintiffs filed their Amended Complaint against Mrs. Hutchens on March 15, 2018. (Doc. No. 31.) Plaintiffs had difficulty serving Mrs. Hutchens, who resides in Canada. (See

Pls.’ Renewed Mot. for Leave to Serve, Doc. No. 28.) On April 5, 2018, Plaintiffs filed a Motion for Service on Mrs. Hutchens, requesting an Order granting them leave to serve Mrs. Hutchens by mail at her home address. (Pls.’ Mot. for Service, Doc. No. 38.) Mrs. Hutchens had testified under oath that the address in question—33 Theodore Place, Thornhill, Ontario—was indeed her home address. (Kevin Roddy Decl. 3, Doc. No. 38-1; Ex. A, Doc. No. 38-1.)

On April 10, 2018, I granted Plaintiffs’ Motion, allowing Plaintiffs to serve Mrs. Hutchens by first-class mail at her home and by certified mail to her counsel in another matter. (Doc. No. 42); Fed. R. Civ. P. 4(f)(3). In an abundance of caution, I also ordered Plaintiffs to serve Mrs. Hutchens by first-class mail at the Canadian home address of her husband, Sandy Hutchens. (*Id.*) On April 16, 2018, Plaintiffs filed a Proof of Service, attesting that Mrs. Hutchens had been served according to my April 10th Order. (Doc. No. 43.) Mrs. Hutchens did not file an Answer, nor otherwise appear to defend herself. (See Docket, 2:18-cv-00692.)

On August 20, 2018, Plaintiffs filed a Motion for Default Judgment against Mrs. Hutchens. (Doc. No. 95); Fed. R. Civ. P. 55. On August 23, 2018, I denied Plaintiffs’ Motion as unripe because they had not yet sought an entry of default from the Clerk of the Court. (Doc. No. 97.) Plaintiffs corrected this mistake, and on August 27, 2018, the Clerk of the Court entered default against Mrs. Hutchens for her failure to plead or otherwise defend. (Doc. No. 98.) That same day, Plaintiffs renewed their Motion for Default Judgment against Mrs. Hutchens. (Doc. No. 99.) On August 31, 2018, Plaintiffs amended their Motion to seek treble damages. (Doc. No. 103); 18 U.S.C. § 1964(c). On September 26, 2018, I ordered Plaintiffs to submit additional briefing on their damages calculation and the involvement of Mrs. Hutchens. (Doc. No. 106.) On October 9, 2018, Plaintiffs complied by filing an Interim Report. (Doc. No. 117.) My Order and Default Judgment followed. (Doc. Nos. 124, 125.)

II. LEGAL STANDARDS

A default judgment may be set aside either (1) under Rule 60(b)(1) for “mistake, inadvertence, surprise, or excusable neglect,” or (2) under Rule 60(b)(6) for “any other reason that justifies relief.” Fed. R. Civ. P. 55(c); id. 60(b)(1), (6). Grants or denials of relief under Rule 60(b) are reviewed under an abuse of discretion standard. Tozer v. Charles A. Krause Mill. Co., 189 F.2d 242, 244 (3d Cir. 1951).

Under Rule 60(b)(1), I must consider: “(1) whether the plaintiff will be prejudiced; (2) whether the defendant has a meritorious defense; [and] (3) whether the default was the result of the defendant’s culpable conduct.” United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984).

Rule 60(b)(6) requires an additional showing of “extraordinary circumstances” to justify vacating judgment. Budget Blinds, Inc. v. White, 536, F.3d 244, 251 (3d Cir. 2008). “Extraordinary circumstances rarely exist when a party seeks relief from a judgment that resulted from the party’s deliberate choices.” Id. at 255.

III. DISCUSSION

Mrs. Hutchens argues that her default judgment “violates basic requirements of fundamental fairness that this Court owes to each litigant.” (Mot. Vacate 1, Doc. No. 133.) Mrs. Hutchens states that she filed her October 16, 2018 Affidavit in response to my September 26, 2018 Order and Plaintiffs’ Interim Report. (Mot. Vacate 1–2; Order, Doc. No. 106; Interim Report, Doc. No. 117.) Mrs. Hutchens argues that it is “not fair or appropriate” for the Court to have entered Judgment against her within a week of Plaintiffs’ Interim Report. (Mot. Vacate 2.) Mrs. Hutchens also asserts that she should have the opportunity to respond and be heard “on a dispositional matter such as this.” (Id.)

In her Reply to Plaintiffs' Response to Affidavit (Doc. No. 136)—filed the same day as her Motion to Vacate—Mrs. Hutchens “absolutely denies having been served with the pleadings and documents referenced by Plaintiff” and states that she “is now fully aware of the pendency of this lawsuit and her obligations as a party.” (Reply 1, Doc. No. 136.) In her Reply, she further contests the merits of Plaintiffs' claims against her and requests sixty days “to retain counsel and/or take all actions required by this Court.” (*Id.* at 1–2.)

In her October 22, 2018 Affidavit—a duplicate of her October 16 Affidavit—Mrs. Hutchens denies involvement in the Westmoreland Enterprise, avers that she is legally separated from Sandy Hutchens, and attacks the credibility of a witness who testified against her in another action. (Doc. No. 134.)

Mrs. Hutchens has not made out grounds for the relief she seeks. “A document filed *pro se* is ‘to be liberally construed.’” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Accordingly, in an abundance of caution, I will consider each potential ground of relief.

To the extent that Mrs. Hutchens alleges that her failure to appear is due to “mistake, inadvertence, surprise, or excusable neglect,” she has failed to make a threshold showing for relief on this ground. Fed. R. Civ. P. 60(b)(1). Mrs. Hutchens has not offered a credible explanation for her failure to defend or appear in this litigation until now. Mrs. Hutchens' statement—that she did not receive any pleadings in the case—is simply untrue. Mrs. Hutchens was lawfully served with all pleadings in this lawsuit, beginning with Plaintiffs' Amended Complaint on April 16, 2018. (Proof of Service, Doc. No. 43.) It is doubly incredible that Mrs. Hutchens has received no pleadings, given that the return address she supplied in filing her current briefs is the very same address at which she was served.

Moreover, while Mrs. Hutchens argues that the default judgment against her was unfair because it closely followed Plaintiffs' Interim Report, she offers no reason for her neglect of the case before that period. Plaintiffs' filed the first of three Motions for Default Judgment against Mrs. Hutchens on August 20, 2018. (Doc. Nos. 95, 99, 103.) Mrs. Hutchens thus was on notice of the pending default against her well before my September 26, 2018 Order. (Doc. No. 106.) Only the Judgment against her has prodded her to action. Default judgment is thus due entirely to Mrs. Hutchens' culpable conduct. Accordingly, it is not the result of "mistake, inadvertence, surprise, or excusable neglect."

The Rule 60(b)(1) factors, which I considered previously in granting default judgment against Mrs. Hutchens, also weigh in favor of denying her Motion. (Doc. No. 124); see \$55,518.05 in U.S. Currency, 728 F.2d at 195. First, Plaintiffs will be prejudiced by vacating the Judgment. Plaintiffs' settlement strategy with other Defendants was based on the assumption that Mrs. Hutchens' failure to appear would subject her to default. (Pls. Resp. to Mot. Vacate 12, Doc. No. 137.) Moreover, it appears that Mrs. Hutchens' assets are being dissipated through default sales and foreclosure proceedings. (Id.) Vacating the Judgment will impair Plaintiffs' ability to recover their losses, and provide no assurance that Mrs. Hutchens will abide by this Court's orders. (Id.) Significantly, Mrs. Hutchens has not presented a meritorious defense; she has filed no Answer to Plaintiffs' Amended Complaint. To the extent that Mrs. Hutchens' Affidavits or Reply constitute an Answer, they offer little more beyond blanket denials. Mrs. Hutchens alleges no facts to contest Plaintiffs' claims against her, other than broad denials, labeling the witness who testified against her in another matter a liar. (Doc. Nos. 129, 134, 136.) Furthermore, while Mrs. Hutchens asserts she was legally separated from her husband Sandy in 2011, she offers no reason as to why this exculpates her alleged conduct. (Id.) Third, as

discussed above, Mrs. Hutchens failure to appeal is culpable. In these circumstances, Mrs. Hutchens is not entitled to relief under Rule 60(b)(1).

Next, to the extent Mrs. Hutchens proceeds under Rule 60(b)(6), I find that she has failed to provide an adequate basis for relief. Here, there are no extraordinary circumstances. The default judgment against Mrs. Hutchens is the result of her own considered choice to ignore Plaintiffs' suit. Her appearance now—*only after* default has been entered—is telling. Mrs. Hutchens is thus not entitled to relief under Rule 60(b)(6).

AND NOW, on this 26th day of October, 2018, upon consideration of the Affidavits of Tanya Hutchens (Doc. Nos. 129, 134), Plaintiffs' Response to the Affidavit of Tanya Hutchens (Doc. No. 130), Mrs. Hutchens' Motion to Vacate (Doc. No. 133), Mrs. Hutchens Reply to Plaintiffs' Response (Doc. No. 136), Plaintiffs' Response to Mrs. Hutchens Motion to Vacate (Doc. No. 137), and Plaintiffs' Motion to Strike (Doc. No. 138), it is hereby **ORDERED** that:

1. Mrs. Hutchens' Motion to Vacate (Doc. No. 133) is **DENIED**; and
2. Plaintiffs' Motion to Strike (Doc. No. 138) is **DENIED as moot**.

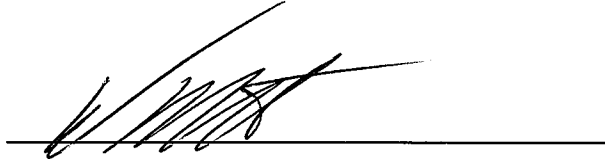
AND IT IS SO ORDERED.

/s/ Paul S. Diamond

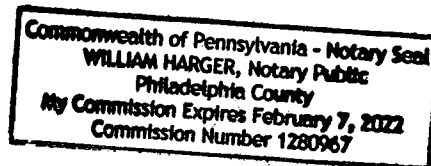
Paul S. Diamond, J.

TAB 9

This is **Exhibit 9** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



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

On October 11, 2018 I entered Default Judgment against Defendant Tanya Hutchens in the amount of \$26,774,763.09 after she failed to appear or otherwise defend. (Doc. Nos. 124, 125.) On October 16, 2018, Mrs. Hutchens, appearing *pro se*, filed an Affidavit, alleging that she was not involved in the advance fee mortgage scheme that caused Plaintiffs Gary and Linda Stevens to suffer significant losses. (Doc. No. 129.) This was Mrs. Hutchens' first appearance in the case. (See Docket, 18-cv-00692.) On October 22, 2018, Mrs. Hutchens filed a Motion to Vacate the Order of Judgment entered against her, another Affidavit, and a Reply to Plaintiffs' Response. (Doc. Nos. 133, 134, 136.) On October 26, 2018, I denied Mrs. Hutchens' Motion to Vacate because she failed to demonstrate that she was entitled to relief. (Doc. No. 139.) On November 21, 2018, Mrs. Hutchens filed a second Motion for Relief from Judgment Pursuant to FRCP 59 & 60. (Doc. No. 147.) I will again deny Mrs. Hutchens' Motion.

I must construe Mrs. Hutchens' *pro se* Motion liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007). A default judgment may be set aside either (1) under Rule 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect," or (2) under Rule 60(b)(6) for "any other reason that justifies relief." Fed. R. Civ. P. 55(c); *id.* 60(b)(1), (6). Grants or denials of relief

under Rule 60(b) are reviewed under an abuse of discretion standard. Tozer v. Charles A. Krause Mill. Co., 189 F.2d 242, 244 (3d Cir. 1951).

Under Rule 60(b)(1), I must consider: “(1) whether the plaintiff will be prejudiced; (2) whether the defendant has a meritorious defense; [and] (3) whether the default was the result of the defendant’s culpable conduct.” United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984).

Rule 60(b)(6) requires an additional showing of “extraordinary circumstances” to justify vacating judgment. Budget Blinds, Inc. v. White, 536, F.3d 244, 251 (3d Cir. 2008). “Extraordinary circumstances rarely exist when a party seeks relief from a judgment that resulted from the party’s deliberate choices.” Id. at 255.

Rule 59(e) permits a party to file a motion “to alter or amend a judgment” within twenty-eight days of the entry of judgment. Fed. R. Civ. P. 56(e). Mrs. Hutchens cites Rule 59 in the title of her Motion, but it is inapplicable in this case, as her time to file a Motion pursuant to Rule 59 expired on November 8, 2018.

II. DISCUSSION

In her instant Motion for Relief, Mrs. Hutchens repeats the same arguments I rejected in my October 26, 2018 Order. (Doc. No. 139; see also Mot. Vacate, Doc. No. 133.) Mrs. Hutchens continues to insist that she is excused from participating in this case because she was not personally served with the Complaint. (Mot. Vacate 2, Doc. No. 147; Br. Supp. Mot. Vacate 2–4, Doc. No. 147-1.) Mrs. Hutchens avers that she “believed [she] was not legally served unless a process server placed papers initiating the case in [her] hand as a basic precept of Anglo-Canadian-American law. That act of personal service never occurred.” (Mot. Vacate 2.) In support of her service argument, Mrs. Hutchens cites Rule 4, but conveniently fails to cite the

relevant portion of the rule that applies to her: a plaintiff may serve a defendant in a foreign country “by other means not prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). As I explained in my April 10, 2018 and March 27, 2018 Orders, this Rule permits service by ordinary mail in Ontario, Canada. (See Doc. Nos. 34, 42.) In my April 10, 2018 Order, I determined that service of process by ordinary mail at Mrs. Hutchens’ Ontario home address would be reasonably calculated to provide her with notice of this suit. (April 10, 2018 Order 2, Doc. No. 42.) Mrs. Hutchens’ “belief” notwithstanding, she was legally and validly served with Plaintiffs’ Amended Complaint. (See Proof of Service, Doc. No. 43.) Mrs. Hutchens nonetheless chose to ignore the case pending against her. Her current situation is thus no one’s fault but her own. Accordingly, Mrs. Hutchens’ objection on this ground, to the extent it can be construed as a claim for relief under Rule 60(b)(1), is wholly baseless.

In addition to contesting service, Mrs. Hutchens argues that I lack personal jurisdiction over her. (Br. Supp. Mot. Vacate 4–5.) Mrs. Hutchens waived this argument by failing to present it in a timely manner. Fed. R. Civ. P. 12(b)(2)–(5); (g)(2); (h)(1)(A)–(B). Mrs. Hutchens otherwise argues that Plaintiffs’ have not offered sufficient evidence to prove her direct involvement in the RICO scheme perpetrated by Westmoreland. (Br. Supp. Mot. Vacate 5–8.) The evidence that Plaintiffs have been able to obtain—despite the utter lack of discovery cooperation from Mrs. Hutchens and others in the fraud—refutes Mrs. Hutchens’ protests. (See Pls.’ Resp. Mot. Vacate, Doc. No. 137; Pls.’ Letter Resp. & Exs., Doc. No. 149.) Mrs. Hutchens’ proclamation of innocence rings hollow against her attempts to dodge service, refusal to participate in discovery, and apparently false statements. In any event, none of her arguments warrant relief under Rule 60(b).

The Rule 60(b)(1) factors, which I have twice considered (in granting default judgment

against Mrs. Hutchens and again in denying her previous Motion to Vacate), still weigh in favor of denying relief. (See Doc. Nos. 124, 139); see also \$55,518.05 in U.S. Currency, 728 F.2d at 195. Mrs. Hutchens offers no new reasons or changed circumstances in her current Motion that would affect my prior analysis of the Rule 60(b)(1) factors. Nor has she offered any extraordinary circumstances to persuade me to grant her relief under Rule 60(b)(6). Accordingly, Mrs. Hutchens is not entitled to the relief she seeks.

AND NOW, on this 29th day of November, 2018, upon consideration of Tanya Hutchens' Motion for Relief from Judgment Pursuant to FRCP 59 & 60 (Doc. No. 147), as well as Plaintiffs Letter Response and attached exhibits (Doc. No. 149), it is hereby **ORDERED** that Mrs. Hutchens' Motion for Relief (Doc. No. 147) is **DENIED**.

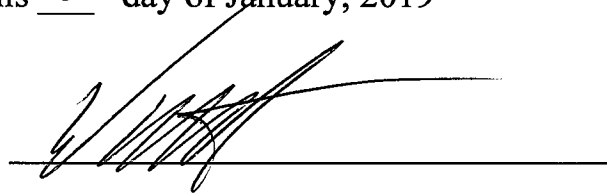
AND IT IS SO ORDERED.

/s/ Paul S. Diamond

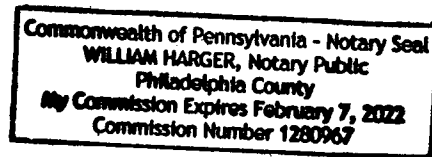
Paul S. Diamond, J.

TAB 10

This is **Exhibit 10** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to read 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



Workspace Webmail :: Print

https://email05.godaddy.com/view_print_multi.php?uidArray=3534...[Print](#) | [Close Window](#)**Subject:** Re: See attached correspondence**From:** Sandy Hutchens <sandyhutchens0@gmail.com>**Date:** Tue, Apr 24, 2018 3:35 pm**To:** "Shapiro, Peter" <Peter.Shapiro@lewisbrisbois.com>

Howard Langer <hlanger@langergrogan.com>, "Bronstein, Eric"

<Eric.Bronstein@lewisbrisbois.com>, "Datto, Brett A. (brett.datto@weirpartners.com)"

Cc: <brett.datto@weirpartners.com>, "bernie@bernardfeldmanpa.com"

<bernie@bernardfeldmanpa.com>, Ned Diver <ndiver@langergrogan.com>, Peter Leckman

<pleckman@langergrogan.com>, "Schwimmer, Lauren" <lschwimmer@weirpartners.com>

Attach: image001.png

Response March 15 18 amended laim.pdf

FILED
MAY 15 2018KATE BARKMAN, Clerk
By _____ Dep. Cler

First of all thank you for copying me, I concur with your position that until all motions that are pending have been dealt with, no discovery materials will or should be provided to the Plaintiffs and I will decline to provide same to the Plaintiff. I have attached my defense/response and answer to the Plaintiffs latest version of the claim dated march 15/18, I was just provided a copy of this amended claim yesterday by an unrelated third party. The Plaintiff's are considered served with this response, until I am advised as to what version this is I will just date the response.

I have also been advised that the plaintiff obtained an order against my x wife Tanya Hutchens, in that my x Law firm can serve me which would constitute good service on Tanya Hutchens. The order which I don't have was signed apparently by Justice Diamond, it is common knowledge and filed in another matter which the Plaintiff's attorney is fully aware that Tanya and I have been separated since Early 2011 by way of separation agreement a copy which is filed on the record in that other matter.

I am not sure what representations Mr. Langer made to obtain this extremely different type order, but I will be looking into this shortly and making an appropriate motion to set aside this order. I currently have no contact with Tanya Hutchens and certainly would not discuss this case with her even if I did. Tanya Hutchens has never obviously been involved with Westmoreland, the plaintiffs attorney knows this full well. And therefore could NOT have made the required contact etc to give the court jurisdiction over her in any event.

On Tue, Apr 17, 2018 at 4:55 PM, Shapiro, Peter <Peter.Shapiro@lewisbrisbois.com> wrote:

I moved for a discovery stay and plaintiffs did not oppose that aspect of the motion. I am taking the position that discovery should be on hold as a result. I decline to enter into any discovery schedule unless and until the court directs that we need to proceed on that front. I am not aware of the court asking us to provide a discovery schedule or confer pursuant to Rule 26(f) now. I certainly do not agree about law of the case point, as you know from my motion papers. Issues concerning what documents are to be produced should be dealt with in response to specific document requests; it is not proper to ask defendants to commit now to overbroad production as to unrelated transactions, and we will not agree to that.



Peter T. Shapiro

Northeast Regional Vice-Chair, Employment Group

peter.shapiro@lewisbrisbois.com

T: 212.232.1322 F: 212.232.1399

77 Water Street, New York, New York 10005 |

One Riverfront Plaza, Suite 800, Newark, New Jersey 07102 |

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From: Howard Langer [mailto:hlanger@langergrogan.com]
Sent: Tuesday, April 17, 2018 3:53 PM
To: Sandy Hutchens; Bronstein, Eric; Datto, Brett A. (brett.datto@weirpartners.com); bernie@bernardfeldmanpa.com; Shapiro, Peter
Cc: Ned Diver; Peter Leckman; Schwimmer, Lauren
Subject: See attached correspondence

Howard Langer
Langer Grogan & Diver, P.C.
[1717 Arch Street](#)
[Philadelphia, PA 19103](#)
215 320 5661

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

GARY STEVENS, LINDA STEVENS AND 1174365 ALBERTA LTD.,
Plaintiffs,

V

Civil Action No. 2:18-CV-00692-PD

WESTMORELAND EQUITY FUND, LLC, SANDY HUTCHENS, ED RYAN, TANYA
HUTCHENS, JENNIFER HUTCHENS, SHANNON HUTCHENS, MATTHEW KOVCE,
JASON UNDERWOOD, BERNARD FELDMAN, SOFIA CAPITAL VENTURES; BARBARA
LEUIN, AMERICAN ESCROW & SETTLEMENT SERVICES, LLC, ELIAS CORREA,
ALAN FELDMAN, LYDECKER, LEE, BERGA & DE ZAYES LLC, LYDECKER,
INDIVIDUALLY, LYDECKER, LEE, BERGA & DE ZAYES LLC D/B/A LYDECKER DIAZ,
LYDECKER LLP, RICHJARD LYDECKER AND JOHN DOES 1-20
Defendants.

RESPONSE TO AMENDED FEDERAL COMPLAINT DATED 3/15/2018

Sandy Hutchens hereby responds to the Second Amended Complaint filed in this matter
as follows,

1. ~~No response required except to offer that Plaintiffs suffered no damage whatsoever and are not entitled to any damages. Further Plaintiff's counsel has been put on notice of same by prior counsel.~~
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Denied.
9. Denied.
10. Admit.
11. Denied.
12. Denied.
13. Admit.
- 14-16. Sandy Hutchens neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
17. Admit Ed Ryan has a relationship with Shannon Hutchens however balance is Denied.
18. Sandy Hutchens neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
19. Admit.
20. Admit.
21. Denied.

22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. The website speaks for itself.
27. The website speaks for itself.
28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied.
34. Denied.
35. Denied.
36. Denied.
37. Denied.
38. Denied.
39. Denied.
40. Denied.
41. It is admitted that the CGC and Antoniono cases have been pending. Neither is finalized being on appeal or subject to pending motions.
42. Denied.
43. Admit.
44. Denied.
45. Admit.
46. Admit.
47. Denied. Sandy Hutchens was advised by counsel that there would be a hearing on damages which has not occurred. There are no damages that were suffered by Plaintiff's as a result of any actions of Sandy Hutchens.
48. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
49. Denied.
50. Bernard Feldman was an independent agent who earned fees for bookkeeping, due diligence reports, site visits and consultation.
51. Denied.
52. Denied. AESS was not an escrow agent. It performed strictly bookkeeping/accounting functions for Westmoreland Equity Fund
53. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
54. Denied.
55. Denied.
56. Transcript of testimony will speak for itself.
57. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

58. Admit.
59. Sandy Hutchens neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
60. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
61. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
62. Consent Order speaks for itself but does not appear to have any relevance to activities performed for Westmoreland Equity Fund.
63. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
64. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
65. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
66. Press release speaks for itself.
67. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
68. Affidavit speaks for itself. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
69. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
70. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
71. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
72. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
73. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
74. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
75. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
76. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
77. Denied.
78. Admit.
79. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
80. Admit.
81. Denied.

- 82. Denied.
- 83. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 84. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 85. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 86. Denied.
- 87. Denied.
- 88. Denied.
- 89. Denied.
- 90. Denied.
- 91. Denied.
- 92. Denied.
- 93. Denied.
- 94. Denied.
- 95. Denied.
- 96. Denied.
- 97. Denied.
- 98. Admit.
- 99. Denied.
- 100. Denied.
- 101. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 102. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 103. Transactions were not funded as a result of failure to abide by the terms of the Commitment or the submission of fraudulent application materials or both.
- 104. Denied.
- 105. Denied.
- 106. Denied.
- 107. Denied.
- 108. Denied.
- 109. Denied.
- 110. Denied.
- 111. Denied.
- 112. Denied.
- 113. Denied.
- 114. Denied.
- 115. Denied.
- 116. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 117. Denied.

- 118. Denied.
- 119. Denied.
- 120. Denied.
- 121. Denied.
- 122. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 123. The testimony of record speaks for itself as does the record of the Judgment that is currently being appealed.
- 124. Denied.
- 125. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 126. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 127. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 128. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 129. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 130. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 131. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 132. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 133. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 134. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 135. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 136. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 137. Admit.
- 138. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 139. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 140. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 141. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

142. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
143. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
144. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 145 Admit.
- 146 Denied.
- 147 Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 148 Denied.
- 149 Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 150 Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 151 Denied.
- 152 The documentation referenced speaks for itself.
- 153 The documentation referenced speaks for itself.
- 154 Defendant restates responses to said allegations as earlier stated.
- 155 Denied.
- 156 Admit.
- 157 Denied.
- 158 It is admitted that communications were ongoing while the application was pending.
- 159 Denied.
- 160 Denied.
- 161 Denied.
- 162 There was no second appraiser. The only appraiser retained by Westmoreland Equity Fund pursuant to the Commitment was instructed per long-term practice to not have contact with any parties related to the transaction.
- 163 Denied.
- 164 Emails submitted to Plaintiff speak for themselves. The independent appraisal obtained did not support the Plaintiff's application for funding.
- 165 The appraisal is the property of Westmoreland Equity Fund per the terms of the Commitment.
- 166 Denied.
- 167 The Email transmission speaks for itself.
- 168 The Email transmission speaks for itself.
- 169 The Email transmission speaks for itself.
- 170 The Email transmission speaks for itself.
- 171 Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.
- 172 Denied.
- 173 The Email transmission speaks for itself.

174 Admit funds were received. As to the balance of said allegation Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

175. Denied.

176. Denied.

177. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

178. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

179. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

180. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

181. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

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187. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

188. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

189. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

190. Defendant neither admits nor denies the allegations not being aware of facts to admit or deny what is stated therein.

191 Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs.

192-201. Denied.

202.. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs.

203-206. Denied.

207. Responders re-allege and incorporate by reference the responses as set forth in foregoing

208-213. Denied.

214.. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

215-222. Denied.

223. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

224-228 Denied.

229. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

230-232 Denied.

233. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

234-235 Denied.

236. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

237-246 Denied.

247. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

248-254 Denied.

255. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

256-266. Denied.

267. Responders re-allege and incorporate by reference the responses as set forth in foregoing paragraphs

268-274 Denied.

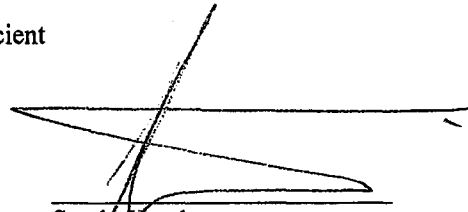
Wherefore, Defendant prays this Court enter its order of No Cause for Action and award appropriate costs and fees.

Sandy Hutchens
1779 Cross Street
Innisfil, Ontario L9S4L9
Sandyhutchens0@gmail.com
215-960-6773

AFFIRMITIVE DEFENSES

1. Plaintiffs' claims are barred in that Plaintiffs' losses, if any, were the result of factors and conduct of persons over whom Responding Defendant had no control.
 2. No act or omission on the part of Responding Defendant was, or could have been, a legal cause of harm, if any, alleged to have been suffered by Plaintiffs.
 3. Plaintiffs are neither aggrieved nor suffered any damages as a result of any action on the part of Answering Defendants.
 4. Plaintiffs failed to mitigate their losses, if any.
 5. Plaintiffs' claims are barred by the applicable statute of limitations.
 6. Plaintiffs' claims are barred by their affirmation, consent and/or ratification.
 7. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.
 8. At all relevant times hereto, Responding Defendants acted in good faith.
 9. Plaintiffs' claims are barred in that Plaintiffs were in the best position to prevent the losses complained of, yet Plaintiffs failed to take any action to prevent those losses.
 10. Plaintiffs' claims are barred by their own comparative and/or contributory negligence and assumption of risk.
 11. Plaintiffs have failed to join indispensable parties.
 12. Responding Defendant were not in a conspiracy with the other defendants and never entered into an agreement with the other defendants to accomplish an unlawful goal.
 13. Responding Defendant did not breach any duty to the Plaintiffs.
 14. Plaintiffs' claims are barred by inability to prove damages.
 15. Plaintiffs are barred by equitable doctrine of unclean hands. Assertions on materials submitted to lender contained material omissions and misrepresentations (a federal crime under 18 U.S.C. § 1014), and thus gave them unclean hands, which barred their claims including civil RICO claims.
 16. Venue is inappropriate pursuant to US law, Court rules and practice.
 17. Jurisdiction has not been properly obtained against answering defendant pursuant to US Law, Court rules and practice.
 18. The RICO and related counts of the Complaint must fail because Plaintiff's are Canadian citizens and lack standing.
- The RICO Claims fail to state any Claims for relief because:
- (i) They fail to plead a pattern of racketeering activity
 - (ii) They fail to plead with the necessary particularity
 - (iii) The Enterprise allegations are insufficient
 - (iv) Plaintiffs fail to sufficiently plead operation or management
 - (v) Plaintiff's Conspiracy Claim is insufficient
 - (vi) Plaintiff's Common law fraud claim is insufficient

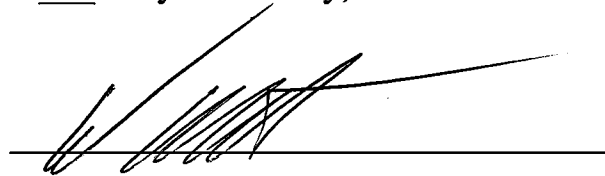
(vii) Plaintiff's Civil Conspiracy claim is insufficient

A handwritten signature in black ink, appearing to read "Sandy Hutchens", is written over a horizontal line.

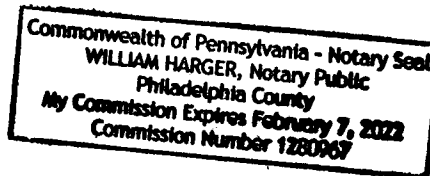
Sandy Hutchens
1779 Cross Street
Innisfil, Ontario L9S4L9
Sandyhutchens0@gmail.com
215-960-6773

TAB 11

This is **Exhibit 11** referred to in the
Affidavit of Howard Langer, sworn before me,
this 9th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

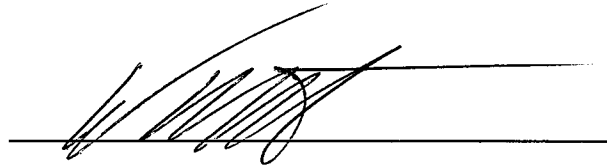
Commissioner for Taking Affidavits (or as may be)



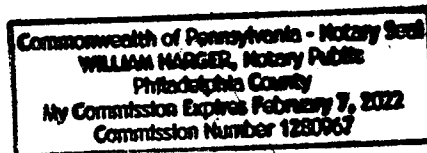
Paul S. Diamond, J.

TAB 12

This is **Exhibit 12** referred to in the
Affidavit of Howard Langer, sworn before me,
this 6th day of January, 2019

A handwritten signature in black ink, appearing to be 'William Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



**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.	:	

**PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT
AGAINST SANDY HUTCHENS PURSUANT TO
RULE 37 AND RULE 55, FED. R. CIV. P.**

Plaintiffs move for default judgment against defendant Sandy Hutchens (hereinafter "Defendant") pursuant to Rule 37 and Rule 55, Fed. R. Civ. P., and in support thereof aver the following.

1. A default judgment was entered for refusing to answer discovery against Defendant's alter egos Westmoreland Equity Fund, LLC and "Ed Ryan" in the state court proceedings on August 23, 2017. *Stevens v. Westmoreland Equity Fund, LLC*, Jan. Term, 2017, No. 2862 (Ct. of Common Pleas, Phila. Aug. 23, 2017). In those proceedings, Defendant's alter egos were represented by counsel Bochetto & Lentz, who consented to the entry of default. At that time, defendant was not yet a party himself, except through his alter egos. (Orders attached hereto as Exhibit A). There, as is the case here, an initial motion to compel resulted in an

order directing answers and a subsequent order entering the default when the answers were not forthcoming.

2. “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.” Fed. R. Civ. P. 37(b)(2)(A)(vi). “Certain Rule 37 remedies—dismissing a complaint or entering judgment against a defendant—are severe sanctions, but they may be appropriate in ‘extreme situations,’ as when a court finds willfulness, bad faith, or any fault on the part of the noncompliant party.” *Guggenheim Capital, LLC v. Birnbaum*, 722 F.3d 444, 450-451 (2d Cir. 2013). *See also National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (“[T]he most severe in the spectrum of sanctions provided by [Rule 37] must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.”).

3. On August 28, 2018, the Court entered an order granting plaintiffs’ Motion to Compel (Doc. No. 100). Defendant Sandy Hutchens was ordered to “**RESPOND** to Plaintiffs’ interrogatories and requests for production of documents **no later than noon** on **Monday, September 3, 2018.**” (Doc. No. 100). In that order, the Court noted in bold, capitalized letters that “**FAILURE TO**

COMPLY WITH THIS ORDER MAY RESULT IN THE IMPOSITION OF SANCTIONS, INCLUDING THE ENTRY OF JUDGMENT IN PLAINTIFFS' FAVOR.” (Doc. No. 100).

4. Plaintiffs' counsel, under no obligation, forwarded the Court's order to Defendant's email address on August 29, 2018. Defendant Sandy Hutchens has failed to respond to the Court's order in any form, either by providing the ordered discovery or by communicating an excuse as to why he is unable to do so.

5. That motion preceding the Order of August 28, set forth how plaintiffs had twice served Hutchens with the discovery. (Doc. No. 94). Plaintiffs had served Hutchens a second time and extended his time to respond when Hutchens claimed not to have received the discovery when first served (even though it had been served by email, the manner he requested it be served, and to the address he requested that it be he served).

6. Thus, based on the experience of the discovery in the state proceedings, when he was represented by counsel, which resulted in defaults against his alter egos, and based upon his conduct in ignoring the discovery and subsequent motion and resulting Order in these proceedings, Hutchens conduct is clearly willful and in bad faith.

7. As an additional grounds for sanctions, the Court has power to impose a default judgment under Rule 55 “where a party fails to comply with the court's

orders.” *Malibu Media, LLC v. Paek*, 2015 WL 779494, at *2 (E.D. Pa. Feb. 23, 2015) (citing *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 918-19 (3d Cir. 1992). And failure to appear at a pretrial conference is grounds for a default judgment under Rule 55. See *McGrady v. D'Andrea Elec., Inc.*, 434 F.2d 1000, 1001 (5th Cir.1970).

8. Defendant was ordered by the Court’s order of July 6, 2018, to attend the pretrial conference on August 28, 2018. (Doc. No. 92). The order noted in bold, capital, and highlighted lettering that “**FAILURE TO COMPLY WITH THIS ORDER WILL RESULT IN THE IMPOSITION OF SANCTIONS.**” (Doc. No. 92).

9. Defendant neither attended the conference nor informed the Court as to why he was unable to attend the conference. Defendant, who continues to be represented by counsel on appeal of the Denver judgment and had been represented by Bochetto & Lentz in this proceeding, could have retained counsel to attend the hearing but chose not to.

10. Defendant Sandy Hutchens had consistently refused to take this litigation seriously. He has evaded service, been dilatory in answering the complaint, and now thwarts the Court’s orders related to discovery and the pretrial conference. Based on his history of fraud, there is little to suggest that withholding

the strict sanction of default judgment will increase the likelihood of his good faith participation in this litigation going forward.

11. Attached hereto as Exhibit B is the affidavit of Gary Stevens dated August 21, 2017, submitted to the Court of Common Pleas, Philadelphia County, in the state action, which details the amount of damages to total \$9,117,817.92.

12. 18 U.S.C. § 1964(c) entitles the plaintiffs to threefold the damages sustained by the violation of 18 U.S.C. § 1962. Plaintiffs have alleged violations of 18 U.S.C. § 1962(c) and § 1962(d) against all defendants, including Sandy Hutchens, in the Eighth, Ninth, Tenth, and Eleventh Claims for Relief of the Amended Federal Complaint (Doc. No. 31). The plaintiffs are therefore entitled to damages of \$27,353,453.76.

For the above reasons, plaintiffs request that their amended motion be granted and an Order of Default Judgment be entered against Defendant Sandy Hutchens in the amount of \$27,353,453.76.

Respectfully Submitted,

Dated: September 4, 2018

/s/Howard Langer

Howard Langer
Langer Grogan & Diver, P.C.
1717 Arch Street, Ste. 4020
Philadelphia, PA 19103
(215) 320-5660 Phone
(215) 320-5703 Fax
hlanger@langergrogan.com
Attorney for Plaintiffs

EXHIBIT A

13 JUL 2017 11:29 am

Civil Administration

E. MASCUILLI

CONTROL NUMBER:

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

Plaintiffs

v.

Westmoreland Equity Fund LLC; Ed Ryan;
Jason Underwood; Bernard Feldman;
Sofia Capital Ventures; Barbara Leuin;
and John Does 1 through 20

Defendants

Court of Common Pleas

Philadelphia County

January Term, 2017

No. 2862

DOCKETED

AUG 14 2017

R. POSTELL
COMMERCE PROGRAM

**ORDER AND JUDGMENT BY DEFAULT AGAINST
DEFENDANTS WESTMORELAND EQUITY FUND LLC AND ED RYAN**

AND NOW this 14th day of August, 2017 upon plaintiffs' motion pursuant to Rule

4019(c)(3), Pa.R.Civ. Pro. for entry of a judgment by default against defendants Westmoreland Equity Fund LLC ("Westmoreland") and Ed Ryan, it is hereby Ordered and Decreed as follows:

1. Plaintiffs' motion is granted.
2. On June 26, 2017 this Court entered an order granting plaintiffs' motion to

compel. That Order read as follows:

PLAINTIFFS' MOTION TO COMPEL IS GRANTED; WITHIN TEN (10) DAYS OF THIS ORDER, DEFENDANTS WESTMORELAND EQUITY FUND LLC AND ED RYAN SHALL SEPARATELY SERVE VERIFIED FULL AND COMPLETE ANSWERS TO PLAINTIFFS' INTERROGATORIES AND SHALL PRODUCE ALL DOCUMENTS RESPONSIVE TO PLAINTIFFS' DOCUMENT REQUESTS.

3. That Order was entered following the request of Defendant Westmoreland's

counsel for ten additional days to determine whether his client would respond to discovery.

4. No responses were filed in the period following the Order.

Stevens Etal Vs Westmor-ORDER

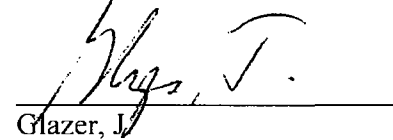


Case ID: 17010286

5. Judgement Judgment of default is hereby entered against defendants Westmoreland Equity Fund, LLC and Ed Ryan.

6. Within twenty days of this Order plaintiffs shall file a declaration setting forth their damages in contemplation of entry of a final judgment against defendants Westmoreland Equity Fund, LLC and Ed Ryan.

BY THE COURT:


Glazer, J.

CONTROL NUMBER: 17071167

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

Plaintiffs

v.

Westmoreland Equity Fund LLC; Ed Ryan;
Jason Underwood; Bernard Feldman;
Sofia Capital Ventures; Barbara Leuin;
and John Does 1 through 20

Defendants

Court of Common Pleas

Philadelphia County

January Term, 2017

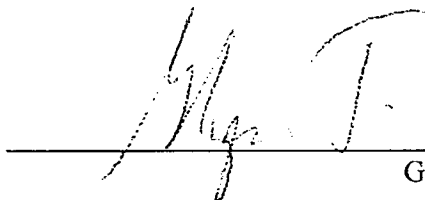
No. 2862

DOCKETED

AUG 23 2017

R. POSTELL
COMMERCE PROGRAM**FINAL JUDGMENT**

NOW, this 13th day of August, 2017, a final judgment on liability having been entered by this Court on August 14, 2017, defendants Westmoreland Equity Fund, LLC ("Westmoreland") and Ed Ryan ("Ryan"), having been represented by counsel in this action and Westmoreland having been served with process personally and having process also accepted by its counsel, and Ed Ryan having been served pursuant to this Court's Order of May 5, 2017, plaintiffs having subsequently filed a declaration setting forth their actual damages as directed in the Judgment of August 14, 2017, Final Judgment is hereby entered in favor of plaintiffs against defendants Westmoreland Equity Fund LLC and Ed Ryan, jointly and severally, awarding actual damages in the amount of \$ 9,117,817.92.



Glazer, J.

Stevens Etal Vs Westmor-ORDRF



17010286200081

EXHIBIT B

CONTROL NUMBER 17071167

Attorneys for Plaintiffs

Howard Langer
 Attorney No. PA 25403
 Edward Diver
 Attorney No. PA 85011
 LANGER GROGAN & DIVER, P.C.
 Three Logan Square, Ste. 4130
 1717 Arch Street
 Philadelphia, PA 19103
 Tele: (215) 320-5660
Attorneys for Plaintiffs

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

Plaintiffs

v.

Court of Common Pleas

Philadelphia County

Westmoreland Equity Fund LLC; Sandy Hutchens;
 Ed Ryan; Tanya Hutchens; Jennifer Hutchens;
 Shannon Hutchens; Matthew Kovce;
 Jason Underwood; Bernard Feldman;
 Sofia Capital Ventures; Barbara Leuin; American
 Escrow & Settlement Services, LLC;
 and John Does 1 through 20

January Term, 2017

No. 2862

Defendants.

**DECLARATION OF GARY STEVENS
PURSUANT TO COURT ORDER OF AUGUST 14, 2017**

Gary Stevens, deposes and states:

1. I am one of the plaintiffs in this action. Except where otherwise specified, the statements in this declaration are made upon personal knowledge.
2. The purpose of this declaration is to set forth the damages the plaintiffs incurred as a result of defendants' conduct.
3. The formal appraisal furnished to Defendants with the application that gave rise to the Commitment Letter appraised the property at \$20,672,000 CDN. A copy of the summary appraisal is attached hereto Exhibit A.. When Westmoreland failed to perform on its

Commitment Letter refinancing the underlying mortgage, the underlying lender, which had granted repeated extensions during the period Westmoreland had delayed performance, commenced foreclosure proceedings. See Attachment B hereto. The total principal and interest due at the time of foreclosure was \$9,220,170.96 CDN with which we were credited as part of the foreclosure *id.*¹ Our loss was \$11,451,829.04 CDN which is \$9,038,342.92 at the current exchange rate.

4. In addition, we wired Westmoreland \$74,267 in fees (US dollars), and incurred additional appraisal and environmental fees required by Westmoreland in the amount of \$6,075 CDN which is \$4,848 at current exchange rates. Copies of the bank transfers are attached hereto Exhibit C.

5. Our total damages based on the above are therefore as follows:

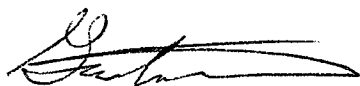
\$ 9,038,342.92

\$ 74,627.00

\$ 4,848

Total: \$ 9,117,817.92

I, verify subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities that the facts set forth herein are true and correct upon my personal knowledge.



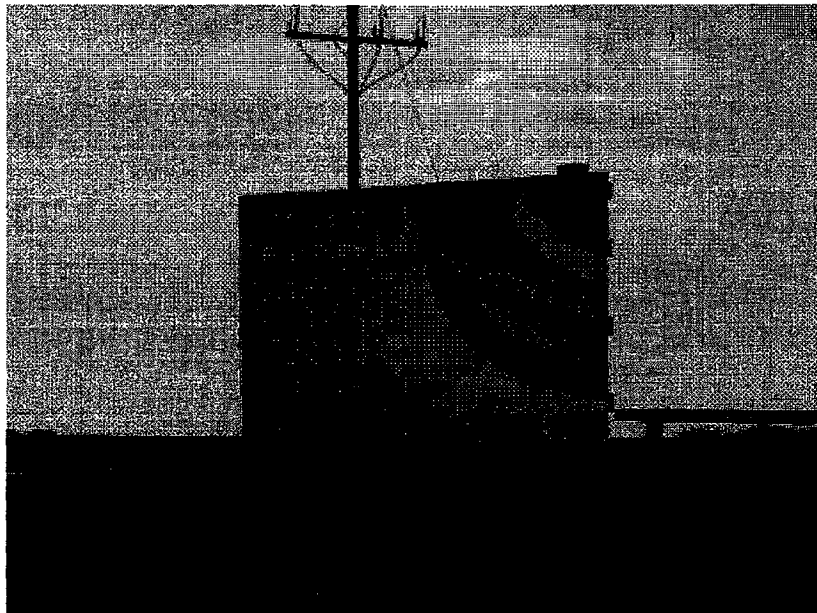
Gary Stevens

Dated: August 21, 2017

¹ In addition to the above, we invested significant additional sums in development of the project in reliance upon the Westmoreland commitment.

Exhibit A to Declaration of Gary Stevens

**REPORT ON APPRAISAL OF
BYPASS INDUSTRIAL PARK
R.M. OF ESTEVAN NO. 5, SASKATCHEWAN**



**AS AT
JULY 21, 2014**

**PREPARED BY
ROBIN JOHNSON, M.A. ECON., AACI, P. APP.
LAWREK JOHNSON BIRD REAL ESTATE APPRAISALS
2126 ROSE STREET
REGINA, SASKATCHEWAN
S4P 2A4**

LJB Lawrek Johnson Bird

REAL ESTATE APPRAISALS AND CONSULTING LTD.

COMMERCIAL - INDUSTRIAL - AGRICULTURAL - PROPERTY TAX ASSESSMENTS

2126 Rose Street
Regina, Saskatchewan S4P 2A4
www.ljbappraisals.com

Email: ljbappraisals@sasktel.net
Main Office (306) 721-5525
Fax (306) 721-5532

Robin Johnson, M.A. Econ., AACI, P.App.

Joanne Kydd, B.Admin, B.A. Econ, Candidate Appraiser

August 18, 2014

Bypass Industrial Park
Attention: Gary Stevens
Box 1559
Mayerthorpe, AB
T0E 1N0

Attention: Gary Stevens:

Re: Bypass Industrial Park (SW 29-2-7 W2), R.M. of Estevan No. 5, SK.

As per your instructions, an appraisal report on the above referenced property has been completed, which is legally described as:

Lot 1, Block 1, Plan No. 101974798
Lot 4, Block 1, Plan No. 101974798
Lot 5, Block 1, Plan No. 101974798
Lot 1, Block 2, Plan No. 101974798
Lot 2, Block 2, Plan No. 101974798
Lot 3, Block 2, Plan No. 101974798
Lot 8, Block 2, Plan No. 101974798
Lot 9, Block 2, Plan No. 101974798
Lot 12, Block 2, Plan No. 102100442
Lot 13, Block 2, Plan No. 102100442
Lot 14, Block 2, Plan No. 102100442
Lot 15, Block 2, Plan No. 102100442
Lot 16, Block 2, Plan No. 102100442
Lot 17, Block 2, Plan No. 102100442

The estimate of value of each of the subject lots is based on the assumption that:

- gravel road access is provided to each of the proposed lots as of the effective date of this appraisal; and
- water, sewer, natural gas and electrical services are provided to the property line of each proposed lot as of the effective date of this appraisal.

It is assumed that Lot 1, Block 1 is divided into four separate parcels.

The definition of "market value" is outlined in the attached report. The estimate of value assumes no duress on the part of either a purchaser or vendor, it does not take into consideration any existing mortgages against the property and it assumes a reasonable marketing time to find a purchaser, which in this case is estimated to be from three to 12 months for each subdivided lot. The estimate of value does not include any value for the minerals, if any.

LJB Lawrek Johnson Bird

REAL ESTATE APPRAISALS AND CONSULTING LTD.

COMMERCIAL - INDUSTRIAL - AGRICULTURAL - PROPERTY TAX ASSESSMENTS

2126 Rose Street

Regina, Saskatchewan S4P 2A4

www.ljbappraisals.com

Robin Johnson, M.A. Econ., AACI, P.App.

Email: ljbappraisals@sasktel.net

Main Office (306) 721-5525

Fax (306) 721-5532

Joanne Kydd, B.Admin, B.A. Econ, Candidate Appraiser

The estimate of market value of each subdivided lot as of the effective date, July 21, 2014 is as follows:

Lot #	Estimate of Value
Lot 1a Block 1	\$1,490,000
Lot 1b Block 1	\$1,490,000
Lot 1c Block 1	\$917,000
Lot 1d Block 1	\$917,000
Lot 4 Block 1	\$1,738,000
Lot 5 Block 1	\$1,738,000
Lot 1 Block 2	\$1,684,000
Lot 2 Block 2	\$1,684,000
Lot 3 Block 2	\$1,515,000
Lot 8 Block 2	\$873,000
Lot 9 Block 2	\$873,000
Lot 12 Block 2	\$1,347,000
Lot 13 Block 2	\$862,000
Lot 14 Block 2	\$875,000
Lot 15 Block 2	\$889,000
Lot 16 Block 2	\$900,000
Lot 17 Block 2	\$880,000
Total	\$20,672,000

Note: The total figure is not the total estimate of value of the entire subdivision. It is only the total of all individual subdivided lots.

The following report describes the methods of appraisal and contains data compiled in the investigation, which to the best of my knowledge is correct subject to the limiting conditions set out in this report.

Respectfully submitted,

LJB APPRAISALS

Per

Robin Johnson, M.A. Econ., AACI, P. App.

4.

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5.

Executive Summary

Type of Property: Industrial land

Location: R.M. of Estevan No. 5, SK.

Legal Description:

Lot 1, Block 1, Plan No. 101974798
Lot 4, Block 1, Plan No. 101974798
Lot 5, Block 1, Plan No. 101974798
Lot 1, Block 2, Plan No. 101974798
Lot 2, Block 2, Plan No. 101974798
Lot 3, Block 2, Plan No. 101974798
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Lot 9, Block 2, Plan No. 101974798
Lot 12, Block 2, Plan No. 102100442
Lot 13, Block 2, Plan No. 102100442
Lot 14, Block 2, Plan No. 102100442
Lot 15, Block 2, Plan No. 102100442
Lot 16, Block 2, Plan No. 102100442
Lot 17, Block 2, Plan No. 102100442

Effective Date of Appraisal: July 21, 2014

Date of Inspection: July 21, 2014

Zoning: C - Highway Commercial and Light Industrial 6

2014 Assessed Value: n/a

2013 Property Taxes: n/a

Highest and Best Use: Current Use

Site Size: 120.93 subdivided into 18 lots with 14 remaining for sale.

Improvements: Assumed gravel road access, truck route relocation and water and utility service.

Highest and Best Use: Industrial development.

6.

Final Estimate of Value:

Lot #	Lot Size (Acre)	Estimate of Value Per Acre	Estimate of Value	Rounded
Lot 1a Block 1	6.55	\$227,500	\$1,490,125	\$1,490,000
Lot 1b Block 1	6.55	\$227,500	\$1,490,125	\$1,490,000
Lot 1c Block 1	6.55	\$140,000	\$917,000	\$917,000
Lot 1d Block 1	6.55	\$140,000	\$917,000	\$917,000
Lot 4 Block 1	9.93	\$175,000	\$1,737,750	\$1,738,000
Lot 5 Block 1	9.93	\$175,000	\$1,737,750	\$1,738,000
Lot 1 Block 2	9.62	\$175,000	\$1,683,500	\$1,684,000
Lot 2 Block 2	9.62	\$175,000	\$1,683,500	\$1,684,000
Lot 3 Block 2	9.62	\$157,500	\$1,515,150	\$1,515,000
Lot 8 Block 2	4.99	\$175,000	\$873,250	\$873,000
Lot 9 Block 2	4.99	\$175,000	\$873,250	\$873,000
Lot 12 Block 2	9.62	\$140,000	\$1,346,800	\$1,347,000
Lot 13 Block 2	6.16	\$140,000	\$862,400	\$862,000
Lot 14 Block 2	5.00	\$175,000	\$875,000	\$875,000
Lot 15 Block 2	5.08	\$175,000	\$889,000	\$889,000
Lot 16 Block 2	5.14	\$175,000	\$899,500	\$900,000
Lot 17 Block 2	5.03	\$175,000	\$880,250	\$880,000
Total	120.93		\$20,671,350	\$20,672,000

7.

PART TWO - BASIS OF THE APPRAISAL**Client and Intended Use**

The report is intended for the use only by the client, Mr. Gary Stevens of Mayerthorpe, Alberta who is representing Bypass Industrial Park. The report is intended to assist the client for asset valuation purposes and for first mortgage financing. Use of this report by others is not intended by the appraiser and any liability in this respect is strictly denied.

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the subject properties located at in the R.M. of Estevan No. 5, SK, free and clear of all encumbrances, as of the effective date, July 21, 2014.

Property Rights Appraised

Fee simple interest subject to any lease agreements outlined in this report.

Type of Report

The report is a short narrative estimating current market value.

Definitions

Market Value: It is the most probable price in terms of money which a property should bring in an open and competitive market. Under these conditions, it is assumed that the buyer and seller are in an arms-length transaction, each acts prudently, knowledgeably and without compulsion. Most recently, it has been defined as "the most probable selling price of a property."

8.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) both buyer and seller are typically motivated;
- 2) both parties are well informed or well advised, and acting in what they consider their own best interests;
- 3) a reasonable time is allowed for exposure in the open market;
- 4) payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto; and
- 5) the price represents the normal consideration for the property sold unaffected by special creative financing or sales concessions granted by anyone associated with the sale.

Market value as defined by International Valuation Standards 2000:

"Market value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

9.

Assumptions & Limiting Conditions

1. The client to whom this report is addressed may use it in deliberations affecting the subject property only, and in so doing, the report should not be extracted, but used in its entirety.
2. While expert in appraisal matters, the author is not qualified and does not purport to give legal advice. It is assumed that:
 - a) The legal description as furnished by Information Services Corporation (I.S.C.) is correct;
 - b) Title to the property is good and marketable;
 - c) There are no encroachments, encumbrances, restrictions, leases or covenants that would in any way affect the valuation, except as expressly noted herein;
 - d) The existing use is a legally conforming use which may be continued and the required building permits have been acquired for all improvements;
 - e) Rights of way, easements or encroachments over other real property and leases or other covenants noted herein are legally enforceable.

Because these assumptions have been made, no investigation, legal or otherwise, has been undertaken which would verify these assumptions except as expressly noted herein.

3. The author is not a qualified surveyor (and no legal survey concerning the subject property has been provided). Sketches, drawings, diagrams, photographs etc. are presented in this report for the limited purpose of illustration and are not to be relied upon in themselves.
4. The author is not qualified to give engineering advice. It is assumed that there are no patent or latent defects in the subject improvements, that no objectionable materials such as Urea Formaldehyde foam are present, that they are structurally sound and in need of no immediate repairs, unless expressly noted within this report. No soil tests have been done, nor have tests been done of the heating, plumbing, electrical, air-conditioning or other systems and, for the purpose of this opinion, they are assumed to be in good working order.
5. No investigation has been undertaken with the local zoning office, the fire department, the buildings inspector, the health department or any other government regulatory agency unless such investigations are expressly represented to have been made in this report. The subject property must comply with such government regulations and, if it does not comply, its non-compliance may affect market value. To be certain of compliance, further investigations may be necessary.

10.

6. Neither possession of this report nor a copy of it carries with it the right of publication. All copyright is reserved to the author and is considered confidential by the author and his client. It shall not be disclosed, quoted from or referred to, in whole or in part, or published in any manner, without the express written consent of the appraiser. This is subject only to confidential review by the Appraisal Institute of Canada.
7. Market data has been obtained, in part, from documents at the land registry office, or as reported by the real estate board. As well as using such documented and generally reliable evidence of market transactions, it was also necessary to rely on hearsay evidence. Except as noted herein, a reasonable attempt has been made to verify all such information.
8. Because market conditions, including economic, social and political factors, change rapidly and, on occasion, without warning, the market value expressed as of the date of this appraisal cannot be relied upon to estimate the market value as of any other date except with further advice of the appraiser.
9. The compensation for services rendered in this report does not include a fee for court preparation or court appearance, which must be negotiated separately. However, neither this nor any other of these limiting conditions is an attempt to limit the use that might be made of this report should it properly become evidence in a judicial proceeding. In such a case, it is acknowledged that it is the judicial body which will decide the use of the report which best serves the administration of justice.
10. The appraiser is not qualified to comment on environmental issues that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions that might give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past, present or future, that might affect the market value of the property appraised. If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such issues. We expressly deny any legal liability relating to the effect of environmental issues on the market value of the property appraised.
11. Extra-ordinary Limiting Condition: One or two of the three traditional approaches to value may have been excluded. The reasons for any exclusions are explained in this report.
12. Extra-ordinary Assumption: Refer to covering letter for discussion of extra-ordinary assumptions.

11.

Scope of Work

Inspection

We inspected the subject site on July 21, 2014. Our identification of the property also involved a review of mapping prepared by the local municipality, and our earlier files on the property. The photographs were taken on the date of inspection.

Type of Analysis

This appraisal complies with the Standards of the Appraisal Institute of Canada. We are competent in this type of appraisal analysis and have appraised this type of property previously.

Data Research

We received our instructions from the client who provided information on the property. Publications produced by the R.M. of Estevan No. 5 provided information on applicable land use controls. Sources of market evidence included, as appropriate, the local real estate board, I.S.C. - including those reported by local assessors, real estate agents, vendors and purchasers active in the market. I.S.C. provided information on the state of title.

Audits and Technical Investigations

We did not complete technical investigations such as:

- Detailed investigations or engineering review of the plans of the structure;
- An environmental review of the property;
- A site or building survey;
- Investigations into the bearing qualities of the soils; and
- Audits of financial and legal arrangements concerning the leases.

Verification

The analysis set out in this report relied on written and verbal information obtained from a variety of sources we considered reliable. Unless otherwise stated herein, we did not verify client-supplied information, which we believed to be correct. The mandate for the appraisal did not require a report prepared to the standard appropriate for court purposes or for arbitration, so we did not fully document or confirm by reference to primary sources all information herein.

Exhibit B to Declaration of Gary Stevens

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:46 #989 P.003/007

386-636-9881

Trobett Law Firm

01:03:39 p.m.

05-28-2015

2/4

From: Mathiason Valkenburg 244-4423 To: 13066349881

05/27/2015 15:01 #886 P.003/005

Form 10-43A
(Subrule 10-43(3))COURT FILE
NUMBER

QB 47 OF 2015

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE ESTEVAN

PLAINTIFFS CALIDON FINANCIAL SERVICES INC.

DEFENDANTS 1174365 ALBERTA LTD., GARY STEVENS,
LINDA STEVENS, CALVEN DAVID
JOHNSON AND ASSOCIATED
ENGINEERING (SASK) LTD.

Clerk's Stamp

BEFORE THE HONOURABLE

Mr. Justice D. J. Brown

May 25, 2015

Date

IN CHAMBERS

ORDER NISI FOR FORECLOSURE

On the application of Counsel for the Plaintiff, on reading the Statement of Claim with proofs of service of them, the mortgage sued on in this action, the certified copy of title and the Affidavit of Default, Certificate of Search, Certificate of Lawyer, the Land Titles Registry Search Results and Writ Registry Search Result all filed, and on hearing Counsel for the Plaintiff and Counsel for the Defendants 1174365 Alberta Ltd., Gary Stevens and Linda Stevens.

The Court declares and orders that:

1. The full amount due for principal and interest under the mortgage:
 - between 1174365 Alberta Ltd, as mortgagor, and Calidon Financial Services Inc., as mortgagee;
 - dated the 16th day of September, 2012; and registered in the land titles registry on the 19th day of September, 2012 as Interest Register #118644396 covering the following land:

Lot 1, Blk/Par 1, Plan No. 101974798, Extension 0
Surface Parcel #164368569
Lot 4, Blk/Par 1, Plan No. 101974798, Extension 0
Surface Parcel #164368536

From: Nathlason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47 #989 P.004/007

306-634-9881

Trobert Law Firm

From: Nathlason Valkenburg 244-4423 To: 13066349881

01:03:54 p.m.

05-28-2015

3/4

05/27/2015 15:01 #886 P.004/005

Lot 5, Blk/Par 1, Plan No. 101974798, Extension 0
 Surface Parcel #164368570
 Lot 1, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368648
 Lot 2, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368693
 Lot 3, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368581
 Lot 8, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368525
 Lot 9, Blk/Par 2, Plan No. 101974798, Extension 0
 Surface Parcel #164368660
 Lot 12, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215548
 Lot 13, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215629
 Lot 14, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215618
 Lot 15, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215595
 Lot 16, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215607
 Lot 17, Blk/Par 2, Plan No. 102100442, Extension 0
 Surface Parcel #166215641

on the 25th day of May, 2015 is \$9,463,461.51, and the amount due for arrears under the mortgage on the 25 day of May, 2015, is \$9,463,461.51.

2. The defendant 1174365 Alberta Ltd. shall pay into Court to the credit of this cause on or before the 31st day of August, 2015, the total amount claimed, namely the sum of \$9,220,170.96 with interest on \$9,220,170.96 at the rate of 10% per year from the 17th day of February, 2015, together with costs to be assessed.

3. Subject to paragraph 4, in default of payment into Court as required by paragraph 2, there will be foreclosure absolute, and, on application by the plaintiff

(a) the title of the mortgaged lands shall vest and remain in the plaintiff absolutely freed from all right, title and interest of the defendant 1174365 Alberta Ltd.; and

(b) all persons claiming through or under the defendant 1174365 Alberta Ltd. in possession of the mortgaged lands, shall give up possession of those lands to the plaintiff within 21 days after service on them of a copy of the final order;

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47 #989 P.005/007

306-634-3881

Trobert Law Firm

01:04:09 p.m. 05-28-2015

4/4

From: Mathiason Valkenburg 244-4423 To: 13066349881

05/27/2015 15:01 #886 P.005/005

4. If on payment of the arrears mentioned in paragraph 1 of \$ 9,463,461.51 and any interest that may have accrued on the arrears to the date of payment, plus costs to be assessed, the defendant 1174365 Alberta Ltd. shall be relieved from immediate payment of so much of the money secured by the mortgage as may not have become payable by lapse of time.

5. A copy of this order must be served on 1174365 Alberta Ltd., Gary Stevens, Linda Stevens, Calvin David Johnson and Associated Engineering (SASK) Ltd.

6. The costs of and incidental to the application shall be costs in the cause.

ISSUED at Estevan, Saskatchewan, this 4 day of June, 2015.

"D. Cloughton"
D. Local Registrar

This within Order is hereby consented to as to form and content this 27 day of May A.D. 2015.

MATHIASON VALKENBURG & POLISHCHUK

Per: [Signature]
Perry G. Polishchuk
Solicitor for the Plaintiff
Calidon Financial Services Inc.

This within Order is hereby consented to as to form and content this 20 day of May A.D. 2015.

TROBERT LAW FIRM

Per: [Signature]
James G. Trobert
Solicitors for the Defendant,
1174365 Alberta Ltd.

THIS DOCUMENT WAS DELIVERED BY:

MATHIASON VALKENBURG & POLISHCHUK
Barristers and Solicitors
785-238-22nd Street East
Saskatoon, Saskatchewan
S7K 0E9

and the address for service is the same as above.
Lawyer in charge of file: Perry G. Polishchuk
Telephone: (306) 242-1202
Facsimile: (306) 242-2433

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47

#989 P.006/007

COURT FILE
NUMBER

Q.B.S. No. 47 of 2015

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE

ESTEVAN

PLAINTIFFS

CALIDON FINANCIAL SERVICES INC.

DEFENDANTS

1174365 ALBERTA LTD., GARY STEVENS,
LINDA STEVENS, CALVEN DAVID JOHNSON
AND ASSOCIATED ENGINEERING (SASK.)
LTD.

Clark's Stamp

ACKNOWLEDGEMENT OF SERVICE

You are asked to fill out and sign this form without delay, and to return it to Mathiason Valkenburg & Polishchuk by fax to Perry G. Polishchuk at (306) 244-4423. If you do not return this signed and completed Acknowledgement of Service without delay, you may not receive notice of any further proceedings or any documents may be personally served on you and you will be required to pay the costs of service.

I ACKNOWLEDGE SERVICE of the May 25, 2015 Order Nisi For Foreclosure as issued on
June 4, 2015.

Signature

Date of Service

My name is:

James F. Trobert
Trobert Law Firm
Solicitor For: 1174365 Alberta Ltd., Gary Stevens and Linda Stevens

My address for service is:

305-1133 4th Street
Estevan, SK S4A 1E3

My telephone number is:

(306) 634-2616

My fax number is:

(306) 634-9881

My e-mail address is:

From: Mathiason Valkenburg 244-4423 To: 13066349881

06/10/2015 08:47 #989 P.007/007

NOTICE

- (1) You must include an address in Saskatchewan where documents may be mailed to or left for you if you wish to receive notice of subsequent proceedings in this matter.
- (2) It is optional to include your fax number and e-mail address. If you include your fax number or e-mail address, documents may be served on you by fax or electronic transmission.
- (3) The address, fax number or e-mail address that you give on this form will be used to serve you with documents until you serve on the other parties and file with the court written notice of a new address for service.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

Name of Firm:	MATHIASON VALKENBURG & POLISHCHUK
Name of Lawyer in charge of file:	Perry G. Polishchuk
Address of legal firm:	705-230-22 nd Street E. Saskatoon, SK S7K 0E9
Telephone number:	(306) 242-1202
Fax number:	(306) 244-4423
E-mail address :	pgp.mvplaw@sasktel.net

Exhibit C to Declaration of Gary Stevens

gary stevens

From: "Donald Smith" <donald@falconleasing.net>
Date: November-04-14 4:28 PM
To: "Colin Durward" <colin.durward@falconcreekindustries.com>
Cc: <garymbr@telus.net>
Subject: FW: Wire transfer receipt

Gentleman, below is the Confirmation I just received from my bank for the \$10,000 USD wire transfer

Donald H. Smith
 361 Marion St.
 Winnipeg, Manitoba
 R2H-0V4
 204-254-4702
donald@falconleasing.net

From: Roxanne Laxdal [mailto:rlaxdal@caisse.biz]
Sent: November-04-14 3:53 PM
To: donald@falconleasing.net
Subject: Wire transfer receipt

CAISSE POPULAIRE GROUPE FINANCIER -
Wire Transfer Receipt

Date	4-Nov-2014	Transfer Amount	10,000.00USD
Reference		USD Equivalent @ 1.00000000	10,000.00USD
Number	2906911	Charges	19.81USD
		Customer Total	10,019.81USD

Sender

Account Number 100731174
Name Wieland Management Corp
Street 361 Marion Street
City Winnipeg
Province/State Manitoba
Postal/Zip R2H 0V4
Country CANADA

Receiver

Account Number 639917918
Name American Escrow and Settlement
Srv
Street 21301 Powerline Road, no. 106
City Boca Raton
Province/State Florida
Postal/Zip 33433
Country USA

Payment Details

Line 1 re: 1174365 Alberta Ltd
Line 2 1st Mortgage and Westmoreland
Line 3 Equity Fund LLC
Line 4

Additional Information

Line 1
Line 2
Line 3
Line 4
Line 5
Line 6

From FI

Transit 081900507
Name CAISSE POPULAIRE GROUPE FINANCIER
Address 100-205, BOULEVARD

To FI

Routing Code 267084131
Name JPMorgan Chase Bank, NA
Address 5545 Sheridan St
City Hollywood, FL, 33021

09/10/2016

City	PROVENCHER	Country	United States
Country	WINNIPEG, MB, R2H 0G4		
	Canada		
Sender Correspondant		Receiver Correspondant	
Account		Account	
Line 1		Line 1	
Line 2		Line 2	
Line 3		Line 3	
Line 4		Line 4	
Intermediary		Account With FI	
Account		Account	
Name		Line 1	
Address 1		Line 2	
Address 2		Line 3	
		Line 4	

Bottom of Form

Customer Signature

Concours : Comparez pour gagner max de 5 000 \$ - participez au www.caisse.biz

Contest : Compare to Win up to \$5,000 – enter at www.caisse.biz

Roxanne Laxdal

Conseillère, services aux membres | Member Service Advisor

Caisse Groupe Financier | Caisse Financial Group

100 – 205 boulevard Provencher Boulevard

Winnipeg MB R2H 0G4

Tél/Tel: (204) 237-8874 Poste | Ext. 1065

Télec/Fax: (204) 257-3007

rlaxdal@caisse.biz | www.caisse.biz

Confidentiality Notice: This message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing this message. If you have received this communication in error, please delete it and immediately notify the sender. Thank you.

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.5557 / Virus Database: 4213/8554 - Release Date: 11/11/14

09/10/2016

gary stevens

From: "Donald Smith" <donald@falconleasing.net>
Date: November-12-14 2:43 PM
To: <garymbr@telus.net>
Cc: "Colin Durward" <colin.durward@falconcreekindustries.com>
Subject: FW: Wire transfert receipt

Gentleman...ok I just got this Confirm of the wire transfer for \$51,750 + \$15 for a fee...the \$15 is to cover whoever is taking fees on the way to the Escrow company.

Donald H. Smith
 Falcon Auto Leasing Inc.
 361 Marion St.
 Winnipeg, Manitoba
 R2H-0V4
 204-254-4702
donald@falconleasing.net

From: Roxanne Laxdal [mailto:rLaxdal@caisse.biz]
Sent: November-12-14 2:32 PM
To: donald@falconleasing.net
Subject: Wire transfert receipt

CAISSE POPULAIRE GROUPE FINANCIER -
Wire Transfer Receipt

Date	12-Nov-2014	Transfer Amount	51,765.00USD
Reference		USD Equivalent @ 1.00000000	51,765.00USD
Number	2911700	Charges	19.81USD
		Customer Total	51,784.81USD

Sender

Account Number 100731174
 Name Wieland Managment Corp
 Street 361 Marion Street
 City Winnipeg
 Province/State Manitoba
 Postal/Zip R2H 0V4
 Country CANADA

Receiver

Account Number 639917918
 Name American Escrow and Settlement
 Srv
 Street 21301 Powerlind Road no. 106
 City Boca Raton
 Province/State Florida
 Postal/Zip 33433
 Country USA

Payment Details

Line 1 Escrow File no. 14-10005
 Line 2 F no. WML 014
 Line 3
 Line 4

Additional Information

Line 1
 Line 2
 Line 3
 Line 4
 Line 5
 Line 6

From FI

Transit 081900507
 Name CAISSE POPULAIRE GROUPE FINANCIER

To FI

Routing Code 267084131
 Name JPMorgan Chase Bank, NA
 Address 5545 Sheridan St

Address	100-205, BOULEVARD PROVENCHER	City	Hollywood, FL, 33021
City	WINNIPEG, MB, R2H 0G4	Country	United States
Country	Canada		
Sender Correspondant		Receiver Correspondant	
Account		Account	
Line 1		Line 1	
Line 2		Line 2	
Line 3		Line 3	
Line 4		Line 4	
Intermediary		Account With FI	
Account		Account	
Name		Line 1	
Address 1		Line 2	
Address 2		Line 3	
		Line 4	

Bottom of Form

Customer Signature

Concours : Comparez pour gagner max de 5 000 \$ - participez au www.caisse.biz
Contest : Compare to Win up to \$5,000 – enter at www.caisse.biz

Roxanne Laxdal
 Conseillère, services aux membres | Member Service Advisor

Caisse Groupe Financier | Caisse Financial Group
 100 – 205 boulevard Provencher Boulevard
 Winnipeg MB R2H 0G4
 Tél/Tel: (204) 237-8874 Poste | Ext. 1065
 Téléc/Fax: (204) 257-3007
rlaxdal@caisse.biz | www.caisse.biz

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Confidentiality Notice: This message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing this message. If you have received this communication in error, please delete it and immediately notify the sender. Thank you.

No virus found in this message.

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Version: 2015.0.5315 / Virus Database: 4213/8561 - Release Date: 11/12/14

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.5577 / Virus Database: 4223/8646 - Release Date: 11/28/14

10/10/2016

ATB Customer Transfer

Originating Transit: 876

Date: January 13, 2015

Please transfer at my/our risk.
Wire To

Transfer Information

Wire Transfer Destination: USA

Effective Date: January 13, 2015

Transfer Amount/Currency: 12500.00 USD

Payment Amount/Currency: 15167.50 CAD

Exchange Rate: 1.215

Charges/Currency: 50.00 CAD

Ordering Customer Information

Business Partner Number: 543847

Customer Name: GARY STEVENS

Account Number: 0000000201564101

Address: PO Box 1559
MAVERTHORPE, Alberta
T0E 1N0
Canada

Telephone: 7807869166

Date of Birth:

Individual Occupation/Nature of Business:

Receiving Institution Information

Institution Name: JPMORGAN CHASE BANK, NA

Bank/Transit Number:

SWIFT/BIC Code:

FedWire Number: 267084131

Sort Code:

Account Number:

Address: BEVERLY HILLS, CA
US

Beneficiary Payment Instructions

☒ Credit Account

Notify and Pay To

Beneficiary Name: AMERICAN ESCROW AND SETTLEMENT

Account Number: 639917918

Address: 21301 POWERLINE ROAD 100
BOCA RATON, FL
33433
US

Telephone:

Details of Payment

AMERICAN ESCROW AND SETTLEMENT SERVICES LLC SWIFT CODE CHASUS33

Bank to Bank Information

BANK INFORMATION 5545 SHERIDAN STREET HOLLYWOOD FL 33021

The applicant hereby agrees to the attached conditions. Alberta Treasury Branch is hereby authorized to charge the account of the undersigned, or any of them if more than one, for the requested wire transfer payment including any charges.

Signature of Applicant

GARY STEVENS

Name of Applicant

January 13, 2015

Date

Fee Payments

Paid CBRE- Westmoreland Appraiser \$5,040 CAD

Paid Keneco Phase 1 Environmental for Westmoreland \$1,035.50 CAD

----- Forwarded message -----

From: **B.R. Gaffney & Associates** <gaffney.assoc@sasktel.net>

Date: Tue, Jan 6, 2015 at 5:20 PM

Subject: RE: Proposed First Mortgage Loan on 29-2-7-W2 Saskatchewan (Southwest Quarter section 29 27w2), Our File No. WML-014, AESS No. 14-10005 - Appraisal - Wiring Instruction Request

To: Ed Ryan <westmorelandequityfundllc@gmail.com>

Ed,

Below is the required information.

Company Name: 101184290 Saskatchewan Ltd. (B.R. Gaffney and Associates is our registered operating name)

Address: 2330 15th Avenue, Regina, SK S4P 1A2

Branch Address: TD Bank - 1904 Hamilton Street, Regina, SK, S4P 3N5

Transit Number: 75448

Institution Number: 004

Account Number: 5232371

Swift Code: TDOMCATTTOR

The total fee including GST is \$5,040.00.

Should you require anything further please contact us.

Thanks,
Blaise Clements

https://portal.enterprise.insideab.net/webdynpro/dispatcher/atb.com/wd-transfer/OneTI... 1/7/2015 Page 1 of 1

Transfer Confirmation

Pooling lock 2000 has been determined
Payment item check found error(s)
From: Freedom Account (575-00201584101) CAD
To: 0004 (75445-523232) 101184200 Sanku@howae Ltd.
Amount: 30,000.00 CAD
Transfer Date: Jan 07, 2015
Payment Notes: File # VAL-014
Reference: 000304223044 File and Print Out-Txn Transfer

Transfer

From: Pay As You Go Account (876-80201578501) CAD
To: 0096 (14051-0084226) Keneco Environmental Services
Amount: \$1,035.50 CAD
Transfer Date: Dec 16, 2014
Payment Notes:

Submit Cancel

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

A. Plaintiffs' motion is granted;

B. Defendant failed to comply with the Court's Orders of August 28, 2018 (Doc. No. 100), and of July 6, 2018 (Doc. No. 92).

C. Judgment on liability by default is entered against Defendant pursuant to Rule 37(b)(2)(A)(vi) and Rule 55(b)(2).

D. Plaintiffs are entitled to treble damages under 18 U.S.C. § 1964(c) for injuries sustained in violation of 18 U.S.C. § 1962(c) and § 1962(d).

E. Final judgment is hereby entered in favor of the Plaintiffs against Defendant Sandy Hutchens, jointly and severally, awarding actual damages in the amount of \$27,353,453.76.

AND IT IS SO ORDERED

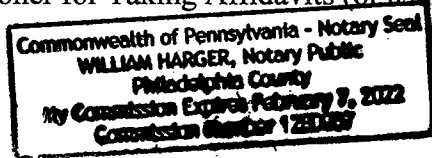
Paul S. Diamond J.

TAB 13

This is **Exhibit 13** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to read 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



CERTIFICATE OF SERVICE

I, Howard Langer, counsel for the Plaintiffs, hereby certify that on this date I caused to be served a true and correct copy of the foregoing Motion for Default Judgment Against Sandy Hutchens via this Court's Electronic Case Filing System on all interested parties and upon Defendant Sandy Hutchens by email to sandyhutchens0@gmail.com, and by first class mail to 1779 Cross Street, Innisfil, Ontario L9S4L9 Canada and to Defendant Tanya Hutchens at 33 Theodore Place, Thornhill, Ontario L4J 8E2 Canada

Date: September 4, 2018

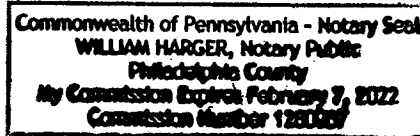
/s/ Howard Langer
Howard Langer

TAB 14

This is **Exhibit 14** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, consisting of several overlapping, slanted strokes, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)



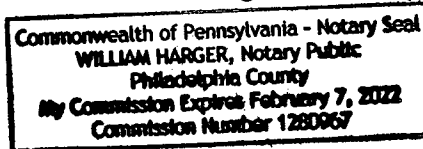
Paul S. Diamond, J.

TAB 15

This is **Exhibit 15** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to read 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



**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.

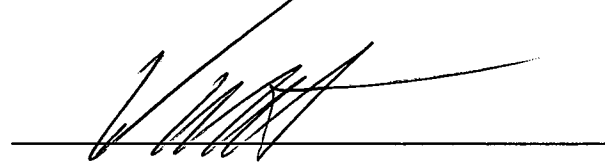
/s/ Paul S. Diamond

October 10, 2018

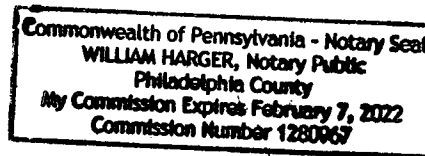
Paul S. Diamond, J.

TAB 16

This is **Exhibit 16** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to be 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



**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

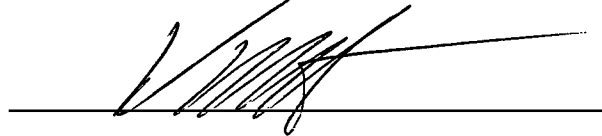
AND IT IS SO ORDERED.

/s/ Paul S. Diamond

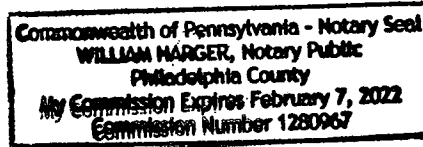
Paul S. Diamond, J.

TAB 17

This is **Exhibit 17** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to read 'W. Mager', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



Civ. No. 18-692

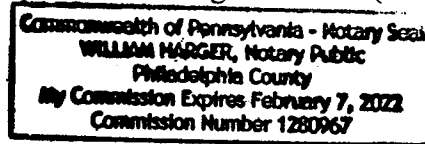
Paul S. Diamond, J.

TAB 18

This is **Exhibit 18** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019



Commissioner for Taking Affidavits (or as may be)



1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLORADO

3 Civil Action No. 11-CV-01012-RBJ

4 CGC HOLDING COMPANY, LLC, et al.,

5 Plaintiffs,

6 vs.

7 SANDY HUTCHENS, et al.,

8 Defendants.

9
10 -----
11 REPORTER'S TRANSCRIPT

12 Jury Trial - Excerpt: Cross-Examination of Sandy Hutchens
13 -----

14 Proceedings before the HONORABLE R. BROOKE JACKSON,
15 Judge, United States District Court for the District of
16 Colorado, commencing on the 12th day of May, 2017, in
17 Courtroom A902, United States Courthouse, Denver, Colorado.

18 APPEARANCES

19 For the Plaintiffs:

20 KEVIN P. RODDY and MICHAEL FRIED, Wilentz Goldman & Spitzer,
21 PA, 90 Woodbridge Center Dr., Ste. 900, Woodbridge, NJ 07095
22 SCOTT R. SHEPHERD, Shepherd, Finkelman, Miller & Shah, LLP, 35
23 East State St., Media, PA 19063

24 For the Defendants:

25 STEVEN A. KLEND, Klenda Gessler & Blue, LLC, 1624 Market St.,
Ste. 202, Denver, CO 80202

26 Sarah K. Mitchell, RPR, CRR, 901 19th Street, Room A252,
27 Denver, CO 80294, 303-335-2108

28 Proceedings reported by mechanical stenography;
29 transcription produced via computer.

1 I N D E X

2

3 EXAMINATIONS

4

Defendants' Witness	Page
SANDY HUTCHENS	
Cross-Examination by Mr. Roddy	3

5

6

7 PLAINTIFFS' EXHIBITS

Exhibit	Description	Received
238	Hutchens' responses to interrogatories 3-24-17	21
239	Summary of GEIF fees received from class members	18
240	GEIF commitment letter to Bluemoon Investment	24
242	GEIF Commitment Letter - Zentana Conference Resort	26
244	Corporation Profile Report - 241 Lloyd Street	32
246	Bank statements - 241 Lloyd Street	33
247	Bank statements - 480 Linda Street	29
251	Personal check to Manny Singh	38

15

16

17 DEFENDANTS' EXHIBITS

Exhibit	Description	Received
(No exhibits.)		

19

20

21

22

23

24

25

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1 * * * * *

2 (The following is an excerpt of proceedings
3 commencing at 3:43 p.m.)

4 THE COURT: All right. Cross.

5 CROSS-EXAMINATION

6 BY MR. RODDY:

7 Q. Mr. Hutchens, you had some things to say about Mr. Medick
8 and Mr. Margolis and Mr. Bainbridge, correct?

9 A. Correct.

10 Q. And you're aware that each of those gentlemen came here in
11 person to testify before the Court and the jury?

12 A. Yes.

13 Q. Can you explain to us the reason why you are not here with
14 us and haven't been with us throughout the trial?

15 A. I have my health issues, and I'm not -- I'm not permitted
16 to -- right now to get into the United States because of my
17 criminal record.

18 Q. You are not permitted to come into the United States by
19 virtue of an order of the Department of Homeland Security; is
20 that correct?

21 A. Yes. When I attempted to go, they wouldn't allow me in
22 for the first time ever.

23 Q. You didn't -- I noticed you didn't have anything negative
24 to say about Mike May, did you?

25 A. I wasn't asked about Mr. May.

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Jury Trial - Excerpt

05/12/2017

4

1 Q. Okay. And you said some things about Mr. Py. Are you
2 aware that your lawyers never bothered to show up at his
3 deposition taken in Tennessee?

4 A. I understand that he was a witness in another matter, and
5 they felt that it was a legal argument as opposed to
6 deposition issues.

7 Q. Another matter in which you're a defendant, correct?

8 A. Correct.

9 Q. Now, sir, about your criminal record. Let's cover this
10 very briefly. During the class period which runs from 2005 to
11 2013, you never revealed your criminal record to any borrower,
12 correct?

13 A. No. I believe I revealed it to one or two borrowers, but
14 never dealt directly -- I dealt with the brokers.

15 Q. Sir, do you remember when I took your deposition in
16 Toronto on March 1st, 2016, and at page 99 I asked you this
17 question, and you gave me this answer. Question, During the
18 class period did you reveal the facts concerning your criminal
19 record to any borrower? Answer, No. Do you recall this
20 question and answer? Question, But you never disclosed that
21 criminal record to any borrowers, correct? Your answer was,
22 No. Do you remember giving that testimony under oath?

23 A. Yes.

24 Q. You testified at 2:13 p.m. this afternoon, and I quote,
25 You have to know who you are dealing with, closed quote. Do

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1 you remember giving that testimony?

2 A. As a lender, yes.

3 Q. Were you listening in on the telephone when David Shepherd
4 testified the other day?

5 A. Yes.

6 Q. Do you remember David Shepherd saying that he revealed
7 your criminal record to one borrower and that borrower walked
8 away from the deal?

9 A. Yeah, that particular borrower, I take it, did that, yeah.

10 Q. And do you remember Mr. David Shepherd testifying that
11 borrowers have the right to know and the right -- the right to
12 know who they're dealing with?

13 A. Correct. I heard his testimony.

14 Q. During your four-hour examination today and yesterday,
15 your lawyer showed you a number of e-mails concerning Jim
16 Medick. Do you recall that?

17 A. Yes.

18 Q. Let me show you a document that you weren't shown. Can
19 you bring up Exhibit 201, please.

20 A. I don't have that exhibit, just so you know.

21 Q. All right, sir.

22 MR. RODDY: Can you bring it up?

23 MR. KLEND: He should.

24 Q. (By MR. RODDY) Sir, I'll help you. Do you remember that
25 Exhibit 201 is a letter that you sent to the Superior Court of

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1 the State of California for the County of Orange, dated
2 March 2, 2010?

3 A. Yes.

4 Q. And that concerned Mr. Medick's loan application?

5 A. Yes.

6 Q. And certainly, sir, you would agree with me that when you
7 wrote that letter to a state court judge in California you
8 wanted to be as truthful and accurate as possible?

9 A. Yes. But I didn't do it right, that's for sure. But
10 Mr. Medick was saying, please, you know, could you help me
11 out, and I sent the letter. It was wrong.

12 Q. Are you saying -- are you telling us that you submitted a
13 false and misleading letter to a judge of the Superior Court
14 of California, County of Orange?

15 A. I'm saying that -- I don't have it in front of me which
16 would help -- but the estate was correct, but the management
17 of 16 estates, that wasn't me, that was Mr. Spiro, and I
18 should have made that abundantly clear that that wasn't me.

19 Q. Oh, you're saying there were misrepresentations in the
20 very first paragraph of the letter? Is that what you're
21 saying to us?

22 A. Yes, it was wrong.

23 Q. In the third paragraph of the letter you stated as
24 follows, and I quote -- first sentence, Stephen -- Your Honor,
25 the borrower has provided all documentation that is in his

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1 care and control. However, we have been waiting for some
2 third-party documentation, i.e., compliance letters for
3 occupancy of the local county inter alia, closed quote. Are
4 those the words you wrote to the state court judge in
5 California?

6 A. Right. And at that time we thought we had it all -- I
7 don't remember the timing -- but then there's other things
8 come up, like all of a sudden the rents and all of a sudden
9 this, and it kept changing.

10 MR. RODDY: Stephen, can you go to the top of the
11 second page, please.

12 Q. (By MR. RODDY) First paragraph, Mr. Hutchens, do you
13 recall writing these words to Justice Moss, quote, There is
14 nothing outstanding with respect to the required documentation
15 that would prevent his closing?

16 A. Right. At that point I understood he had all the
17 compliance documents in, but then we found out things we
18 didn't know.

19 Q. Do you recall that this litigation in Colorado started in
20 April of 2011?

21 A. Yes, sir.

22 Q. Would it be fair to say that some months before April 2011
23 you were aware that litigation was likely?

24 A. No. Why would I be aware it was likely?

25 Q. Sir, do you have -- can you bring up, Mr. Najarian --

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1 Plaintiff's Exhibit No. 148.

2 A. Again, I don't have that exhibit.

3 MR. RODDY: Is there a reason why he doesn't have the
4 exhibit?

5 THE WITNESS: I was never given any of the
6 plaintiffs' exhibits.

7 MR. KLEND: I'm sorry. The exhibits were delivered
8 to the court reporter's office this afternoon. I am not
9 certain why they are not there, but they were delivered. So I
10 apologize both to the Court and Mr. Roddy. We made every
11 effort to have those documents up there. And their staff is
12 gone. So I believe that the documents are there, but the
13 current staff is unaware of them, and they're not in the room.
14 I'm sorry, Your Honor. I can't fix that right now.

15 THE WITNESS: There's staff here. Can we have a
16 moment to check? It's going to be difficult for me without
17 exhibits.

18 THE COURT: Yeah, well, the condition that I imposed
19 in exchange for permitting you to testify this way was that
20 you would have available any document that was needed for
21 cross-examination purposes, and apparently that hasn't
22 happened.

23 MR. RODDY: And, in fact, Your Honor, this morning
24 Mr. Klenda asked me to provide him with an updated list of the
25 exhibits that I intended to use, and I sat at that table,

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1 wrote it out in longhand and gave it to him.

2 THE COURT: Well, yes, and he explained just now, and
3 I take his word for it, that he tried, so let's not --

4 MR. KLEND: I believe, Your Honor --

5 THE COURT: Let's not take this too far, gentlemen.
6 Go ahead and cross-examine him.

7 Q. (By MR. RODDY) All right, sir, I'll see if I can help you.
8 Do you recall that on March 23rd, 2010, Alvin Meisels sent you
9 an urgent e-mail letter?

10 A. He could have. Again, I haven't seen it, and I'm not
11 trying to be difficult, but I would like to see it.

12 MR. KLEND: Mr. Hutchens, please just do your best
13 as Mr. Roddy describes the document, okay?

14 THE WITNESS: All right.

15 Q. (By MR. RODDY) Sir, I'll focus our attention on the third
16 paragraph of the letter on the first page. And it says in
17 part, quote, While Mr. Schiller said that on a case-by-case
18 basis you may appear to have reason not to fund a loan
19 application, when taken together as a consistent pattern of
20 taking millions in fees and not funding a single deal and
21 having regard to your not-so-distant personal past, he
22 believes that criminal charges will be brought against you in
23 the U.S., and there will be an extradition request made to
24 Canadian authorities. Do you recall your lawyer Alvin Meisels
25 communicating that information to you on March 23rd, 2010?

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1 A. I honestly don't remember that letter. But if there was
2 something else in it that I could see, but...

3 Q. Sir, do -- that was March 23rd, 2010. Do you recall that
4 approximately nine and a half months later on January 7th,
5 2011, you and your wife entered into a separation agreement?

6 A. Yes, we entered a separation agreement, yes.

7 Q. And that was dated January 7th, 2011, correct?

8 A. Correct.

9 Q. And do you recall testifying in your deposition when I
10 took your testimony in Toronto that the negotiations for that
11 agreement began in fall 2010?

12 A. Yes, sorry, yeah.

13 Q. Now, from January 2011 to today, by my calculation, it's
14 six years and four months, or 76 months. Do you accept my
15 math?

16 A. I'll accept your math, yeah.

17 Q. Okay. You agreed to pay -- because of that settlement
18 agreement, you agreed to pay child support of 10,000 per
19 month?

20 A. Yes.

21 Q. You agreed to pay spousal support of 5,000 per month?

22 A. Yes.

23 Q. So I multiplied 15,000 per month times 76, and I came out
24 with \$1,140,000. You accept my math?

25 A. Yes, 1 million --

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1 Q. \$1,140,000?

2 A. Okay.

3 Q. You also agreed to make an equalization payment of
4 \$2 million?

5 A. Yes.

6 Q. And you also agreed to make another payment of \$1,727,578?

7 A. Yes.

8 Q. The total I come up with is that you agreed to pay, over
9 the last 76 months, \$4,867,578. Do you accept my math?

10 A. Yes.

11 Q. Mr. Paul Riley represented you in negotiating that
12 settlement agreement, correct?

13 A. Well, he -- at the end he helped me, and then he had to
14 sign, and then we had another lawyer sign as well.

15 Q. Mr. Riley's signature appears on the document, correct?

16 A. Correct.

17 Q. Now, as I understood your wife's testimony the other day,
18 I believe she testified that you have paid her \$100,000 since
19 January 2011, or did I hear that wrong?

20 A. I think -- I didn't -- I didn't hear the question that
21 way. I thought you asked her how much was maybe still owing,
22 or I don't recall exactly.

23 Q. How much have you paid her since January 2011 of the 4.87
24 -- I'm sorry -- \$4.867 million that's owed?

25 A. I don't know exactly.

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1 Q. Well, can you give us a range?

2 A. Not really, because there was loans back and forth, loans
3 -- I don't know exactly. You asked me when I was deposed, and
4 I said, you know, really, I'm not really sure. It could be a
5 million and a half. I honestly don't know.

6 Q. How much do you still owe?

7 A. I'm not sure. I'm honestly not sure.

8 Q. You never got divorced, correct?

9 A. No, I didn't get -- we have to get a Jewish divorce, and
10 we haven't gotten that, no.

11 Q. How many times over the past 76 months has your wife taken
12 you to court for failure to pay your obligations?

13 A. She has not.

14 Q. Sir, is it correct that Schedule A to that separation
15 agreement, which I believe is Exhibit 221, lists real estate
16 with a market value of \$16.275 million?

17 A. I don't have it with me, but I'll take your word that's
18 what it says.

19 Q. Sir, do you recollect in paragraph nine of that separation
20 agreement, Exhibit 221, you gave up all of your interests in
21 the properties listed in Schedule A?

22 A. Yes.

23 Q. Was that settlement agreement intended to put your assets
24 out of the reach of your creditors, including the plaintiffs
25 and class members in this case?

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1 A. Absolutely not. There wasn't a lawsuit then.

2 Q. Sir, I believe we've just established that this case was
3 filed in April 2011.

4 A. Yes.

5 Q. Do you remember that the complaint that was filed by the
6 plaintiffs accused you of running an advance-fee fraud scheme?

7 A. Yes.

8 Q. And do you recollect that when the plaintiffs started this
9 case, they accused you of issuing loan commitments and
10 collecting advance fees while failing to tell borrowers that
11 you had a criminal record?

12 A. Yes.

13 Q. And do you recollect that when this lawsuit started the
14 plaintiffs alleged that you used false and misleading business
15 addresses?

16 A. That was the allegation, but I didn't use false business
17 addresses.

18 Q. Do you recollect that when plaintiffs started this lawsuit
19 they accused you of using aliases to hide your true identity?

20 A. Yes.

21 Q. GEIF was formed in March of 2011; is that correct?

22 A. Correct.

23 Q. And is it correct that GEIF issued its first loan
24 commitment in June of 2011, about two months after this case
25 started?

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1 A. Yes.

2 Q. Okay. I'd like to look at how you have conducted your
3 business in Toronto while this class action has been pending
4 here in Denver. All right?

5 A. Okay.

6 Q. With regard to GEIF loan commitments, is it true that you
7 did not tell borrowers that you had a criminal record?

8 A. No.

9 Q. That's true, isn't it?

10 A. Correct, correct, sorry.

11 Q. And is it true that you also used a false and misleading
12 business address representing on stationery that the office of
13 GEIF was located in Williamsville, New York?

14 A. Yes, I used -- no, I used a virtual office, yes.

15 Q. In Williamsville, New York, correct?

16 A. Correct.

17 Q. And is it also correct that while you were operating GEIF
18 you used an alias, namely Mathew Kovce, to conceal your true
19 identity?

20 A. Yes, I used Mathew Kovce's name, yes.

21 Q. So would it be fair to say that while you were operating
22 GEIF beginning in the spring of 2011, you did business the
23 exact same way that you had done business before, even though
24 this class action was going on in this courthouse?

25 A. Yes. Because I wanted to try to fund the deal -- fund

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1 deals.

2 MR. RODDY: Can we look at slide 36, please,
3 Mr. Najarian.

4 Q. (By MR. RODDY) Sir, have you been shown slide 36 from my
5 opening statement?

6 A. It's coming up now. One second.

7 Q. Okay. Good.

8 A. Yes, I have it.

9 Q. Okay. Focusing on the box in the lower left-hand corner,
10 is that period of time correct that GEIF issued loan
11 commitments between June of 2011 and March of 2013?

12 A. Yes. I'm sorry. I got a First Central letter. Is that
13 what you have? A letter for First Central. What is slide 36,
14 please?

15 THE COURT: He doesn't have your slides.

16 MR. RODDY: Okay. We'll move on.

17 Q. (By MR. RODDY) Sir, do you remember testifying in your
18 deposition that the following entities had bank accounts,
19 Canadian Funding Corporation?

20 A. Yes.

21 Q. 308 Elgin Street?

22 A. Yes.

23 Q. First Central Holdings?

24 A. Yes.

25 Q. And Northern Capital?

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1 A. Yes.

2 Q. Would you agree with me that by the fall of 2011, those
3 entities had issued over 100 loan commitments?

4 A. Approximately.

5 Q. Would you agree with me that by the fall of 2011, those
6 loan commitments were worth over \$600 million?

7 A. In total, but remember something, as a file is terminated,
8 the amount goes down. The amount of commitment may be
9 correct, the amount of commitment, a dollar value, yes.

10 Q. Would you agree with me that by November 2011 you had
11 collected borrower fees exceeding \$5 million?

12 A. Our figure I came up with is much less, which we had
13 submitted, and I'm not sure what period that's for. I'm
14 sorry.

15 Q. Okay. Your figure was 3.7 million, correct?

16 A. Correct, less expenses, yes.

17 Q. Do you remember testifying that in your deposition that on
18 November 2nd, 2011, TD Bank closed all of those bank accounts?

19 A. Yes.

20 Q. Do you recall testifying under oath that when those bank
21 accounts were closed, you withdrew the money that was left?

22 A. Yeah, yes.

23 Q. Do you remember saying to me under oath, quote, I hung on
24 to what little money I had, closed quote?

25 A. Yes. As I recall there was not very much left when they

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1 closed the accounts.

2 Q. You testified under oath that when those accounts were
3 closed on November 2nd, 2011, there was about 10 or \$15,000
4 left?

5 A. I said that was the best of my recollection. I'm not
6 sure.

7 Q. And do you remember testifying under oath that you lived
8 on that \$10,000 from November 2011 to the end of the class
9 period, April 2013, a period of 18 months?

10 A. I may have testified -- I may have testified to that, but
11 I did live on that money. I did have that money, yes.

12 Q. And you also testified under oath that from November 2nd,
13 2011 to April 2013, you did not open any new bank accounts?

14 A. I'm sorry. Dates from when to when, please?

15 Q. November 2nd, 2011 to April 2013.

16 A. I don't recall doing that, because I did open an account
17 in 2012, I believe, but if I was wrong, I'm sorry.

18 Q. From June of 2011 to at least March of 2013, you were
19 operating or managing Great Eastern Investment Fund, correct?

20 A. Correct.

21 Q. You admit that Great Eastern Investment Fund issued at
22 least 20 loan commitments?

23 A. Yes.

24 Q. And do you remember preparing a schedule called summary of
25 Great Eastern Investment Fund LLC's fees received from class

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1 members?

2 A. Yes.

3 MR. RODDY: Your Honor, it has been marked as
4 Exhibit 239, and we ask that it be admitted.

5 MR. KLEND: No objection.

6 THE COURT: It's admitted.

7 (Plaintiffs' Exhibit 239 admitted into
8 evidence.)

9 Q. (By MR. RODDY) Mr. Hutchens, do you have Exhibit 239 with
10 you?

11 A. One second. I'm looking.

12 MR. RODDY: Mr. Najarian, can you put up 239.

13 A. I have the exhibit now.

14 Q. (By MR. RODDY) Okay. This is a schedule that you
15 prepared, correct?

16 A. Yes, sir.

17 Q. And, Mr. Hutchens, you did an analysis of each of the 20
18 loan transactions; is that correct?

19 A. Yes.

20 Q. You -- you identified the borrower, you gave information
21 about the amount of the loan commitment, correct?

22 A. Correct.

23 Q. The loan amount, and then over in the right-hand corner
24 you totaled the amount paid confirmed to GEIF, correct?

25 A. Yes.

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1 Q. So, for example, on page four, we see the loan transaction
2 involving Mike May. It says Vernal Express. Do you see that?

3 A. I'm looking. Yes.

4 Q. And then on page six, can you go to page six.

5 A. Okay.

6 Q. You see Shy Willie Lodging?

7 A. Yes.

8 Q. That was another Mike May project, correct?

9 A. Correct.

10 Q. Can you go to page five.

11 A. Yes.

12 Q. On page five do you see Mr. Arthur Py's project called
13 Blue Bay?

14 A. Yes.

15 Q. And you collected all of this information and put it on
16 this chart, correct?

17 A. Yes.

18 Q. Now, I didn't see totals on the last page, so I went ahead
19 and added up the fees for these 20 loans, and I came up with
20 the figure of \$1,892,733. Do you accept my math?

21 A. Yes, for the purposes of this, yes.

22 Q. Now, sir, do you remember earlier this year you indicated
23 to us in a discovery response that there were five GEIF deals
24 that either you could not recall or you couldn't find the loan
25 file?

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1 A. I don't recall. What date was that?

2 Q. Earlier this year in a discovery response.

3 A. Yes.

4 Q. And, in fact, you asked us to help you, didn't you?

5 A. To help me?

6 Q. Yes.

7 A. I'm sorry. I don't remember asking you to help me, but I
8 could have.

9 Q. Sir, do you have with you Exhibit 238?

10 A. Yes, I do. One second. Yes, I have it in front of me.

11 Q. Okay. These are responses to interrogatories that you
12 prepared dated March 24th, 2017. Do you see that?

13 A. I'm sorry. March 24, '17, okay.

14 Q. Yes, sir. And toward the back under the -- on the page
15 that says verifications, is that your signature?

16 A. One second. Yes.

17 Q. Okay. Just so we all understand what was going on, you
18 were answering questions under oath about specific GEIF loan
19 transactions; is that correct?

20 A. Yes.

21 Q. Let me show you page -- well, the pages are not numbered.

22 MR. RODDY: Yes, Your Honor. We offer -- I apologize
23 -- we offer Plaintiffs' Exhibit No. 238.

24 MR. KLEND: No objection.

25 THE COURT: Right. It's admitted.

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1 (Plaintiffs' Exhibit 238 admitted into
2 evidence.)

3 Q. (By MR. RODDY) Mr. Hutchens, can you hear me if I stand
4 over here?

5 A. I can, sir.

6 Q. Okay. Can you see this page?

7 A. I can't see any pages, but if you could tell me what's at
8 the top of it or something.

9 Q. Yes, sir. These are not numbered. Can you turn in to the
10 one, two, third page.

11 A. Sorry. Starting with Cowabunga?

12 Q. Yes.

13 A. Okay.

14 Q. In the middle of the page, can you see where it says
15 Hutchens and GEIF have been unable to locate files for the
16 following transactions included in the plaintiffs'
17 interrogatories for the reasons described below?

18 A. Yes.

19 Q. The first one was a transaction called Bluemoon
20 Investment?

21 A. Yes.

22 Q. And you said that while you have a general recollection of
23 the transaction, you were unable to locate the file?

24 A. Because Bluemoon was not listed in our computer under
25 Bluemoon. So you had made requests after -- I remember we

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1 gave you a list of what we had, and you kept coming back with
2 a different address. I'd go through the computer, it's not
3 there, and then, you know, it was -- as you know, we're going
4 back and forth, and ultimately, I got it, but --

5 Q. You went through all your boxes of loan files and you
6 couldn't find Bluemoon, correct, and we had to find it for
7 you?

8 MR. KLEND: Objection, misstates his testimony.

9 THE COURT: Yeah, sustained.

10 THE WITNESS: That's not what I said.

11 THE COURT: Sustained.

12 Q. (By MR. RODDY) Well, do you have with you -- strike that.
13 One of the names you used was Frederick Merchant, correct?

14 A. Yes.

15 Q. You're prepared now to admit that you used the name
16 Frederick Merchant?

17 A. When you had asked me at the time I really couldn't
18 remember, but, yeah, Frederick Merchant I was going to use as
19 the director of the company when I opened up -- when Tony
20 Tomasso opened up Great Eastern for me, I used that name for
21 just the opening purpose to sign the commitments, not as
22 managing member, just as representative, and Matt, my
23 son-in-law -- Mathew Kovce is whose name I was going to use.

24 Q. Sir, do you remember when I took your deposition in
25 Toronto on March 14th of this year I repeatedly asked you who

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1 Frederick Merchant was and you said to me, I don't know, I
2 don't remember, I don't know what you're talking about.

3 A. I didn't remember at the time. I honestly didn't. But --
4 and you knew I wasn't feeling well that day, but it doesn't
5 matter. I didn't remember, and now I -- I remember now what I
6 used it for.

7 Q. During the class period you used the name Frederick
8 Merchant?

9 A. For a short period of time, yes, when I opened up Great
10 Eastern.

11 Q. Do you have Exhibit 240, the Bluemoon Investment
12 commitment letter?

13 A. Yes. One second.

14 Q. Do you have it in front of you?

15 A. I do.

16 Q. It's a GEIF commitment letter dated June 14th, 2011,
17 correct?

18 A. Correct.

19 Q. And you signed it on page 19 Frederick Merchant?

20 A. I did. And this file was one of the first files, and I
21 couldn't locate it under Bluemoon. That was the problem. And
22 up to file 1850 from 1820 we had a different e-mail and a
23 different server gadget, and we lost those files, so I
24 couldn't -- that's why I couldn't remember this file.

25 MR. RODDY: Your Honor, we offer Exhibit 240.

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1 MR. KLEND: I don't object.

2 THE COURT: It's admitted.

3 (Plaintiffs' Exhibit 240 admitted into
4 evidence.)

5 Q. (By MR. RODDY) Sir, do you remember me asking you in your
6 deposition whether you ever used the name Fred Hayes?

7 A. Yes.

8 Q. Are you now ready to -- have you heard the witnesses'
9 testimony in this case?

10 A. Yes.

11 Q. As to their dealings with Fred Hayes?

12 A. Yes.

13 Q. You testified under oath in your deposition that Fred
14 Hayes worked for your company for about a week and a half,
15 correct?

16 A. Correct.

17 Q. Did you hear the testimony of Jill Evans and Leon
18 Franklin, both of whom said they dealt with Fred Hayes for a
19 period of six months?

20 A. Correct. And I said in my last deposition he worked for
21 me for a week and a half. I have no reason to say that, but
22 he did work for me for a week and a half, and I carried it on
23 was my words, and I said that in the deposition.

24 Q. So you used the name Fred Hayes during the class period?

25 A. Yes, sir.

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1 Q. When you were dealing with borrowers, you identified
2 yourself as Fred Hayes?

3 A. In the first couple of weeks when he was there, he started
4 on certain files, and as I said to you, I carried it on after
5 that.

6 Q. When you say you carried on after that?

7 A. I kept using -- I used the name of Fred Hayes, but Moshe
8 Ben Avraham on all new files, and I was signing the
9 commitments as Moshe Ben Avraham, not Fred Hayes, not one, and
10 I signed Moshe Ben Avraham. And none of the deals that your
11 clients submitted were fundable, and that time they were all
12 mostly fraudulent.

13 Q. Did you use the name Fred Hayes when you were on telephone
14 conversations with other people?

15 A. Yes.

16 Q. Do you remember that another -- if you go down two more
17 transactions it says Zentana Conference Resort at Colorado
18 Springs, LLC?

19 A. I'm sorry. Which two transactions?

20 Q. I'm asking you to look at Zentana Conference Resort at
21 Colorado Springs, LLC.

22 MR. KLEND: Are we now back on page three of
23 Exhibit 238?

24 MR. RODDY: Yes.

25 A. Oh, I see, okay. I didn't know what exhibit.

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1 Q. (By MR. RODDY) And your response was you didn't have a
2 file, correct?

3 A. No, I couldn't find the file at that time because it was
4 under Bluemoon. We don't regularly have them under Bluemoon.
5 It would be under whatever's listed on that spreadsheet that I
6 did, Exhibit 239. It wasn't that I didn't want to find it. I
7 couldn't find it.

8 Q. Can you grab -- sir, do you have Exhibit 242?

9 A. Yes, one second. I'm getting it. I have it.

10 Q. This is the commitment letter from GEIF to Zentana
11 Conference Resort dated March 18th, 2013; is that correct?

12 A. Correct.

13 Q. You signed this one as Mathew Kovce?

14 A. Yes.

15 MR. RODDY: Your Honor, we offer Exhibit 242 into
16 evidence.

17 MR. KLEND: I do not object.

18 THE COURT: It's admitted.

19 (Plaintiffs' Exhibit 242 admitted into
20 evidence.)

21 Q. (By MR. RODDY) Sir, you own an entity named 480 Linda
22 Street Inc.?

23 A. Yes.

24 Q. You are the owner of 480 Linda Street?

25 A. Yes, sir.

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1 Q. You are the sole shareholder of 480 Linda Street?

2 A. Yes, sir.

3 Q. Now, is it correct that borrowers from GEIF paid their
4 fees to the MS Title Agency in Southfield, Michigan?

5 A. I believe for the most part, yeah.

6 Q. Is that David Shepherd's company?

7 A. No, it's not.

8 Q. And is it correct that MS Title Agency would wire transfer
9 those fees to 480 Linda Street's account at the Meridian
10 Credit Union in Toronto?

11 A. I'm not sure if they wired all of them. Some of them,
12 yes. But I think there was another -- two or three other
13 title companies.

14 Q. The fees that were received from GEIF borrowers were the
15 only deposits in the 480 Linda Street account, correct?

16 A. I don't know. I need to see it, please, because there may
17 be one or two others.

18 Q. 480 Linda Street had -- 480 Linda Street had account
19 number 9142696 at Meridian Credit?

20 A. I'm sorry. The number?

21 Q. 9142696.

22 A. 9142696, and that's for 480 Linda?

23 Q. Yes. That was the account number, correct?

24 A. Yes. I think so. I'm looking for a document. Have you
25 got an exhibit that would have it so I can confirm it? I

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1 think I may be able to find it here. One second.

2 Q. The bank statements are Exhibit 247.

3 A. Yes, I see that.

4 Q. Just so we're clear.

5 A. Yes.

6 Q. Do you recognize Exhibit 247 as being the bank statements
7 from the account maintained by 480 Linda Street at the
8 Meridian Credit Union?

9 A. Yes.

10 Q. And these are the bank statements that you produced to us
11 in March; is that correct?

12 A. Correct.

13 Q. And is it correct that that bank account at 480 Linda
14 Street was opened from approximately May 2012 to March 2014?

15 A. May 20th.

16 Q. May 2012 to March 2014.

17 A. I believe -- I believe it was December of 2012, not May, I
18 believe. I'd have to check, because I thought it was December
19 of 2012, I believe.

20 Q. Okay. Sir, do you see if you look at -- strike that.

21 MR. RODDY: Your Honor, we offer Exhibit 247 into
22 evidence.

23 MR. KLEND: 247 or 246, Mr. Roddy?

24 MR. RODDY: 247.

25 MR. KLEND: Thank you. I do not object.

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1 THE COURT: It's admitted.

2 (Plaintiffs' Exhibit 247 admitted into
3 evidence.)

4 Q. (By MR. RODDY) So just so we're clear, we're looking at
5 the bank statements of something called 480 Linda Street; is
6 that correct?

7 A. Correct.

8 Q. And that is an entity that you owned and controlled?

9 A. Yes.

10 Q. And this bank account, account number 9142696, you also
11 controlled?

12 A. Yes, this bank account, yes.

13 Q. Now, is it correct that this bank account for 480 Linda
14 Street has two sides?

15 A. It has what?

16 Q. Two sides. It has a U.S. dollar account and a Canadian
17 dollar account?

18 A. Yes.

19 Q. And is it correct that the fees that were paid by GEIF
20 borrowers were deposited into the U.S. dollar side of the
21 account?

22 A. Yes.

23 Q. And is it correct that you then transferred the money to
24 the Canadian dollar side of the account and then used it as
25 you wished?

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1 A. I transferred it, yes.

2 Q. Is it correct that on the U.S. dollar side of this account
3 GEIF borrowers made 49 wire transfers totally \$2,032,106?

4 A. I will accept that in your numbers, but I've not checked
5 it, but I'll accept that.

6 Q. And is it correct, sir, that you transferred every dollar
7 from the U.S. dollar side to the Canada dollar side of this
8 account?

9 A. As of what date?

10 Q. During 2012, 2013, 2014.

11 A. Well, I closed the account, so when I closed the account
12 obviously everything would be transferred.

13 Q. No, sir. While you were managing the accounts, isn't it
14 correct that on a month-by-month basis, you transferred money
15 from the U.S. dollar side of the account to the Canadian
16 dollar side of the account?

17 A. Yes, sir.

18 Q. And isn't it correct that during this time period you
19 spent every penny that was in this account?

20 A. Yes, I controlled it, so, yeah, I would have spent it.

21 Q. And you spent the money on such things as ice hockey
22 trading cards?

23 A. Yes.

24 Q. You spent it on veterinarian bills for your pets?

25 A. Yes.

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1 Q. You transferred money to Paul Riley?

2 A. Yes.

3 Q. You transferred money to Mr. Klenda's law firm?

4 A. Yes.

5 Q. And that account is now closed, correct?

6 A. Correct.

7 Q. The \$2,032,106 that was paid by GEIF borrowers is gone?

8 A. Yes.

9 Q. Now, do you remember on March 30th, 2017, you revealed to
10 us another entity that you had forgotten?

11 A. Oh, yeah, 241 Lloyd Street, yes.

12 Q. 241 Lloyd Street. Is that another entity that you own?

13 A. Yes.

14 Q. You formed 241 -- I'm sorry. Is 241 Lloyd Street a
15 corporation?

16 A. Yes.

17 Q. It's an Ontario corporation, correct?

18 A. Correct.

19 Q. You formed it in September 2008?

20 A. Yes.

21 Q. Can you look, sir, please at Exhibit 244.

22 A. One second. I have that.

23 Q. Do you recognize that document to be a corporation profile
24 report for 241 Lloyd Street Inc.?

25 A. Yes.

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1 Q. And do you see there that Sandy Hutchens is listed as a
2 director, as a secretary, and as a president?

3 A. Yes.

4 MR. RODDY: Your Honor, we offer Plaintiffs' Exhibit
5 No. 244 into evidence.

6 MR. KLEND: I do not object.

7 THE COURT: It's admitted.

8 (Plaintiffs' Exhibit 244 admitted into
9 evidence.)

10 Q. (By MR. RODDY) Sir, is it correct that 241 Lloyd Street
11 owned or -- owned a bank account at Meridian Credit Union,
12 account number 2835569?

13 A. I will accept that. That's fine. If you have an exhibit,
14 it would help, but...

15 Q. Sir, can you look at Exhibit 246, please.

16 A. I have that.

17 Q. And is Exhibit 246 the account -- the bank statement for
18 241 Lloyd Street Inc. with a street address of 33 Theodore
19 Place, Thornhill, Ontario?

20 A. Yes.

21 Q. And you produced this to us in discovery, correct?

22 A. Correct.

23 Q. And is it correct that the account number is 2835569?

24 A. Yes.

25 MR. RODDY: Your Honor, we offer into evidence

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1 Plaintiffs' Exhibit No. 246.

2 MR. KLEND: I do not object.

3 THE COURT: It is admitted.

4 (Plaintiff's Exhibit 246 admitted into
5 evidence.)

6 Q. (By MR. RODDY) Now, sir, would you agree with me that the
7 241 Lloyd Street account is something that was under your
8 control?

9 A. Yes.

10 Q. And is it true that this account, like the account for 480
11 Linda Street, also had a U.S. dollar side and a Canadian
12 dollar side?

13 A. Yes, sir, it does.

14 Q. And would you agree with me -- is it correct that between
15 November 2013 and June 2014, an eight-month period, the U.S.
16 dollar side of the account received 15 wire transfers totaling
17 just over \$500,000?

18 A. Sorry. The period again, June?

19 Q. I'm sorry. November of 2013 and June of 2014, which is an
20 eight-month period.

21 A. I will take your word. I haven't gone through and counted
22 the wires, but I will assume it's correct.

23 Q. And is it correct, sir, that during that eight-month
24 period you transferred the money from the U.S. dollar side to
25 the Canadian dollar side and then spent it as you saw fit?

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1 A. I transferred it, yes.

2 Q. And is it correct that that money is now all gone?

3 A. Yes. That account is closed, yes.

4 Q. Are there any other bank accounts that you haven't told us
5 about?

6 A. During the class period, no.

7 Q. Sir, as I look at this 241 Linda Street Inc. account, you
8 see wire transfers of borrower fees coming in from something
9 called Bernard Feldman PA?

10 A. Where would that be in the --

11 Q. Certainly. You have the statements open in front of you?

12 A. Yes, I see, yeah.

13 Q. Who is Bernard Feldman?

14 A. He was doing inspections, and he's the owner of Hollywood
15 Title, and he was getting wires -- getting funds and wiring
16 them.

17 Q. And are you still doing business with Bernard Feldman?

18 A. Yes.

19 Q. He got in some trouble, didn't he?

20 A. I understand that.

21 Q. What is your understanding of the trouble Mr. Feldman got
22 himself into?

23 A. He apparently had something to do with title -- title
24 forms or title packages or something like that. The insurance
25 company had stopped. He apparently wasn't aware of it, and he

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1 kept running the policies for that or something along those
2 lines. I don't exactly know.

3 Q. Do you know who Ed Ryan is?

4 A. Yes.

5 Q. Is Ed Ryan another one of your aliases?

6 A. Yes.

7 Q. And you're doing business under the name Westmoreland
8 Equity, correct?

9 A. Correct.

10 Q. How long have you been doing business as Ed Ryan under the
11 name Westmoreland Equity?

12 A. Two or three years.

13 Q. How many loan commitments have you issued during that two-
14 or three-year period?

15 MR. KLEND: Objection, relevance, outside the class
16 period.

17 THE COURT: Overruled.

18 Q. (By MR. RODDY) Your answer is?

19 A. I'm not sure how many. Honestly, I don't know.

20 Q. Sir, did you find Plaintiffs' Exhibit 64?

21 A. One sec.

22 Q. That's the damages chart prepared by Gary Weiss, our
23 expert witness.

24 A. Okay.

25 Q. Do you have it in front of you?

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1 A. I do.

2 Q. Okay. Sir, have you -- were you aware that while this
3 litigation was going on, we asked your counsel if you would
4 review previous versions of Plaintiffs' Exhibit 64 and provide
5 any corrections that you thought should be made?

6 A. Yes. And I did give them some corrections that were made,
7 and I don't see they have been made.

8 Q. Who did you give those corrections to?

9 A. His partner, I'm sorry, Chris? Is one of his partners
10 Chris? I gave him several corrections that I pointed out.

11 Q. So you don't know whether this Chris actually communicated
12 those to us?

13 A. I honestly don't know.

14 Q. Okay. One final topic. Manny Singh came and testified
15 here before the Court and the jury. You know Mr. Singh, of
16 course?

17 A. Yes, I do.

18 Q. You heard his testimony?

19 A. Yes.

20 Q. And is it correct that you and Jennifer and Mathew and
21 Paul Riley met Mr. Singh at the Holiday Inn at the Toronto
22 airport back in 2015?

23 A. Yes.

24 Q. You invited Mr. Singh to come up to Toronto for a meeting?

25 A. Yes.

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1 Q. Is it correct, as Mr. Singh testified, that you agreed to
2 pay his travel expenses?

3 A. Yes.

4 Q. And is it correct as Mr. Singh testified that at that
5 meeting you actually wrote out a personal check and gave it to
6 Mr. Singh?

7 A. Yes.

8 Q. And that was to cover half of his travel expenses,
9 correct?

10 A. Correct.

11 Q. You never paid the other half?

12 A. No, he wanted it -- he testified he wanted the other half
13 in cash, so I gave him in cash, as I recall, and then the
14 check. I think that covered the whole thing, I believe. I
15 don't think I owe him \$300, that's for sure.

16 Q. Sir, can you see this image of the check?

17 A. No, I can't.

18 Q. Okay.

19 A. What's the exhibit?

20 Q. Doesn't have an exhibit number yet, but I'll hand a copy
21 to your counsel. And I'll represent to you, sir, that this
22 was disclosed by us on Tuesday, March 28th, 2017, and what we
23 have in front of us is a check, personal check on the account
24 of Sandy C. Hutchens, 33 Theodore Place, Thornhill, Ontario,
25 made payable to Manny Singh in the amount of \$700, and then

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1 below that you can see the endorsement information indicating
2 that it was deposited.

3 A. Yeah, I've seen that check.

4 MR. RODDY: Your Honor, we offer this as exhibit
5 next.

6 MR. KLEND: I do not object.

7 THE COURT: Pardon me?

8 MR. KLEND: I don't object.

9 THE COURT: That will be 251.

10 (Plaintiffs' Exhibit 251 admitted into
11 evidence.)

12 MR. RODDY: 251. May we display it to the jury,
13 please?

14 THE COURT: Yeah, it should be up there.

15 Q. (By MR. RODDY) So, Mr. Hutchens, that's your -- you can't
16 see it, but in 2015 did you maintain a bank account at Korea
17 Exchange Bank of Canada in Thornhill, Ontario?

18 A. Is this -- it's not within the class period, is it? I'm
19 not sure. But I do -- I have -- I had an account there, yes.

20 Q. And you wrote a check to Manny Singh for \$700?

21 A. Yes.

22 Q. And that was to reimburse him for travel expenses for
23 coming up to meet with you in Toronto, correct?

24 A. Correct.

25 MR. RODDY: Thank you, Your Honor. We have nothing

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1 further.

2 (This portion of proceedings concluded at 4:38

3 p.m.)

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REPORTER'S CERTIFICATE

I, SARAH K. MITCHELL, Official Court Reporter for the United States District Court for the District of Colorado, a Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein at the time and place aforementioned and that the foregoing pages constitute a full, true and correct transcript.

Dated this 21st day of May, 2017.

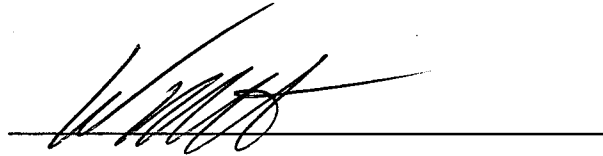
/s/ Sarah K. Mitchell

SARAH K. MITCHELL
Official Court Reporter
Registered Professional Reporter
Certified Realtime Reporter

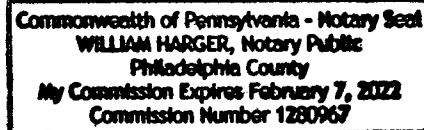
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TAB 19

This is **Exhibit 19** referred to in the
Affidavit of Howard Langer, sworn before me,
this 8th day of January, 2019

A handwritten signature in black ink, appearing to read 'W. Harger', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



**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 LT1 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

GARY STEVENS, LINDA STEVENS and
1174365 ALBERTA LTD.
Applicants

v.

TANYA HUTCHENS
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

APPLICATION RECORD

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