

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

-and-

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

Respondents

SECOND REPORT OF THE RECEIVER

May 15, 2019

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Respondents

SECOND REPORT OF THE RECEIVER

May 15, 2019

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I. INTRODUCTION AND PURPOSE OF THE FIRST REPORT

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

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

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

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

5. Each head of work is continuing.

6. The Receiver files this second report (the “**Second Report**”) in order to:
- (a) Advise the court of the Receiver’s activities since its first report dated March 14, 2019 (the “**First Report**”);
 - (b) Advise the court of the progress and findings of the Receiver’s investigation into the Debtors’ assets since the First Report;
 - (c) Advise the court of the progress of the Receiver’s efforts to sell properties pursuant to the April Order; and
 - (d) Support the Receiver’s request for approval of (i) its activities; and (ii) the fees and disbursements of the Receiver and its counsel through April 30, 2019.

II. DISCLAIMER

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

III. BACKGROUND

A. The Parties

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

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

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

B. The Pennsylvania Action and Judgments

11. In their Pennsylvania District Court action, the Applicants alleged that the Hutchens created and controlled a company, Westmoreland Equity Fund, LLC, which issued commitments for mortgage loans to prospective borrowers that it had neither the capacity nor intention to fund. Prospective borrowers were required to pay advance fees as a condition for closing. Once the loan application process was far enough along, Westmoreland would find fault with the loan

application, impose additional terms, and often require additional fees. Westmoreland would invariably find that the prospective borrower had failed to abide by these new terms and terminate the loan application process. Upon termination of the loan application, Westmoreland would keep all the monies advanced (the “**Loan Fraud**”).

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

C. The Colorado Action

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

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

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

IV. ASSET INVESTIGATION

A. Overview

15. Since its initial appointment on February 28, 2019, the Receiver has conducted an investigation to identify assets of the Debtors. In its First Report, the Receiver reported on the status of that investigation as of March 15, 2019, the date of the First Report. By that date, the Receiver had sent out several requests for information and records to the parties and third parties, many of which were then outstanding. Since March 15, 2019, the Receiver has:

- (a) Sent follow-up information requests to parties and third parties who had not provided full responses;
- (b) Sent information requests to a number of additional third parties;
- (c) Conducted further searches of public databases including corporate profile searches, title searches, real estate listings, and Purview (Teranet);
- (d) Conducted examinations of Sandy and Tanya; and
- (e) Reviewed information obtained through its investigation in order to identify Debtor assets, as well as to attempt to trace the flow of the lending fees that were the subject of the Pennsylvania action and the Colorado Class Action.

16. The Receiver’s investigation is ongoing. As described in the following sections, the Receiver continues to await some requested information and documents. In addition, the Receiver has not yet completed its examinations of Sandy and Tanya.

17. The Receiver has located four properties other than the Properties listed in Schedule B to the March Order that appear to be owned and/or controlled by Mr. and Mrs. Hutchens or for their benefit. These are described at ¶¶91-93 below.

B. Requests for Information and Responses

18. The Interim Appointment Order and March Order empower the Receiver to compel information and records from the parties and third parties, and to conduct examinations under oath. The Receiver requested information and records from a number of persons:

- (a) The Applicants;
- (b) Sandy;
- (c) Tanya;
- (d) The Companies;
- (e) The plaintiffs in the Colorado Enforcement Action;
- (f) Morry Posner, known to have acted as accountant for the Respondents and affiliated corporations in the past;
- (g) Two solicitors known to have acted for the Debtors in respect of a number of real property transactions;
- (h) A law firm representing the Hutchens in Colorado that is mortgagee under mortgages registered against title to several Properties;
- (i) Financial institutions at which the Respondents and certain affiliated corporations were known to have held accounts;
- (j) The other Schedule I banks and National Bank;
- (k) The listing agents for Properties listed for sale on or about January 22, 2019, and realtors who acted on the January 2019 sales of two additional properties.

19. The Receiver made a number of these requests prior to the First Report and reported on their status as at March 15, 2019 in that report. The following sections provide an update on the status of the pre-First Report requests as well as additional requests made since.

20. Attached at **Appendices 8, 9 and 10** are tables summarizing the Receiver's requests and the responses it has received as of the date of this Second Report.

1. The Applicants

21. On March 6, 2019, the Receiver wrote to counsel for the Applicants asking them to confirm whether they were asserting a proprietary interest in certain funds, and if so, to describe the flow of those funds with supporting documentation. A copy of the Receiver's March 6, 2019 letter is attached at **Appendix 11**.

22. On March 12, 2019, the Applicants confirmed they were seeking a proprietary interest in three separate payments and summarized how those funds flowed from them to 241 Lloyd Street Inc. and 1755 Regent Street Inc. The Applicants have provided evidence of wire transfers and account statements as supporting documentation. A copy of the Applicant's March 12, 2019 letter (without attachments) is attached at **Appendix 12**.

23. The Applicants have responded to the Receiver's information and records request in full.

2. Sandy Hutchens

24. On March 6, 2019, the Receiver wrote to counsel for Sandy asking to examine Sandy and requesting certain information and records, including:

- (a) A statement of personal net worth; sources of income; personal tax returns for 2014-2018; a list of entities in which Sandy holds an interest, and corporations of which he is an officer or director;
- (b) With respect to the Companies and four of the Additional Companies: shareholder information, contact information for accountants and bookkeepers, access to electronic devices, tax returns and financial statements;
- (c) With respect to the Properties: contact information for accountants and bookkeepers, and details and records of property management and rental income;
- (d) Details of any other properties, not referenced in the letter, in which the Hutchens or one of the companies referenced in the letter has an interest; and
- (e) Details and records of bank accounts and investment accounts and other assets;
- (f) Details and records of four recent property sales and two mortgages on certain of the Properties; and
- (g) Details and records related to the Respondents' trust claim.

A copy of the Receiver's March 6, 2019 letter is attached at **Appendix 13**.

25. On March 26, 2019, following the March Order's extension of the Receiver's appointment, the Receiver wrote to Sandy with a list of requests then outstanding. A copy of the Receiver's March 26, 2019 letter is attached at **Appendix 14**.

26. Sandy responded via counsel to each of the Receiver's questions and document requests in a series of responses sent between March 8 and April 10, 2019. Copies of his responding emails (without attachments) are attached at **Appendix 15**. The table at Appendix 8 summarizes Sandy's responses and outstanding requests.

27. The Receiver examined Sandy under oath on April 12, 2019. Sandy gave a number of undertakings at that examination, which he has partially answered. A number of undertakings are outstanding as of the date of this Second Report. A chart of Sandy's undertakings and his responses to date (without attachments) is attached at **Appendix 16**.

28. The Receiver did not complete its examination on April 12, 2019. It has scheduled a further examination for May 17, 2019 to complete its questions, including questions arising from Sandy's answers to undertakings.

3. Tanya Hutchens

29. On March 6, 2019, the Receiver wrote to counsel for Tanya seeking to examine her and requesting similar information and records to those sought from Sandy. A copy of the Receiver's March 6, 2019 letter is attached at **Appendix 17**.

30. On March 26, 2019, following the March Order's extension of the Receiver's appointment, the Receiver wrote to Tanya with a list of requests then outstanding. A copy of the Receiver's March 26, 2019 letter is attached at **Appendix 18**. The Receiver requested further information and sent further follow-ups in April and May 2019, copies of which are attached at **Appendix 19**.

31. As of the date of this report, a significant number of requests and undertakings are outstanding. Tanya has provided no responses since the date of the First Report. The table at Appendix 9 summarizes Tanya's responses and outstanding requests.

32. In the Receiver's view, by failing to provide the information and records requested of her pursuant to the Initial Appointment Order prior to the issuance of the March Order, Tanya is in

violation of ¶24 of the March Order, which required the Respondents to “fulfill their obligations under the [Initial Appointment Order] by no later than April 18, 2019.”

33. As reported at ¶¶40-41 of the First Report, Tanya failed to attend her first scheduled examination due to illness, which she evidenced by producing medical records. She attended rescheduled examinations on April 4 and 25, 2019. The Receiver had scheduled an examination on April 18, 2019, but counsel for Tanya advised the day prior that she could not attend due to illness. Tanya did not produce a medical record evidencing this illness despite the Receiver’s request, but did attend a rescheduled examination the week following.

34. Tanya gave 28 undertakings at her examination. She answered one at a later point in the examination. She did not answer any of her other undertakings until May 15, 2019, when she provided a set of answers as the Receiver was finalizing this Second Report. The Receiver has not yet reviewed her answers in substance or for completeness. A chart of her undertakings is attached at **Appendix 20**.

35. The Receiver has not completed its examination of Tanya. It intends to schedule a further examination to complete its questions, including questions arising from Tanya’s answers to undertakings, following receipt of those answers.

4. The Companies

36. On March 6, 2019, the Receiver wrote to counsel for the Companies seeking, among other things, financial statements; tax returns; information on shareholders; copies of minute books; information on property management and rental income; banking records; information regarding their collective debt of CA\$2 million owed to Adroit Advocates LLC; information regarding the mortgages in favour of Dina Brik; and details regarding the Hutchens’ claim that all the properties

owned by the Companies are held in trust for their children. A copy of the Receiver's March 6, 2019 letter is attached at **Appendix 21**.

37. On March 11, 2019, the Companies responded by providing a list of trust agreements that had already been produced in the Colorado Class Action.

38. On March 26, 2019, following the March Order's extension of the Receiver's appointment and, the Receiver wrote to the Companies with a list of requests then outstanding. A copy of the Receiver's March 26, 2019 letter is attached at **Appendix 22**.

39. The Receiver has received some of the information that it requested from the Companies from other sources. However, the Companies have yet to respond to the remainder of the Receiver's requests.

5. Colorado Plaintiffs

40. On March 6, 2019, the Receiver wrote to counsel for the plaintiffs in the Colorado Enforcement Action asking them to confirm if their clients were asserting a proprietary interest in certain assets, and if so, to describe the corresponding flow of funds with supporting documentation. A copy of the Receiver's March 6, 2019 letter is attached at **Appendix 23**.

41. On March 12, 2019, the Colorado plaintiffs confirmed that they are seeking a proprietary interest in the Respondents' assets. They provided a detailed summary of their trust claim as well as pleadings, exhibits, expert analysis, depositions, trial testimony, and court orders in support of their trust claim. The Colorado plaintiffs have advised the Receiver that, with the exception of certain materials filed in court, they are maintaining privilege over most of the documents that they

have provided. A copy of the cover letter describing the documents that the Colorado plaintiffs have provided (without attachments) is attached at **Appendix 24**.

42. The Receiver has subsequently requested information to assist with its asset investigation and received prompt responses.

6. Hutchens Accountant

43. On March 6, 2019, the Receiver wrote to Morris Posner, accountant for the Hutchens, requesting the Hutchens' tax returns for 2014-2018, as well as tax returns and financial statements for the four Additional Companies that the Receiver was aware of at the time. A copy of the Receiver's March 6, 2019 letter is attached at **Appendix 25**.

44. On March 26, 2019, following the March Order's extension of the Receiver's appointment and, the Receiver wrote to follow up on its previous requests. The next day, Mr. Posner advised that he did not have any of the tax returns or financial statements requested.

45. On April 9, 2019, the Receiver asked Mr. Posner if he would be willing to attend for an examination and if he had other financial records from the Hutchens besides tax returns or financial statements. After receiving no response, the Receiver followed up on this request on April 15, 2019.

46. Later that day, Mr. Posner advised that he did not have any additional financial information. The Receiver responded by asking Mr. Posner to explain why he had testified in the Colorado Class Action in the spring of 2017 that he was the Hutchens' accountant at the time. Mr. Posner reiterated that he had not been filing returns for any of the "Hutchens' companies since the 2015 year," because Mr. Hutchens had failed to pay an outstanding invoice.

47. On May 2, 2019, the Receiver asked Mr. Posner to provide the last set of tax returns that he filed for the Hutchens and any financial statements that he prepared for the Hutchens or their corporate entities. On May 14, 2019, Mr. Posner provided copies of Sandy's and Tanya's 2014 federal tax returns. The Receiver then requested the tax returns for the Hutchens' corporate entities, a request to which Mr. Posner has not responded as of the date of this Second Report. A copy of the Receiver's correspondence with Mr. Posner from March 27 to May 14 is attached at **Appendix 26**.

48. As a result of Mr. Posner's indication that he has no information or records subsequent to 2014, the Receiver has not required him to attend for an examination under oath.

7. Mortgage Law Firm

49. On March 6, 2019, the Receiver wrote to counsel for Adroit Advocates LLC, a mortgagee of certain of the properties that are the subject of the Order, in each case with a registered mortgage amount of CA\$2,000,000. The Receiver understands that this firm represents the Hutchens in respect of the Colorado proceeding. The Receiver inquired as to the nature and amount of the debt to which the mortgages relate, and sought corresponding documents. A copy of the Receiver's March 6, 2019 letter is attached at **Appendix 27**.

50. Adroit Advocates LLC responded through counsel on *date*. A copy of its counsel's letter (without attachments) is attached at **Appendix 28**.

8. Realtors

51. Two of the Properties were actively listed for sale at the time of the Initial Appointment Order, 29 Laren Street and 1479 Maple Road. The Receiver sought information and records from the brokers of record for those listings.

52. On March 10, 2019, the Receiver wrote to Alex Dumas, the listing broker for 29 Laren Street Inc. The Receiver requested a copy of his brokerage's listing agreement, as well as written communications with the individual instructing Mr. Dumas.

53. On March 11, 2019, Mr. Dumas provided a copy of the listing agreement, MLS data sheet, and the Working With a Realtor form, and advised that they were signed by Sandy. He also forwarded an email from Sandy to Jan Luistermans, another realtor apparently working with Mr. Dumas, stating the following:

Thank you. The Order is correct, the property was listed, there were CPL's and had an acceptable P & S Agreement been submitted as I indicated approval would have had to be given with the lien holders. Consent was given at the previous hearing that there would be a freeze on properties pending the final disposition of the matter. I apologize for not notifying you. As you recall Tanya Hutchens had authorized the listing and sale of the property subject of course to an approval by the CPL holders. Tanya will advise you if there is any change in the situation if and when it occurs.

54. Later that day, Mr. Dumas forwarded an email in which he asked Sandy to sign a listing cancellation form. On March 18, 2019, Mr. Dumas forwarded an email to the Receiver from Sandy, with a "signed cancellation of listing signed by me [Sandy] on behalf of Tanya."

55. On March 14, 2019, the Receiver wrote to Heather Jones, the broker responsible for the listing for 1479 Maple Road. The Receiver requested a copy of his brokerage's listing agreement, as well as written communications with the individual instructing him.

56. On March 15, 2019 Ms. Jones advised the Receiver that she was initially contacted by Tanya on December 13, 2018 to discuss the listing of 1479 Maple Road and attached a copy of her email correspondence with Tanya, an internal realtor report for the property, the property listing, the listing agreement, and the Working With a Realtor form.

57. The Receiver also investigated whether the Hutchens had an ownership interest in two Sudbury properties, at 241 Lloyd Street and 1755 Regent Street, which had been sold in January 2019. The Receiver wrote to the listing brokers for these sales on March 12, 2019. These brokers responded that they had not worked with the Debtors, and refused to provide further information. As described at ¶90 below, following further investigation the Receiver has no reason to believe that the Debtors in fact hold a legal or beneficial interest in any of those nine properties.

9. Financial Institutions

58. The Receiver has requested information from the following financial institutions. Copies of the Receiver's letters requesting information from these institutions are attached at **Appendix 29**:

- (a) KEB Hanna Bank (“**KEB**”);
- (b) Meridian Credit Union (“**Meridian**”);
- (c) Buduchnist Credit Union (“**BCU**”);
- (d) Sudbury Credit Union;
- (e) Bank of Montreal (“**BMO**”);
- (f) Bank of Nova Scotia;
- (g) Canadian Imperial Bank of Commerce (“**CIBC**”) and CIBC Wood Gundy;
- (h) National Bank of Canada;

- (i) Royal Bank of Canada; and
- (j) Toronto Dominion Bank (“**TD Bank**”).

59. On March 11, 2019, KEB faxed to the Receiver a set of account statements for the period February 1, 2015 to December 3, 2015 for three accounts in the names of Sandy and 241 Lloyd Street Inc., for which the Receiver specifically asked. These statements show that all three accounts were closed on December 3, 2015, with approximately CA\$45,000 withdrawn in the preceding days. The Receiver also asked KEB whether it has or had any other accounts in the names of the Debtors. KEB has yet to respond to that question.

60. On March 15, 2019, Meridian provided the Receiver with limited account statements for accounts in Sandy’s and Tanya’s names. A copy of Meridian’s cover letter of March 15, 2019 (without exhibits) is attached at **Appendix 30**.

61. On April 25, 2019, the Receiver requested the latest payout amounts for the four registered mortgages held by Meridian on 33 Theodore Place, 1779 Cross Street, 1790 Cross Street, and 1889 Simcoe Boulevard (discussed in further detail below). Meridian advised the Receiver that it would do so, but has not as of the date of this Second Report.

62. On March 20, 2019, BCU provided the Receiver with account transaction histories for accounts under 241 Lloyd Street Inc., 1755 Regent Street Inc., and Sandy. These records show a number of transfers out, the destinations of which are not indicated. On May 13, 2019, at the Receiver’s request, BCU provided copies of cancelled cheques and the payees of online bill payments. BCU has also advised that it cannot identify the recipients of several email money transfers of interest from Sandy’s account. (Sandy has undertaken to provide that information, but has not done so as of the date of this Second Report.)

63. On April 10, 2019, TD Bank advised the Receiver that current accounts existed for a RESP account under Sandy and Tanya, a personal RRSP for Sandy, and a personal RRSP for Tanya. At the Receiver's request, TD Bank is currently preparing account statements for these accounts to provide to the Receiver.

64. On April 22, 2019, CIBC Wood Gundy provided the Receiver with account statements for Tanya's RRSP account and Sandy's RRSP account. Both are currently empty. On May 25, 2017, the Hutchens withdrew their respective balances in full. Net of tax and fee deductions, Tanya withdrew \$82,228.88 and Sandy withdrew \$46,628.92.

65. On May 7, 2019, the Bank of Nova Scotia advised that it had located customer profiles for fourteen of the entities that the Receiver inquired about, but that all of those accounts were closed prior to 2015. A copy of the letter from the Bank of Nova Scotia listing the entities that it used to have an account for is attached at **Appendix 31**.

66. The remaining financial institutions have acknowledged receipt of the Receiver's request but have not provided any of the requested information or documents as of the date of this report.

10. Solicitors

67. On April 4, 2019, the Receiver wrote to Michael Spiro and Barry Poulson, two lawyers it understands acted for the Hutchens on various real estate transactions and in preparing related trust agreements. The Receiver requested lists of transactions on which they acted and the details of those transactions, as well copies of trust agreements. A copy of the Receiver's April 4, 2019 letter is attached at **Appendix 32**.

68. On April 12, 2019, Mr. Spiro sent the Receiver the following documents:

- (a) Transaction records for the purchase of 29 Laren Street, 1889 Simcoe Blvd, 1790 Cross Street, 1760 Cross Street;
- (b) Mortgage loans and assignments of mortgages relating to 1790 Cross Street, 1779 Cross Street, 1479 Maple Street, 3415 Errington Ave., 3419 Errington Ave., 1479 Maple Street, 33 Theodore Place, 364 Morris Street, 367-369 Howey Drive, 110-114 Pine Street, 3331 Regent Street; and
- (c) Trust Agreements related to 17 Serpentine Street Inc., 525 Kathleen Street Inc., 247 Shaugnessy Street Inc., 3415 Errington Avenue Inc., 3419 Errington Inc., 331 Regent Street Inc., 193 Mountain Street Inc., 110-114 Pine Street Inc., and 3695 Clarence Street Inc.

69. On April 8, 2019, Mr. Poulson’s counsel, J. Robert LeBlanc, advised that Mr. Poulson had acted for the purchasers of five of the properties identified in the March Order, without specifying which ones, but asserted solicitor-client privilege over all of the information in those files. Mr. LeBlanc also advised that his “clients” might be interested in purchasing one of the properties. The Receiver requested clarification of which five property sales Mr. Poulson had acted on, whether he had acted for any other transactions involving the Hutchens, the identity of his “clients” in addition to Mr. Poulson, and which property they were interested in purchasing.

70. On May 14, 2019, following a further exchange of correspondence, Mr. LeBlanc advised that Mr. Poulson has “never took instructions from” Tanya and has “never acted for her”. Mr. LeBlanc otherwise refused to respond to the Receiver’s requests for information. A copy of the emails exchanged between the Receiver and Mr. LeBlanc is attached at **Appendix 33**.

11. Dina Brik

71. Dina Brik is Tanya's mother. During Tanya's examination, she advised the Receiver that because most banks refuse to permit her to hold or control accounts, she has used two accounts at the BMO held in the name of corporations for which Ms. Brik is signing officer.

72. In addition, the Receiver has conducted title searches in Ms. Brik's name and found that she owns several properties. During Tanya's examination, she advised the Receiver that one of these is a condominium apartment in Toronto, Ontario that was Tanya's former residence, and that Ms. Brik acquired title to the unit in 1998 in trust for Tanya. Tanya also advised that she believed that property was sold years ago, but could not explain why Ms. Brik's name remains on title. This may therefore be a property in which Tanya holds a current beneficial interest.

73. The other properties in Ms. Brik's name appear to have been acquired in 1988 and 1992, and the Receiver has no current basis to suggest that they are held in trust for any Debtor.

74. On April 22, 2019, the Receiver wrote to Ms. Brik, asking for information regarding the properties in her name as well as the BMO accounts. A copy of the Receiver's April 22, 2019 letter is attached at **Appendix 34**. Counsel for the Receiver sent this letter by mail on that date, and again by email on April 29, 2019 after Tanya provided Ms. Brik's email address to the Receiver. The Receiver sent a follow-up email to Ms. Brik on May 8, 2019. On May 15, 2019, as the Receiver was finalizing this Report, the Receiver received a response from Ms. Brik. Her response is attached at **Appendix 35**.

12. Jan Luistermans

75. Sandy and Tanya advised the Receiver at their respective examinations that they are both recovering addicts and that in the spring of 2018, Sandy told Ms. Brik that he believed Tanya had

suffered a relapse. Sandy insists that he can tell that Tanya is using narcotics; Tanya denies that she has relapsed. The Receiver has no special expertise to determine whose position is accurate and does not consider it necessary to do so in order to fulfill its mandate.

76. According to both Sandy and Tanya, Ms. Brik transferred \$300,000 from one of her BMO accounts to Jan Luistermans, a realtor residing in Sudbury.

77. On April 26, 2019, the Receiver wrote to Mr. Luistermans providing him with a copy of the March Order and requesting (a) that he freeze any funds transferred to him by Ms. Brik that were still in his power, possession or control; and (b) information regarding any funds transferred to him from Ms. Brik. A copy of the Receiver's April 26, 2019 letter is attached at **Appendix 36**.

78. On May 1, 2019, Mr. Luistermans advised that he was asked by Ms. Brik to accept money to pay certain Property bills in accordance with Sandy's directions. He did so between July 31, 2018 and October 31, 2018 and offered to provide an accounting. The Receiver responded later that day to request, in addition to the accounting Mr. Luistermans offered to provide, any corresponding bank records, transaction records, correspondence related to these events, and the amount that he transferred back to Sandy. A copy of the Receiver's email exchange with Mr. Luistermans on May 1, 2019 is attached at **Appendix 37**.

79. On May 10, 2019, Mr. Luistermans emailed the Receiver an account history for August 1 to November 1, 2018, with an accompanying handwritten notation. On May 14, 2019, Mr. Luistermans emailed the Receiver an account statement from RBC for August 1 to November 1, 2018, and advised that he no longer holds any funds for Sandy or Tanya. Sandy has also provided the Receiver with copies of receipts, cancelled cheques, account statements and credit card

statements that he advises show the application of the \$300,000 transferred from BMO. The Receiver is in the process of reviewing these records.

13. Ian Mills

80. During her examination, Tanya indicated that she has used the bank account of a friend named Ian Mills. Sandy told the Receiver that Mr. Mills is Tanya's boyfriend. The Receiver requested Mr. Mills' contact information from Tanya on April 26, 2019 but she has not provided it as of the date of this Second Report. If possible, the Receiver intends to ask Mr. Mills for an accounting of Debtor funds that flowed through bank accounts in his name.

C. Identified Assets

81. The Receiver has undertaken a broad investigation to identify assets of the Debtors. That investigation is ongoing. The following subsections summarize the Receiver's findings with respect to real property, personal property, and cash and securities.

82. A summary of the Debtor assets and liabilities (including claims not yet proven) identified to date is attached at **Appendix 38**.

83. In carrying out its review and investigation, the Receiver has not had the benefit of any annual financial statements to date and is advised these have not been prepared for any of the Debtor entities since 2014. Further, neither the Debtors nor their accountants were able to provide any recent interim financial statements for the recent years' activities. Accordingly, the Receiver's findings set out below are based on its review and investigations to date and do not constitute an audit.

1. Real Property

84. As indicated above, the Interim Order and March Order list certain Properties over which they appointed the Receiver. There are 14 Properties listed Schedule B to the March Order, comprising 20 registry parcels.² One or more Debtors are the registered owners of each. The Properties are all located in Ontario, in Sudbury (nine properties), Thornhill/Vaughan (one property), and Innisfil (four properties). They include both single-unit and multi-unit residential properties. Most are rented to tenants. The Receiver notes that one listed Property, 193 Mountain Street, Sudbury, was in fact sold in November 2018.

85. A table summarizing the estimated values, mortgage charges, estimated equity, and registered CPLs for each of the Properties is attached at **Appendix 39**. The estimates of value and equity are based on Purview's algorithmic estimates and are not formally appraised values.

86. The Properties have an estimated total value of CA\$8,493,400. To date, the Receiver has identified registered mortgage charges totaling CA\$4,308,251 as well as a \$2.0 million charge on five of the Properties registered by a law firm that represents Sandy and Tanya in the Colorado Class Action. These registrations are described in the Claims section, below.

87. One of the Properties, 367-369 Howie Drive, Sudbury, appears to be 40% owned (indirectly) by a group of co-investors. The others are owned outright by Tanya, Sandy, or other Debtors of whom Sandy and Tanya are the sole shareholders (beneficiary, in the case of the Estate of Judith Hutchens, Sandy's sister).

² The March Order added two Properties to those listed in Schedule B to the Interim Appointment Order, namely 17 Serpentine Street, Sudbury and 42 Clemow Avenue, Sudbury.

88. The plaintiffs in the Colorado Enforcement Action have registered Certificates of Pending Litigation against most of the Properties.

89. The Receiver is continuing to communicate with the relevant municipalities to determine the level of property tax arrears on each of the properties.

90. At ¶¶73 and 74 of its First Report, the Receiver identified eleven properties of interest in Sudbury that it intended to investigate further. The following table summarizes the status of these properties. In short, two (17 Serpentine Street and 42 Clemow Avenue) were added to the receivership in the March Order. The Receiver has since determined that the bases for its interest in the other nine properties did not in fact reflect recent Debtor ownership, and in most cases did not reflect Debtor ownership at all. As of the date of this Second Report, the Receiver has no reason to believe that the Debtors hold a legal or beneficial interest in any of those nine properties.

| Hutchens et al Original Properties of Interest | | | |
|---|--|-----------------|--|
| Property | Current Owner | Estimated Value | Comments |
| 17 Serpentine Street, Sudbury | 17 Serpentine Street Inc. | 210,000 | Since transferred to Receivership per March 18, 2019 Order Schedule B |
| 480 Linda Street, Sudbury | 480 Linda Street Holdings Corp. | 1,100,000 | Review confirms property was ultimately never purchased by Debtors |
| 1755 Regent Street, Sudbury | Regent North Properties Inc. | 900,000 | Review confirms property was ultimately never purchased by Debtors |
| 241 Lloyd Street, Sudbury | 241 Lloyd Street Holdings Corp. | 2,100,000 | Review confirms property was ultimately never purchased by Debtors |
| 300 Elgin Street, Sudbury | George Soule | 510,000 | Review confirms property was ultimately never purchased by Debtors |
| 308 Elgin Street, Sudbury | Unknown | unknown | Review confirms property was ultimately never purchased by Debtors |
| 233 Shaughnessy Street, Sudbury | George Soule | 583,300 | Review confirms property was ultimately never purchased by Debtors |
| 241 Shaughnessy Street, Sudbury | 502 Holdings Inc; George Soule | 237,300 | Review confirms property was ultimately never purchased by Debtors |
| 247 Shaughnessy Street, Sudbury | George Soule | 165,700 | Review confirms property was ultimately never purchased by Debtors |
| 789 Lawson Street, Sudbury | Glavonjic, Savo; Glavonjic, Borka | 350,000 | Formerly owned by 789 Lawson Street Inc a Hutchens entity. Sold March 30, 2012 |
| 42 Clemow Avenue, Sudbury | Sandy Hutchens; Estate of Judith Anne Hutchens | 134,400 | Since transferred to Receivership per March 18, 2019 Order Schedule B |
| Total | | 6,290,700 | |

91. However, since the date of its First Report, the Receiver has identified four additional properties of interest (the “Additional Properties”). The following table lists their addresses, registered owners, and Purview-estimated value of each Additional Property:

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

92. Tanya is the registered owner of the first three properties at 1573 Houston Ave., Innisfil, 1760 Cross St., Innisfil, and 1015-175 Hilda Ave., Thornhill. Title searches indicate no registered mortgages on these properties. The Receiver has sought the parties' consent to expressly add these properties to the Receivership. A copy of the Receiver's April 29, 2019 letter regarding this and proposed additional sales described at ¶134 below is attached at **Appendix 40**.

93. In addition, as detailed at ¶72 above, Ms. Brik appears to hold title to Tanya's former residence, which Tanya and Ms. Brik each confirmed she held in trust for Tanya. It therefore appears that Tanya may hold a current beneficial interest in this property, a condominium at 131 Beecroft Avenue in Toronto. Tanya advised that this property was sold, but no such sale is registered on title and Tanya has not answered an undertaking to provide documentation of that sale as of the date of this Second Report.

94. The Debtors did not disclose the existence of any of the Additional Properties to the Receiver despite being asked for that information. The Receiver learned of each of the Additional Properties through other sources.

2. *Personal Property Assets (Other than Cash and Securities)*

95. Through its ongoing review and investigation, the Receiver has identified various personal property assets other than cash and securities. These are set out in detail in the chart attached at **Appendix 41**. These personal property assets include boats and motor vehicles identified from insurance records and living expense requests from Tanya.

3. *Cash, Securities and Flow of Funds*

96. The Receiver has discovered minimal cash and securities owned by the Debtors to date. These are set out in the following table:

| HUTCHENS ET AL | | | | | | |
|----------------------------------|-------------------------|----------------|---------------------------------------|------------------------------|---------------|-----------|
| STATEMENT OF CASH AND SECURITIES | | | | | | |
| Notes | Bank Account | Account Number | Entity / Person | Period | Balance as on | Balance |
| - | BMO Account | 1998-893 | 2321676 Ontario Inc | Mar 31, 2017 to May 6, 2019 | 6-May-19 | 2,290.00 |
| 1 | BMO Account | 1997-890 | 2321678 Ontario Limited | Unknown | Unknown | Unknown |
| 2 | Meridian RRSP Advantage | 4330343 | Tatiana Hutchens | Dec 31, 2014 to Feb 28, 2019 | 28-Feb-19 | 20,880.27 |
| 3 | Savings TD RESP | 990369746 | Tatiana Hutchens and Sandy Hutchen | - | 27-Mar-17 | 7,707.26 |

NOTES:

Note 1 The Receiver is yet to receive a copy of bank statements for this account. This information has been gathered from the examinations.

Note 2 Per email received from Tanya Hutchens on May 14, 2019 re living expenses and net worth, the remaining balance of RRSP is \$5,000

Note 3 Per renewal notices dated February 11, 2017 and and July 16, 2016 from TD Canada Trust. We are not aware of the current status of this RESP. No current statements have been provided effective the date of this Report.

97. The Receiver has investigated cash and securities holdings through a variety of means, including (a) information requests sent to every Schedule I bank and National Bank; (b) identification of significant payments by and to the Debtors or entities in their control, and efforts to trace their sources and destinations; and (c) efforts to trace approximately US\$12 million in borrower fees known to have been paid to entities controlled by Sandy since 2008. These are the fees that were the subject of the plaintiffs' fraud allegations in the Pennsylvania action and the Colorado Class Action.

98. As of the date of this Second Report, the Receiver does not have full responses from banks or the Debtors and has not completed its tracing efforts. It is therefore possible that the Receiver may discover cash or other assets through this aspect of its investigation.

99. To date, however, the Receiver's review of extensive bank records has shown either bank accounts closed with nil balances or existing known bank accounts with minimal balances.

100. It appears that Tanya primarily used a BMO account in the name of 2321676 Ontario Inc. to receive rents and pay expenses associated with most of the Properties. She also appears to have used a BMO account in the name of 2321678 Ontario Inc. for 367-369 Howie Drive, in which the Debtors and third parties share ownership, as well as two other properties that the same ownership group formerly owned. Tanya's mother, Ms. Brik, is the sole officer, director and signing officer of both corporations. Tanya's evidence was that Ms. Brik permitted Tanya to use the accounts and provided her with online banking credentials and bank cards, and that this arrangement was necessary because most banks have refused to deal with Tanya or Sandy.

101. On April 22, 2019, CIBC confirmed that RRSP accounts held by Tanya and Sandy were fully withdrawn in May 2017. CIBC reported that Tanya withdrew \$82,228.88 on May 25, 2017 with an additional \$35,240 withheld for taxes, plus a charge of \$113 for gross investment of \$117,582.83; Sandy withdrew \$46,628.92 on May 25, 2017 with an additional \$19,983.83 withheld for taxes, and a charge of \$113 for gross investment of \$66,725.75.

102. The review of the bank statements received from Meridian Credit Union Limited pursuant to request made by the Receiver shows that Tanya Hutchens holds a RRSP Advantage Savings account (Account number 4330353). Per the RRSP Advantage Savings account statements, Tanya Hutchens has a balance of \$20,880.27 as on February 28, 2019 in this account.

103. It appears that the Hutchens also hold a RESP account at TD Bank. The most recent statement the Receiver has seen to date shows a balance of approximately \$7,700 as at March 2017.

D. Claims

104. The Receiver is aware of a number of claims against the Debtors and/or the Properties, including trust claims, secured claims and unsecured claims.

105. The Receiver has requested information from most of the claimants. That information is summarized below.

106. The Receiver has not reached conclusions on the validity of any claims at this time. It anticipates providing its opinion on the validity of the secured claims of the mortgagees of Properties to be sold pursuant to the April Order, if and when it sells those properties and takes possession of proceeds of sale. As of the date of this Second Report, the Receiver has no reason to doubt the validity of these mortgages.

1. Trust Claims

107. Three different claimant groups have asserted that the Debtors hold Properties wholly or partially in trust for them:

- (a) The Applicants;
- (b) The plaintiffs in the Colorado Enforcement Action;
- (c) Sandy's and Tanya's three children, on whose behalf Sandy and Tanya assert that the Debtors hold most of the Properties in trust.

108. The Applicants make a proprietary claim to approximately \$75,000 in funds they sent to 241 Lloyd Street Inc., a corporation controlled by Sandy. As of the date of this Second Report, the Receiver has not traced these funds into any Property or other identified asset.

109. The Colorado Judgments declare that the Debtors hold several of the Properties in trust for the class members in the Colorado Class Action. The Receiver understands that the plaintiffs in the Colorado Enforcement Action seek to have that declaration recognized in Ontario, and alternatively seek equivalent declarations in Ontario based on a tracing of the payments that were the subject of the Colorado Class Action. They have provided the Receiver with a large volume of records on which they relied in the Colorado Class Action to substantiate their claim. The Receiver understands that the Debtors dispute the validity of these claims.

110. The plaintiffs in the Colorado Enforcement Action have provided information and records to the Receiver in support of their asserted tracing of CA\$1.575 million into Properties and Debtor entities. These are summarized in the following table, and set out in detail at **Appendix 42**:

| Colorado Class Action | | | |
|---|---------------------|---|------------------|
| Constructive Trust - Tracing Claim | | | |
| Estate of Judith Hutchens | | 1 | 615,000 |
| 33 Theodore Place | | 1 | 379,968 |
| 1779 Cross Street | | 2 | 150,626 |
| 364 Morris Street Inc., | no less than | 1 | 4,000 |
| 367-369 Howy Drive Inc., | no less than | 1 | 4,000 |
| 720 Cambrian Heights Inc | no less than | 1 | 1,500 |
| JBD Holdings and/or JBD Family | no less than | 1 | 400,000 |
| Sea Doo | no less than | 1 | 20,000 |
| Total | Cdn or USD\$ | | 1,575,094 |

Notes:

Note [1] These tracing claims are set out in the Second Amended and Final judgement dated July 16, 2018 either page 2, 3 or in the table by the relevant property, with the exception of the Sea Doo which is on page 6 under personal property assets

Note {2}. This is referenced in the Plaintiff submissions dated November 21, 2017 at page 13, where it references shareholder advances to 1779 Cross comprising \$100,626.22 from 308 Elgin Street inc for the yearended Dec 31, 2008 and \$50,000 from First Central Holdings Inc. for the yearended Dec 31, 2009 consistent with the testimony of the accountant Lapedus in November 2015

111. Sandy and Tanya both assert that they hold most of the Properties in trust for their children. They and Mr. Spiro have provided the Receiver with a large number of corresponding trust agreements. The Receiver understands that the Applicants and the plaintiffs in the London Enforcement Action dispute the validity of these trusts as sham trusts and/or as reflecting fraudulent conveyances.

2. *Secured*

112. Four parties who appear to be arm's length lenders are registered mortgagees on certain of the Properties, as set out in the following table:

| Hutchens et al | | | |
|---|------------------------------|-------------|---------------|
| Third Party Mortgages April 30, 2019 | | | |
| Mortgagee | Property | Note | Amount |
| Meridian Credit Union | 33 Theodore Place, Thornhill | 1 | 534,746 |
| Meridian Credit Union | 1779 Cross Street, Innisfil | 1 | 298,238 |
| Meridian Credit Union | 1790 Cross Street, Innisfil | 1 | 86,745 |
| Meridian Credit Union | 1889 Simcoe Blvd, Innisfil | 1 | 203,161 |
| Ron Henderson | 42 Clemow, Sudbury | 2 | 79,358 |
| R & A Hache | 331 Regent Street, Sudbury | 3 | 74,401 |
| Sub total | | | 1,276,649 |
| Adroit Advocates | Various properties | 4 | 2,000,000 |
| Total | | | 3,276,649 |
| Notes: | | | |
| Note [1] - Meridian reflect Notice of Sale balances effective September 2018. Payout balances have been requested effective April 30, 2019 but have not been provided effective this reporting. | | | |
| Note [2] - balance confirmed effective April 30, 2019 | | | |
| Note [3] - Mortgage balance effective February 9, 2019 was confirmed via e-mail dated May 1, 2019 as \$74,400.87. No further monthly payments since (\$763.21 per month). Therefore some interest would need to be accrued to reflect the full balance. | | | |
| Note [4] Adroit Advocates \$2.0 million mortgage registered on 6 properties on Oct 4, 2017: 29 Laren Street, 3415 Errington, 3419 Errington, 110-114 Pine Street, 331 Regent Street and 17 Serpentine Street. | | | |

113. Meridian Credit Union Inc. (“**Meridian**”) holds first mortgages on the properties at 1779 Cross Street, 1790 Cross Street, 1889 Simcoe Blvd. and 33 Theodore Place. Ron Henderson and R & A Hache are private lenders holding first mortgages on 42 Clemow Avenue, Sudbury and 331 Regent Street, Sudbury, respectively.

114. In anticipation of selling the Properties against which Meridian and Mr. Henderson have registered mortgages pursuant to the April Order, the Receiver has obtained an independent legal opinion on the validity and enforceability of these mortgages in a letter dated May 8, 2019 from Elaine Peritz of Jaffe, Peritz LLP. Subject to the usual assumptions and qualifications of such an opinion, it confirms the validity and enforceability of Meridian’s and Mr. Henderson’s mortgage charges. A copy of Ms. Peritz’s May 8, 2019 security opinion is attached at **Appendix 43**.

115. On or around October 4, 2017 the Debtors granted a mortgage on six Properties in the Sudbury area, in the amount of \$2 million in favour of Adroit Advocates, LLC a Colorado Limited Liability Company dba Klenda Gessler & Blue LLC (“**Adroit Advocates**”), the Hutchens defence counsel in the Colorado Class Action. The subject Properties are 29 Laren Street, 3415 Errington Ave, 3419 Errington Ave, 110-114 Pine Street, 331 Regent Street and 17 Serpentine Street. Through counsel, Adroit Advocates provided a package of information including a copy of the mortgage and copies of unpaid invoices totalling US\$1,344,373.25 (approximately CA\$1.79 million at the current USD/CAD exchange rate of approximately 1.33).

116. In addition, several non-arm’s length parties have registered mortgages against certain of the Properties, totalling CA\$2.985 million. These are detailed in the following table:

| Hutchens et al | | | | |
|---|----------------------|-------------------------------|-------------|------------------|
| Non Arms Length Mortgages April 30, 2019 | | | | |
| Mortgagee | Property | Mortgage Date/ Assumed | Note | Amount |
| Tanya Hutchens | 29 Laren Street | 24-Mar-16 | 1 | 597,181 |
| Tanya Hutchens | 367-369 Howey Drive | 20-Sep-17 | 2 | 464,193 |
| Tanya Hutchens | 110-114 Pine Street | 27-Mar-17 | 3 | 602,000 |
| Tanya Hutchens | 110-114 Pine Street | 19-Aug-14 | 4 | 125,000 |
| Tanya Hutchens | 331 Regent Street | 14-Feb-14 | 5 | 99,000 |
| Tanya Hutchens | 17 Serpentine Street | 27-Mar-17 | 6 | 200,000 |
| Tanya Hutchens | 17 Serpentine Street | 7-Jan-16 | 7 | 51,000 |
| Sub total | | | | 2,138,374 |
| Dina Brik | 1790 Cross Street | 10-Feb-12 | 8 | 80,750 |
| Dina Brik | 1479 Maple Street | 10-Feb-12 | 8 | 200,000 |
| Dina Brik | 3415 Errington Ave | 30-Apr-15 | 8 | 150,000 |
| Dina Brik | 3419 Errington Ave | 30-Apr-15 | 8 | 150,000 |
| 146 Whittaker Street Inc. | 17 Serpentine Street | 9-Mar-10 | 8 | 56,000 |
| 146 Whittaker Street Inc. | 29 Laren Street | 10-Feb-06 | 8 | 210,000 |
| Total | | | | 2,985,124 |

Notes:

Note [1] Tanya Hutchens assumed BMO mortgage March 24, 2016

Note [2] Tanya Hutchens assumed BMO mortgage Sept 20, 2017

Note [3] Tanya Hutchens assumed Canadian Western (B2B March 27, 2017; face value \$602,000

Note [4] Tanya Hutchens assumed Barbara Carpenter mortgage August 19, 2014; face value \$125,000

Note [5] Tanya Hutchens assumed from WJ Gater and Solid Rock Mortgage Feb 14, 2014; face value \$99,000

Note [6] Tanya Hutchens assumed Canadian Western (B2B March 27, 2017); face value \$200,000

Note [7] Tanya Hutchens assumed Lapelle Management Jan 7, 2016; face value \$51,000

Note [8] - All of these mortgages have been assumed at face value.

117. The majority of these mortgages by value are held by Tanya Hutchens (\$2.138 million),³ and relate to mortgages assumed from major financial institutions in the period February 2014 to September 2017. The Receiver previously detailed these mortgage assumptions at ¶75 of its First Report. Ms. Brik, Tanya’s mother, holds a further \$580,750 in mortgages, which were registered in the period February 2012 to April 2015. The balance relates to mortgages held by 146 Whittaker

³ Actual mortgage balances are subject to confirmation. In a number of cases the face value of the mortgages assumed have been used as the current balance, which may not be correct.

Street Inc. an Ontario corporation with a registered head office at Tanya's home address 33 Theodore Place, Thornhill and of which she and Sandy are the sole directors. Sandy has advised that he is the company's sole shareholder.

3. *Unsecured*

118. In addition to (a) the secured claimants, whose claims may be unsecured as well as secured; and (b) trade creditors and tax authorities in relation to the Income Producing Properties, the Receiver is aware of one additional judgment creditor. Catherine Atchison holds a judgment dated October 27, 2017 against Sandy, Canadian Funding Corporation and "The Estate of Judith Alexander [*sic*]" in the amount of \$313,530.23 plus accruing interest. Her counsel has provided the corresponding documents to the Receiver. The Receiver understands that Ms. Atchison loaned money to the Debtors secured by certain properties, that she sold those properties pursuant to a power of sale after the Debtors defaulted on the loans, and that Ms. Atchison obtained judgment in the amount of the deficiency.

V. CONTROL AND MANAGEMENT OF INCOME PRODUCING PROPERTIES

119. Paragraph 2 of the March Order empowers and authorizes the Receiver to take possession of, and exercise control over, certain of the Properties that produce rental income (the "**Income Producing Properties**"). The Income Producing Properties consist of eight multi-residential or single-family residences in Sudbury, Ontario (the "**Sudbury Rentals**") and four single-family cottages in Innisfil, Ontario (the "**Innisfil Rentals**") at the following municipal addresses:

- (a) 29 Laren Street, Sudbury;
- (b) 3415 Errington Avenue, Sudbury;
- (c) 3419 Errington Avenue, Sudbury;

- (d) 331 Regent Street, Sudbury;
- (e) 110-114 Pine Street, Sudbury;
- (f) 1779 Cross Street, Sudbury;
- (g) 367-369 Howey Drive, Sudbury;
- (h) 42 Clemow Avenue, Sudbury;
- (i) 1889 Simcoe Boulevard, Innisfil;
- (j) 1790 Cross Street, Innisfil;
- (k) 1479 Maple Road, Innisfil; and
- (l) 17 Serpentine Street, Innisfil.⁴

120. The following subsections report on:

- (a) The steps the Receiver has taken with respect to the Income Producing Properties;
- (b) The physical and financial condition of the Income Producing Properties, which in most cases is quite poor; and
- (c) The Receiver's cash flow forecast for the Income Producing Properties and the Receiver's arrangements to borrow funds to meet the deficiency between available and required cash.

E. Steps Taken

121. Following the March Order, the Receiver undertook the following steps with respect to the Income Producing Properties:

- (a) Reviewing and verifying tenancies and rent rolls;

⁴ The March Order included a ninth Sudbury property, at the municipal address 193 Mountain Street, Sudbury. However, the Debtors sold that Property prior to the Receiver's appointment. The Receiver therefore has not taken any steps with respect to its control or management.

- (b) Reviewing the physical condition of the Income Producing Properties and individual rental units at each;
- (c) Reviewing historical costs, to the extent records were available to the Receiver;
- (d) Liaising with property management (where applicable), various service providers and Tanya to determine and address critical cost payments outstanding and going-forward;
- (e) Communicating with tenants and redirecting payment of rents to the Receiver; and
- (f) Forecasting cash requirements for initial clean-up, maintenance, repairs, insurance, general holding costs and management of the Income Producing Property.

122. The Receiver retained the services of North Key Property Management, a third party, Sudbury-based property manager (the “**Sudbury Property Manager**”), to assist with the above steps. The Receiver also authorized the Sudbury Property Manager to collect rents from tenants, address emergency service calls from tenants, issue eviction notices to non-paying tenants in accordance with current landlord-tenant laws, rules and practices, act as the Receiver’s local contact for service providers to ensure continuation of essential services, and address emergency issues raised by local by-law enforcement.

123. With respect to the four Innisfil Rentals:

- (a) 1790 Cross Street and 1889 Simcoe Boulevard are rented to tenants;
- (b) 1479 Maple Road is currently vacant and had been listed for sale by Tanya Hutchens. The Receiver provided the listing agent with notice of the of the Receivership proceeding and the March Order; and
- (c) 1779 Cross Street is being occupied, rent-free, by Sandy.

124. Rents for the two tenanted Innisfil Rentals are normally paid to Tanya. The Receiver has not taken possession or control of the rented Innisfil Properties. However, it has advised the tenants of the March Order and directed them to pay ongoing monthly rent payments to the Receiver, and has liaised with the insurer of the Innisfil Rentals to ensure adequate and continuing insurance coverage.

125. With respect to the eight Sudbury Rentals:

- (a) There are a total of 78 individual residential rental units, of which 53 are currently occupied by tenants;
- (b) Most tenants pay their rents by cash, electronic funds transfer, or cheque;
- (c) Ontario pays at least six tenants' rents directly via the Ontario Disability Support Program; and
- (d) Several of the tenants have refused to pay their rent due to outstanding physical issues with the property and/or their individual units, which are discussed in further detail below.

F. Physical and Financial Condition of the Income Producing Properties

126. The Sudbury Income Producing Properties are in poor physical condition. The Sudbury Property Manager identified several urgent issues relating to the physical condition of the Sudbury Rentals. A copy of his report to the Receiver summarizing these issues is attached at **Appendix 44**. The issues include:

- (a) Insect and rodent infestations;
- (b) Household and other waste littering internal common areas;

- (c) Household waste, used hypodermic needles, old furniture and other waste littering external areas, resulting in potential contravention of municipal by-laws and health and safety standards;
- (d) Overwhelming odours, which may be the result of mold or other contaminants;
- (e) Buildings not being up to fire code and/or a lack of evidence that legally required fire code checks were completed;
- (f) Vacant units being in a general state of disrepair (including issues with floors, drywall, cabinetry, roof leakage, plumbing, electrical, garbage), making them unrentable;
- (g) Leaking pipes causing water damage and other issues; and
- (h) Broken doors and windows that that present security risks.

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

128. As of May 14, 2019, the Receiver has collected a total of \$49,768 in rents. Of this amount, tenants paid \$45,268 directly to the Receiver or the Sudbury Property manager, and Tanya forwarded \$4,500 from rents she had received. Based on the Receiver's assessment of rent rolls, there remains approximately \$21,000 in uncollected and/or unreconciled rents for the month of April 2019.

129. The Receiver has prepared a weekly consolidated cash flow forecast that includes the cash requirements for these extraordinary costs of repair, which is attached at **Appendix 45**. Its figures are subject to the confirmation of property tax arrears, which the Receiver is in the process of

obtaining from the appropriate municipalities. As detailed in the cash flow forecast, the estimated extraordinary repair costs for each Property are:

| Property | Waste Removal | Clean-Up | Pest Control | Fire Code | Building Repairs | Total |
|-----------------------|------------------|-----------------|------------------|------------------|------------------|------------------|
| 110-114 Pine Street | \$ 15,000 | \$ 2,000 | \$ 7,000 | \$ 5,000 | | \$ 29,000 |
| 367-369 Howey Drive | \$ 2,200 | \$ 1,500 | | \$ 5,000 | \$ 3,000 | \$ 11,700 |
| 331 Regent Street | \$ 2,200 | \$ 1,000 | \$ 3,000 | \$ 5,000 | | \$ 11,200 |
| 3415 Errington Avenue | \$ 1,100 | \$ 500 | | \$ 2,500 | | \$ 4,100 |
| 3419 Errington Avenue | \$ 1,100 | \$ 500 | | \$ 2,500 | | \$ 4,100 |
| 29 Laren Street | \$ 2,200 | \$ 1,000 | | \$ 7,000 | \$ 3,000 | \$ 13,200 |
| 17 Serpentine Street | \$ 1,500 | \$ 1,000 | | \$ 5,000 | \$ 3,000 | \$ 10,500 |
| 42 Clemow Street | | | | | \$ 1,500 | \$ 1,500 |
| Total | \$ 25,300 | \$ 7,500 | \$ 10,000 | \$ 32,000 | \$ 10,500 | \$ 85,300 |

130. As further detailed in the Receiver's cash flow forecast, substantial funds over and above what has been collected in rents is required to pay these extraordinary costs of repair. None of these Properties has sufficient cash flow to fund these extraordinary expenses. Accordingly, the Receiver intends to borrow funds to pay for these extraordinary costs of repair, as detailed below.

131. The precision of the Receiver's cash flow forecast is limited by:

- (a) The fact that Tanya, who managed the Income Producing Properties prior to the March Order, has failed to provide the Receiver with records of historical receipts and expenses for the Income Producing Properties or complete rent rolls despite undertaking to do so, requiring the Receiver to assemble this information to the extent possible from alternative sources; and
- (b) The fact that the Receiver has not received any information relating to the ongoing expenses of the Innisfil Rentals, of which it has not taken possession of as described above, except for information it has gathered relating to insurance and property tax

expenses. The Receiver has not received any complaints or reports of disrepair to the Innisfil Rentals.

G. Receiver's Borrowing and Proposed Further Sales

132. The cash flow forecast at Appendix 45 indicates that as a result of the critical physical condition of most Income Producing Properties, the set of Income Producing Properties does not generate sufficient cash flow to fund their own near term repair, maintenance and operational expenses, let alone the Debtors' living expenses and legal fees and the fees of the Receiver and its counsel, all of which require funding. The overall cash flow forecast amongst other matters is subject to the confirmation of property tax arrears which are still being gathered from the various municipalities.

133. The April Order empowered and authorized the Receiver to sell five Properties. The Receiver anticipates that these sales will generate sufficient proceeds to fund these cash requirements, but not as quickly as cash is needed. As such, the Receiver has made arrangements to obtain interim funding, as it is empowered to do by ¶18 of the March Order. Specifically, the Receiver is finalizing borrowing terms with Hillmount Capital Inc. for a \$750,000 credit facility. The Receiver believes that the terms offered by this lender are reasonable in the circumstances.

134. In addition, the Receiver has proposed the sale of certain of the Income Producing Properties that are operating at negative cash flow and income. This proposal is set out in its April 29, 2019 letter at Appendix 40.

VI. INITIAL SALES EFFORTS

135. The April Order empowers and authorizes the Receiver to sell five Properties:

- (a) The Innisfil Rental 1779 Cross Street;
- (b) The Innisfil Rental 1889 Simcoe Boulevard;
- (c) The Innisfil Rental 1790 Cross Street;
- (d) The Sudbury Rental 42 Clemow Avenue; and
- (e) Tanya's residence, 33 Theodore Place, Vaughan, Ontario.

136. The Receiver has solicited listing proposals from several local realtors in each of the Thornhill, Innisfil and Sudbury regions.

137. On May 8, 2019, The Receiver entered into a listing agreement for 42 Clemow Avenue with Sudbury brokerage Royal LePage Realty Team Brokerage, with commissions at 4% (2% for listing brokerage, 2% for cooperating brokerage) and a three-month term. The Receiver consulted with Mr. Henderson, the mortgagee of this Property, prior to entering into the listing agreement. The Receiver has also arranged an appraisal of value for this Property. It has not received an appraisal report as of the date of this Second Report, but anticipates receiving one shortly and has a strong indication of this Property's value.

138. The Receiver has arranged visits by realtors from four different brokerages to the other four Properties to be sold pursuant to the April Order. They visited these Properties on May 10 and 13, 2019. As of the date of this Report, the Receiver anticipates shortly receiving proposals from the brokerages and selecting one or more to list the Properties for sale. The Receiver will also arrange appraisals of these Properties.

139. The realtors viewed Sandy's residence at 1779 Cross Street on May 10, 2019. The Receiver understands that Sandy spoke directly with the realtors when they attended, and advised them that he has a tenancy right to maintain an office at that Property as well as Tanya's residence (33

Theodore Street, Thornhill) until December 31, 2020 pursuant to a separation agreement between him and Tanya. A copy of Sandy's May 12, 2019 email to the Receiver (with attachments) advising of his actions is attached at **Appendix 46**.

140. In response, through counsel, the Receiver asked Sandy to refrain from interfering in the sales process, and to bring a motion on an urgent basis if in fact he takes the position that he has a right to continue to occupy these Properties post-sale. A copy of the emails from counsel to the Receiver to counsel for Sandy dated May 12 and 13, 2019 are attached at **Appendix 47**. As of the date of this Second Report, the Receiver has received no response and Sandy has not brought a motion.

VII. FEES OF THE RECEIVER AND ITS COUNSEL

141. The Receiver seeks approval of its fees and disbursements and those of its counsel up to April 30, 2019, pursuant to the Interim Appointment Order and the March Order.

142. Attached at **Appendix 48** is an affidavit of the Receiver setting out its fees and disbursements to April 30, 2019. The Receiver's detailed statements of account for this period are attached as exhibits to that affidavit. The total quantum of the amounts incurred and for which approval is sought is fees of \$277,213.00, disbursements of \$12,049.89, and HST of \$36,037.73, for a total of \$325,300.62 inclusive of disbursements and HST.

143. Attached at **Appendix 49** is an affidavit of counsel to the Receiver in this proceeding, Naymark Law, setting out its fees and disbursements to April 30, 2019. Counsel's detailed statements of account for this period are attached as exhibits to that affidavit. The total quantum of the amounts incurred and for which approval is sought is \$169,009.40 including disbursements and HST.

VIII. ADDITIONAL ACTIVITIES

144. In addition to the activities set out above, the Receiver has undertaken the following activities since its First Report:

- (a) Maintenance of segregated bank accounts and related cash management pursuant to ¶3 of the March Order;
- (b) Updating the webpage (<https://farbergroup.com/engagements/hutchens/>) and service list for this receivership;
- (c) Ongoing liaison and correspondence with members of the service list and other third parties;
- (d) Attending to urgent property management matters;
- (e) Responding to expressions of interest in various Properties; and
- (f) Reviewing proposed living expenses and legal fees budgets from the Hutchens.

IX. RECOMMENDATIONS AND RELIEF REQUESTED

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

- (a) Approving the fees and disbursements of the Receiver and its counsel, as set out herein; and
- (b) Approving the activities of the Receiver as detailed herein.

All of which is respectfully submitted this 15th day of May, 2019.

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



Paul

STEVENS *et al.*
Applicants

HUTCHENS *et al.*
Respondents

-and-

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

SECOND REPORT OF THE RECEIVER

NAYMARK LAW

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

APPENDIX 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE
)
JUSTICE PENNY) 28TH DAY OF FEBRUARY, 2019



GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

– and –

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

Respondents

**ORDER
(Appointing an Interim Receiver)**

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

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

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

APPOINTMENT

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

INTERIM RECEIVER'S POWERS

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

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

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

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

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE INTERIM RECEIVER

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

CONTINUATION OF SERVICES

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

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

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

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

INTERIM RECEIVER'S ACCOUNTS

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

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

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

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

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

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

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

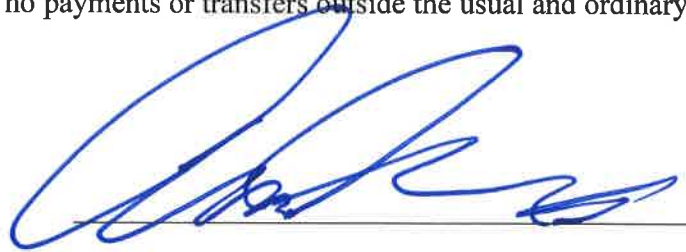
FREEZING OF ASSETS

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

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

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

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



Alan G. Smith

SUPERIOR COURT OF
JUSTICE

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

MAR 05 2019

PER/PAR: *RW*

SCHEDULE "A"
DEBTOR ENTITIES

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

SCHEDULE "B"
DEBTOR PROPERTIES

Real Property:

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

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

| | Property Address | Registered Owner | Legal Description of Real Property |
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| 12. | 1779 Cross Street Innisfil, Ontario | Tanya Hutchens | PIN #58069-0150 (LT); PT N 1/2 LT 25 CON 6 INNISFIL AS IN R01093173; ST R01093173; INNISFIL |
| 13. | 367-369 Howey Drive Sudbury, Ontario | 367-369 Howey Drive Inc. | PIN #73583-0400 (LT); LT 1-2 BLK A PL 5SA MCKIM S/T & T/W S112782; S/T INTEREST IN S112782; GREATER SUDBURY |
| 14. | 33 Theodore Place Vaughan, Ontario | Tatiana Hutchens | PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593: Vaughan |
| 15. | 33 Theodore Place Vaughan, Ontario | Tatiana Hutchens | PIN #03251-0304 (LT); PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593: Vaughan |
| 16. | 1889 Simcoe Blvd Innisfil, Ontario | Tatiana Hutchens | LT 31, PL 657; INNISFIL being all of PIN (58072-0299 (LT)) |
| 17. | 1790 Cross Street | Tatiana Hutchens | LT 1, PL 978; INNISFIL |

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

Personal Property:

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(APPOINTING INTERIM RECEIVER)**

Necpal Litigation Professional Corporation
171 John Street, Suite 101
Toronto, Ontario M5T 1X3
Fax: 1.866.495.8389

Justin Nepal (LSO# 56126J)
Tel: 416.646.2920
justin@necpal.com

Anisah Hassan (LSO# 65919L)
Tel: 416.646.1018
ahassan@necpal.com

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

APPENDIX 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

MONDAY, THE

JUSTICE PENNY)

18TH DAY OF MARCH, 2019

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

-and-

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

Respondents

**ORDER
(Continuing Receivership)**

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

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



APPOINTMENT CONTINUED

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

RECEIVER'S POWERS

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

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

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

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

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

RING-FENCING AND USE OF FUNDS

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

GENERAL

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

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

TIMING OF FURTHER STEPS

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

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



CM CHIBA, Registrar
Superior Court of Justice

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

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

MAR 26 2019

PER / PAR: *RW*

SCHEDULE "A"
DEBTOR ENTITIES

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

SCHEDULE "B"
DEBTOR PROPERTIES

Real Property:

| | Property Address | Registered Owner | Legal Description of Real Property |
|----|---|----------------------------|---|
| 1. | 29 Laren Street Sudbury, Ontario | 29 Laren Street Inc. | PIN #73481-0001 (LT); PCL 12042 SEC SES; PT LT 31 BLK B PL M9 DRYDEN & PT LT 32 BLK B PL M9 DRYDEN AS IN LT67718; PT LT 33 PL M9 DRYDEN PT 1 53R.64589; GREATER SUDBURY |
| 2. | 29 Laren Street Sudbury, Ontario | 29 Laren Street Inc. | PIN #73481-0006 (LT); PCL 12115 SEC SES; LT 30 BLK B PL M9DR YDEN;GREATERSUDBURY |
| 3. | 29 Laren Street Sudbury, Ontario | 29 Laren Street Inc. | PIN #73481-0008 (LT); PLC 12201 SEC SES; LT 29 BLK B PL M9 DRYDEN; PT PINE ST PL M9 DRYDEN; PT LANE PL PL M9 DRYDEN (NOW CLOSED) PARTS 3- 5, 53R9050 SAVE & EXPECTING THEREFROM THE CANADIAN PACIFIC RAILWAY COMPANY PROPERTY, & THAT PORTION OF THE WAHNAPIAE RIVER; S/T LT567345; GREATER SUDBURY |
| 4. | 29 Laren Street Sudbury, Ontario | 29 Laren Street Inc. | PIN #73481-0493 (LT); PCL 3816 SEC SES; LT 5-6 BLK B PL M9 DRYDEN; S/T LT567345; GREATER SUDBURY |
| 5. | 29 Laren Street Sudbury, Ontario | 29 Laren Street Inc. | PIN #73481-0446 (LT); PCL 12386 SEC SES; LT 1-3 BLKB PL M9DRYDEN;GREATERSUDBURY |
| 6. | 29 Laren Street Sudbury, Ontario | 29 Laren Street Inc. | PIN #73481-0512 (LT); PLC 198 SEC SES; LT 4 BLK B PL M9 DR YDEN;GREATERSUDBURY |
| 7. | 3415 Errington Avenue Sudbury, Ontario | 3415 Errington Avenue Inc. | PIN: 73349-1569 (LT) |

| | Property Address | Registered Owner | Legal Description of Real Property |
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| | | | PCL 10618 SEC SWS;LT215BLK6PL M91 BALFOUR; GREATER SUDBURY |
| 8. | 3419 Errington Avenue Sudbury, Ontario | 3419 Errington Avenue Inc. | PIN: 73349-0720 (LT) PCL 21629 SEC SWS; LT 222 BLK 6 PL M91 BALFOUR; GREATER SUDBURY |
| 9. | 331 Regent Street Sudbury, Ontario | 331 Regent Street Inc. | PIN #73586-0638 (LT) LT 297 PL 4SC MCKIM; GREATER SUDBURY |
| 10. | 110-114 Pine Street Sudbury, Ontario | 110-114 Pine Street Inc. | PIN #02135-0246 (LT); LTS 48, 49, PT LT 50, BLK B PLAN 3SA; PTS 2, 4, 5, 6 53R 11500 SUBJECT TO S94352 CITY OF SUDBURY |
| 11. | 193 Mountain Street Sudbury, Ontario | 193 Mountain Street Inc. | PIN #02132-0942 (LT); PCLS 2388, 3113 AND 21292 SEC SES LTI PLAN M28B EXCEPT COMM AT THESELY ANGLE OF LT1; THENCE S 37 DEG 16'W ALONG THE SLY LIMIT OF LT1 A DISTANCE OF 42FT 3INCHES TO THE SLY ANGLE OF SAID LT1; THENCE S 73 DEG 04'W ALONG THE SLY LIMIT OF SAID LT1 A DISTANCE OF 10FT, 6INCHES TO THE SW ANGLE OF LT1; THENCE N 52DEG 10'W ALONG THE W LIMIT OF LT1 A DISTANCE OF 10FT, 6INCHES TO A POINT; THENCE N 64DEG 29'E A DISTANCE OF 11 FT MORE OR LESS TO A POINT BEING 11.0FT N 25DEG 31'W OF THE SLY ANGLE OF LT1; THENCE N 52 DEG 00' E A DISTANCE OF 38FT MORE OR LESS TO THE POC, PLAN ATTACHED IN 33273, NOW PCL5776 SES; LT2 PLAN M28B EXCEPT COMMENCING AT THESELY ANGLE OF LT2, THENCE S 73 DEGREES 04'W ALONG THE SLY LIMIT OF LT2 A DISTANCE OF 63'2" TO THE SWLY ANGLE OF LT2, THEN 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 |

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

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

Personal Property:

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

SCHEDULE "C"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT\$ _____

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

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

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

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

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

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(CONTINUING RECEIVERSHIP)**

Necpal Litigation Professional Corporation
171 John Street, Suite 101
Toronto, Ontario M5T 1X3
Fax: 1.866.495.8389

Justin Necpal (LSO# 56126J)
Tel: 416.646.2920
justin@necpal.com

Anisah Hassan (LSO# 65919L)
Tel: 416.646.1018
ahassan@necpal.com

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

APPENDIX 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY , THE 25TH
)
JUSTICE PENNY) DAY OF APRIL, 2019

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

– and –

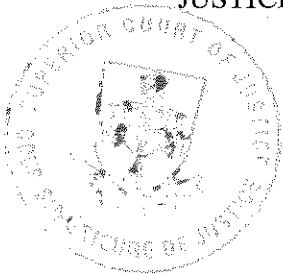
SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT,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

Respondents

ORDER

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

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



SALE OF PROPERTIES

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

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

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

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

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

FREEZING, LIVING EXPENSES, LEGAL EXPENSES

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

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

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

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

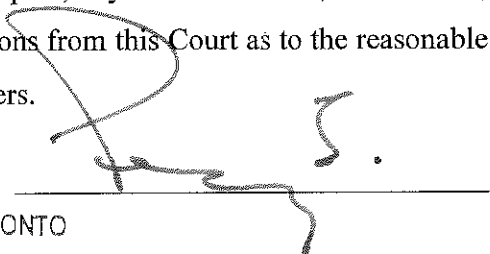
- (a) pay to the Debtors reasonable amounts from the funds in the Receiver's possession as a result of the Appointment Orders or this Order, subject to the availability of such funds for spending on ordinary living expenses and legal advice and representation, and excluding the following funds from the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

- (i) 33 Theodore Place, Vaughan, Ontario – \$379,968;
- (ii) 42 Clemow Avenue, Sudbury, Ontario – \$615,000; and
- (iii) 1779 Cross Street, Innisfil, Ontario – \$150,626.22;

(b) authorize the Debtors to spend reasonable amounts from funds in their power, possession or control otherwise subject to paragraph 3 above on ordinary living expenses and legal advice and representation, and in either case the Debtors shall be entitled to spend such funds on ordinary living expenses and legal advice and representation only.

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

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



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

APR 25 2019

PER/PAR: UM

SCHEDULE "A"
SALEABLE PROPERTIES

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

SCHEDULE "B"
DEBTOR ENTITIES

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

STEVENS *et al.*
Applicants

HUTCHENS *et al.*
Respondents

-and-

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

NAYMARK LAW

171 John Street, Suite 101
Toronto, ON M5T 1X3

Daniel Z. Naymark LSO#: 56889G

Tel: (416) 640-6078

Fax: (647) 660-5060

Terrence Liu LSO#: 64130M

Tel: (416) 640-2256

Fax: (647) 660-5060

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

APPENDIX 4

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

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

ORDER

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

I. BACKGROUND

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

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

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

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

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

II. DISCUSSION

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

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

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

These six factors are:

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

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

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

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

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

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

III. CONCLUSION

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

Sandy Hutchens. An appropriate Judgment follows.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

October 10, 2018

Paul S. Diamond, J.

APPENDIX 5

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

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

ORDER

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

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

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

I. FACTUAL BACKGROUND

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

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

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

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

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

II. LEGAL STANDARDS

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

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

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

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

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

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

III. DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

December 19, 2018

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

APPENDIX 6

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

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

Plaintiffs,

v.

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

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

Defendants.

AMENDED FEDERAL COMPLAINT

I. INTRODUCTION

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

II. PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. VENUE AND JURISDICTION

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

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

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

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

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

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

IV. FACTS GIVING RISE TO THIS CAUSE OF ACTION

A. THE ROLES OF THE KEY PARTICIPANTS IN THE SCHEME

1. Westmoreland Equity Fund

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. "Ed Ryan"/Sandy Hutchens

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

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

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

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

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

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

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

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

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

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

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

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

I am wondering when you could take a call at your convenience, please advise.

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

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

3. Bernard Feldman

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

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

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

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

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

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

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

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

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

d. *David Antoniono Investments, LLC v. Hutchens*, No. 15-61233 (S.D. Fla., June 10, 2015), describes Feldman's participation through his entity Hollywood Title Loans in the essentially identical scheme involving GEIF.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. American Escrow and Settlement Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- b. that Westmoreland had no history of business relationships.
Lydecker Diaz knew that when documentation of an actually funded loan was sought, Westmoreland provided none;
- c. that while immediately aware of complaints that Westmoreland was a fraud, including complaints provided by other attorneys, and/or complaints that it had failed to fund commitments, Lydecker Diaz was unaware of any transaction by Westmoreland that had actually closed or of any positive reference for Westmoreland;
- d. that it (and apparently nobody else) had never met the Ed Ryan purportedly employed by Westmoreland as its managing member;
- e. that it lacked any telephone number by which it could contact Ryan directly;
- f. that the wires it received of funds related to Westmoreland did not originate with Westmoreland;
- g. that the escrow company used by Westmoreland, American Escrow, was affiliated with and/or controlled by Bernard Feldman, a person it knew to have engaged in serious crimes involving moral turpitude; and
- h. that there was no evidence that Westmoreland ever closed a loan and extensive evidence that it told every victim, in at least forty

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Barbara Leuin & Sofia

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

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

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

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

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

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

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

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

B. Plaintiffs' Encounter with the Fraud

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

Fraud and Misrepresentation

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

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

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

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

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

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

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

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

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

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

196. Plaintiffs relied upon Defendants representations.

197. Plaintiffs' reliance was justified.

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

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF**Fraud and Misrepresentation:****Plaintiffs v. Leuin and Sofia**

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

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

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

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

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

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

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

212. Plaintiffs' reliance was justified;

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

FOURTH CLAIM FOR RELIEF

Civil Conspiracy

Plaintiffs v. All Defendants.

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

214. Plaintiffs incorporate all previous paragraphs of the Complaint.

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

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

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

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

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

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

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

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

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

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

FIFTH CLAIM FOR RELIEF

Breach of Contract

Plaintiff 1174365 Alberta Limited v. Sofia and Leuin

223. Plaintiffs incorporate all previous paragraphs of the Complaint.

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

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

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

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

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

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

SIXTH CLAIM FOR RELIEF

Negligence and Malpractice

Plaintiffs v. Sofia and Leuin

229. Plaintiffs incorporate all previous paragraphs of the Complaint.

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

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

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

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

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

SEVENTH CLAIM FOR RELIEF

Aiding and Abetting

Plaintiffs v. All Defendants except Westmoreland

233. Plaintiffs incorporate all the previous paragraphs of the Complaint

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

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

EIGHTH CLAIM FOR RELIEF

Violation of 18 U.S.C. § 1962(c)

Plaintiffs v. All Defendants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NINTH CLAIM FOR RELIEF

Violation of 18 U.S.C. § 1962(d)

Plaintiffs v. All Defendants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ELEVENTH CLAIM FOR RELIEF

Violation of 18 U.S.C. § 1962(d)

Plaintiffs v. All Defendants

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

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

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

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

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

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

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

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

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

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

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

Jury Trial Demand

Plaintiffs demand trial by jury on all issues so triable.

Dated: March 15, 2018

Respectfully submitted,

By:  _____

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

APPENDIX 7

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

Civil Action No. 11-cv-01012-RBJ

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

Plaintiffs,

v.

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

Defendants.

SECOND AMENDED and FINAL JUDGMENT

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

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

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

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

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

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

asset.

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

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

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

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

b) The following Real Property:

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

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

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

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

c) Personal Property

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

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

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

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

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

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

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

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

FOR THE COURT:
JEFFREY P. COLWELL, CLERK

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

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

APPENDIX 8

Documents and Information Requested from Sandy Hutchens

| <u>Document or Information Requested</u> | <u>Status</u> |
|--|----------------------|
| 1 A statement of net worth itemizing Mr. Hutchens' assets and liabilities, including real properties, cash, vehicles, securities, term deposits, investments and other assets. | Answered |
| 2 Personal tax returns for 2014-2018. | Answered |
| 3 Copies of tax returns and financial statements, for 2014-2018, for the corporations listed in Schedule A to the Order and for the owners of (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury (collectively, the "Companies"). For records not in Mr. Hutchens' power, possession or control, to advise where they are located. | Answered |
| 4 Identities of the shareholders of the Companies, and their respective shareholdings. | Answered |
| 5 Name(s) and contact information (address, email address, phone number, and fax number) of the accountant(s) who completed tax returns and financial statements for the Companies, and / or for Mr. Hutchens' tax returns. | Answered |
| 6 Name(s) and contact information (address, email address, phone number, and fax number) of any other person(s) who maintains the books and records of the Companies and the properties listed in Schedule B to the Order (the "Properties"). | Answered |
| 7 Access to the electronic devices that contain or did contain books and records of the Companies. | Answered |
| 8 List of corporations for which Mr. Hutchens is an officer, director, and the position(s) Mr. Hutchens holds. | Answered |
| 9 List of corporations, partnerships and trusts in which Mr. Hutchens owns shares or units (directly, indirectly or beneficially), and a description of the nature of his ownership interest (type of shares held, percentage of total equity). | Answered |
| 10 List of all bank accounts (institution, branch, account number) directly or indirectly controlled by Mr. Hutchens, Sandy Hutchens, the Companies, and Dina Brik (to the extent that is within Mr. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present. | Answered |

11 List of all properties other than the Properties and (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury, in which Mr. Hutchens, Mr. Hutchens or the Companies directly or indirectly own a legal or beneficial interest, or which any of them possess or control, and provide details of the nature of their ownership interest. Answered

12 For the Properties and for (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; (d) 380 Elgin Street, Sudbury; and (e) any of the properties identified in response to 13 above: Answered

- a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s). Please provide this information as a priority so that the Receiver can contact the property manager(s) as soon as possible to coordinate site visits;
- b. Advise the aggregate monthly rental income;
- c. Identify where rental proceeds are deposited;
- d. Provide a rental roll with tenants and monthly rent amount; and
- e. Provide copies of all current rental/lease agreements.

13 Identify the source(s) of the following payments, and produce supporting account and transaction records: Answered

- a. The \$505 filing fee paid on or about March 1, 2019 for the filing of Mr. Hutchens' notice of appeal in Case Number 2:18-CV-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193260), and provide supporting account and transaction records;
- b. The \$505 filing fee paid on or about March 1, 2019 for the filing of Tanya Hutchens' notice of appeal in Case Number 2:18-CV-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193261), and provide supporting account and transaction records; and
- c. The payment to Meridian to discharge its mortgage on 1479 Maple Street, Innisfil (approximately \$204,000).

14 For each of the following property sales, (a) provide copies of agreements of purchase and sale; (b) provide statements of closing adjustments; and (c) provide an accounting of the sale proceeds (i.e., where were they deposited and subsequent flow of funds) and corresponding bank and transaction records: Answered

- a. 364 Morris Street, Sudbury (sold for \$900,000 February 25, 2016);
- b. 625 Ash Street, Sudbury (sold for \$225,000 November 6, 2016);
- c. 720 Cambrian Heights Sudbury (sold for \$3,100,000 September 15, 2017); and
- d. 193 Mountain Street, Sudbury (sold for \$400,000 November 16, 2018).

15 With respect to Mr. Hutchens' and Mrs. Hutchens' trust claim: :

Answered

- a. A description of the nature of any such trusts, including the date and circumstances of their creation, the identities of all trustees and beneficiaries, and the assets over which each trust extends; and
- b. Documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s) existence and operation.

16 The nature and amount of the debt corresponding to the mortgages held on the following properties in the name of Dina Brik in the registered amount of \$1,50,000, and provide corresponding records: 3415 Errington Avenue, Chelmsford and 3419 Errington Avenue, Chelmsford.

Answered

17 The identifies of the shareholders of Lilly Brook Developments Inc.

Answered

18 List of all registered and non-registered investment accounts directly or indirectly controlled by Mr. Hutchens, the Companies, Tanya Hutchens, and Dina Brik (to the extent that is within Mr. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present.

Requested on March 6, 2019.
Partial answer provided. Mr. Hutchens has identified an RESP account for for Brienna, but has only provided account statements for 2016 and 2017.

19 Mr. Hutchens' sources of income for the past three years with supporting documentation (pay slips, T4s, etc.)

Requested on March 6, 2019.
Partial answer provided. Mr. Hutchens has provided a summary of his sources of income but has only provided some of the supporting documentation. The following documentation remains outstanding:
Insurance claim payments;
RRSP/Investments (only a single statement from 2016 has been provided); Unknown deposit for \$2,075.42 on March 26, 2018; gas company overpayment; payments from Jan Luistermans; Shannon Hutchens phone payments; and credit card payments.

20 The nature and amount of the debt corresponding to the mortgages held on the following properties in the name of Adroit Advocacy LLC in the registered amount of \$2 million, and provide corresponding records: 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

Requested March 6, 2019.
Partial answer provided on March 8, 2019. Corresponding records have not been provided by Mr. Hutchens, although they have been obtained from a different source.

21 Undertakings from examination held on April 12, 2019.

Partial answers provided on May 7, 2019. Receiver is currently reviewing the response for completion.

APPENDIX 9

Documents and Information Requested from Tanya Hutchens

Document or Information Requested

Status

- | | | |
|---|---|----------|
| 1 | Statement of Net Worth | Answered |
| 2 | Personal tax returns for 2014-2018 | Answered |
| 3 | Copies of tax returns and financial statements, for 2014-2018, for the corporations listed in Schedule A to the Order and for the owners of (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury (collectively, the “ Companies ”). For records not in Mrs. Hutchens’ power, possession or control, to advise where they are located | Answered |
| 4 | Identities of the shareholders of the Companies, and their respective shareholdings. | Answered |
| 5 | Name(s) and contact information (address, email address, phone number, and fax number) of the accountant(s) who completed tax returns and financial statements for the Companies, and / or for Mrs. Hutchens’ personal tax returns. | Answered |
| 6 | Name(s) and contact information (address, email address, phone number, and fax number) of any other person(s) who maintains the books and records of the Companies and the properties listed in Schedule B to the Order (the “ Properties ”). | Answered |
| 7 | List of all bank accounts (institution, branch, account number) directly or indirectly controlled by Mrs. Hutchens, the Companies, Sandy Hutchens, and Dina Brik (to the extent that is within Mrs. Hutchens’ knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present. | Answered |
| 8 | List of all registered and non-registered investment accounts directly or indirectly controlled by Mrs. Hutchens, Sandy Hutchens, the Companies, and Dina Brik (to the extent that is within Mrs. Hutchens’ knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present. | Answered |
| 9 | Mrs. Hutchens’ sources of income for the past three years with supporting documentation (pay slips, T4s, etc.) | Answered |

- 10 List of all properties other than the Properties and (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury, in which Mrs. Hutchens, Mr. Hutchens or the Companies directly or indirectly own a legal or beneficial interest, or which any of them possess or control, and provide details of the nature of their ownership interest. Answered
- 11 Identify any real properties in which Mr. and/or Mrs. Hutchens holds or has held direct or indirect interests not currently listed in the Schedules to the Order of Justice Penny, dated February 28, 2019, and any details and documents related to their purchase and sale. Answered
- 12 For 1573 Houston Avenue, Innisfil, and 1015-175 Hilda Ave, Toronto: Answered
1. Whether either of these properties is income-producing; and
2. Whether Tanya will consent to an order adding these to the receivership?
- 13 Access to the electronic devices that contain or did contain books and records of the Companies. Answered
- 14 For each of the following mortgages assumed by Mrs. Hutchens or related entities, (a) advise the terms by which Mrs. Hutchens assumed the mortgages and provide copies of any assumption/assignment agreements; and (b) advise the source of funds with which Mrs. Hutchens or related entities paid to assume the mortgages, and provide corresponding bank and transaction records: Requested on March 6, 2019.
Partial answer provided during
examination on April 25, 2019.
Request for supporting documents
remain outstanding.
- a. 29 Lauren Street, Sudbury – mortgage assumed from BMO (face value of \$800k) March 24, 2016;
- b. 367-369 Howey Drive - mortgage assumed from BMO (Face value \$915k) on Sept 20, 2017;
- c. 110-114 Pine Street, Sudbury – mortgage assumed from Canadian Western Trust (face value \$602k) on March 27, 2017 and Barbara Carpenter (face value \$125k) August 19, 2014; and
- d. 17 Serpentine Street, Sudbury - mortgage assumed from Canadian Western (face value \$200k) on March 27, 2017 and Lapelle Management (face value \$51k) on Jan 7, 2016. Requested March 6, 2019.
Partial answer provided on March 13,
2019.
- 15 The nature and amount of the debt corresponding to the mortgages held on the following properties in the name of Dina Brik in the registered amount of \$150,000, and provide corresponding records: 3415 Errington Avenue, Chelmsford and 3419 Errington Avenue, Chelmsford. Requested March 6, 2019.
Partial answer provided on March 13,
2019.
- 16 All mortgage agreements held by Mrs. Hutchens or related entities on any of the Properties. Requested March 6, 2019.
Partial answer provided on March 13,
2019.

17 The four banker's boxes of documents located in Mrs. Hutchens' home, relevant corporate Minute Books, and a hard drive that contains relevant documents.

Requested March 13, 2019. Partial answer provided. The bankers boxes and harddrives have been received, but not the minute books.

18 Undertakings from examinations held on April 4 and April 25, 2019.

Requested March 6, 2019. A net worth statement was provided during the examination held on April 25, 2019. The remaining 27 undertakings and one advisement are outstanding.

See Appendix 20 for a summary of outstanding undertakings.

19 The nature and amount of the debt corresponding to the mortgages held on the following properties in the name of Adroit Advocacy LLC in the registered amount of \$2 million, with supporting documentation: 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

Requested March 6, 2019. Partial answer provided during examination held on April 25, 2019. Corresponding records have not been provided by Mrs. Hutchens.

20 List of corporations, partnerships and trusts in which Mrs. Hutchens owns shares or units (directly, indirectly or beneficially), and a description of the nature of her ownership interest (type of shares held, percentage of total equity).

Requested March 6, 2019. Partial answer provided on March 11, 2019. Mrs. Hutchens has provided trust agreements but has not indicated if they represent a complete list of all trusts that she owns shares or units in.

21 List of corporations for which Mrs. Hutchens is an officer, director, and the position(s) Mrs. Hutchens holds.

Requested March 6, 2019. Partial answer provided on March 11, 2019. On March 26, 2019 we renewed this request for any other companies not already disclosed. No additional response has been received.

- 22 For the Properties and for (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; (d) 380 Elgin Street, Sudbury; and (e) any of the properties identified in response to item #10 above:
- a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s);
 - b. Advise the aggregate monthly rental income;
 - c. Identify where rental proceeds are deposited;
 - d. Provide a rental roll with tenants and monthly rent amount; and
 - e. Provide copies of all current rental/lease agreements.
- Requested March 6, 2019. Partial answer provided. Aggregate monthly rental income and copies of all rental/lease agreements remain outstanding.

- 23 With respect to Mrs. Hutchens and Mr. Hutchens' trust claim:
- a. A description of the nature of any such trusts, including the date and circumstances of their creation, the identities of all trustees and beneficiaries, and the assets over which each trust extends; and
 - b. Documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s) existence and operation.
- Requested March 6, 2019. Partial answer provided. Certain trust agreements have been provided, but the remainder of this request remains outstanding.

- 24 Identify the source(s) of the following payments, and produce supporting account and transaction records:
- a. Payments to Mrs. Hutchens' credit card, which we understand from counsel in the Colorado proceeding totalled \$143,130 between August 2016 and May 2018 (and perhaps more since), and provide supporting account and transaction records;
 - b. The \$505 filing fee paid on or about March 1, 2019 for the filing of Mrs. Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193261), and provide supporting account and transaction records; and
 - c. The payment to Meridian to discharge its mortgage on 1479 Maple Street, Innisfil (approximately \$204,000).
- Requested March 6, 2019.
Request remains outstanding.

25 For each of the following property sales, (a) provide copies of agreements of purchase and sale; (b) provide statements of closing adjustments; and (c) provide an accounting of the sale proceeds (i.e., where were they deposited and subsequent flow of funds) and corresponding bank and transaction records:

Requested March 6, 2019.
Request remains outstanding.

- a. 364 Morris Street, Sudbury (sold for \$900,000 February 25, 2016);
- b. 625 Ash Street, Sudbury (sold for \$225,000 November 6, 2016);
- c. 720 Cambrian Heights Sudbury (sold for \$3,100,000 September 15, 2017); and
- d. 193 Mountain Street, Sudbury (sold for \$400,000 November 16, 2018).

26 To provide the contact information for Ian Mills.

Requested on April 26, 2019.
Request remains outstanding.

APPENDIX 10

Requests Sent to Applicants & Third Parties

| | <u>Requested From</u> | <u>Status</u> |
|----|------------------------------------|---------------------------------------|
| 1 | Adroit Advocacy | Answered all requests to date |
| 2 | Angie Hache | Answered all requests to date |
| 3 | Applicants | Answered all requests to date |
| 4 | Aтчison, Catherine | Answered all requests to date |
| 5 | Bank of Montreal | Waiting for further response |
| 6 | Bank of Nova Scotia | Partial answer provided |
| 7 | Brik, Dina | No response |
| 8 | Buduchnist Credit Union | Reviewing documents recently provided |
| 9 | Canadian Imperial Bank of Commerce | Waiting for further response |
| 10 | CGC | Answered all requests to date |
| 11 | CIBC Wood Gundy | Answered all requests to date |
| 12 | Ed Lowe Limited, Brokerage | Answered all requests to date |
| 13 | KEB Hana Bank Canada | Partial answer provided |
| 14 | Lifestyle Realty Associates Inc. | Answered all requests to date |
| 15 | Luistermans, Jan | Reviewing documents recently provided |
| 16 | Meridian Credit Union | Waiting for further response |
| 17 | National Bank of Canada | Waiting for further response |
| 18 | Posner, Morry | Reviewing documents recently provided |
| 19 | Poulson, Barry | Refused to provide documents |
| 20 | Royal Bank of Canada | Waiting for further response |
| 21 | Royal LePage North Heritage Realty | Answered all requests to date |
| 22 | Spiro, Michael | Answered all requests to date |
| 23 | Sudbury Credit Union | Waiting for further response |
| 24 | Sutton Group Incentive Realty Inc. | Answered all requests to date |
| 25 | The Companies | Partial answer provided |
| 26 | Toronto Dominion Bank | Partial answer provided |

APPENDIX 11

File No. 10197

March 6, 2019

BY EMAIL & FAX

Justin Necpal
Necpal Litigation
171 John Street, Suite 101
Toronto, Ontario, M5T 1X3

Dear Mr. Necpal:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Interim Receiver Information Request**

I write as counsel to A. Farber & Partners Inc. (the “Receiver”), in its capacity as interim receiver pursuant to the February 28, 2019 order of Justice Penny in this matter (the “Order”).

Pursuant to paragraphs 2 to 6 of the Order, we ask that your clients provide the following information and records. Owing to the short time frame for the Receiver’s work, your clients may produce responsive information and materials on a rolling basis.

1. Advise whether your clients assert a proprietary interest in funds paid to the respondents and/or affiliated entities, and/or in accounts or assets into which such funds can be traced; and
2. If the answer to 1 above is “yes”:
 - a. A summary of your clients’ funds paid to the respondents and/or affiliated entities, in respect of which they assert a proprietary tracing, with supporting records; and
 - b. A summary of the subsequent flow of such funds, to the extent your clients have that information, with supporting records.

Yours truly,



Daniel Naymark

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

APPENDIX 12



171 John Street, Suite 101
Toronto, Ontario M5T 1X3
Tel 416.646.2920 / Fax 1.866.495.8389
www.necpal.com

Justin Necpal
justin@necpal.com
416.646.2920

March 12, 2019

VIA EMAIL

Naymark Law
Daniel Z. Naymark
171 John Street, Suite 101
Toronto, ON M5T 1X3

Dear Mr. Naymark:

**Re: Stevens v. Hutchens – Court File No. CV-18-608271-00CL
Our File No. 10176**

I am writing to provide you with the information responsive to your request of March 6, 2019.

The Stevenses made three wire transfers to AESS that were then transferred to 241 Lloyd Street Inc., a company owned solely by Sandy Hutchens, at the request of Sandy Hutchens. The details of the three transfers are as follows:

1. 11/4/14 and 11/5/14 \$10,000 sent by Donald Smith (as agent of Gary Stevens), \$9,985 received by AESS, \$7,500 +\$1,000 sent to 241 Lloyd Street
2. 11/3/15 \$51,765 sent by Donald Smith (as agent of Gary Stevens); \$51,750 received by AESS, \$44,750+ \$1,000 +\$5,500 sent to 241 Lloyd Street
3. 1/13/15 \$12,500 sent by Gary Stevens, \$12,500 received by AESS, \$11,250 sent to 241 Lloyd Street

The enclosed document entitled “Exhibit C to Declaration of Gary Stevens filed in PA Court on 8-22-2017” provides receipt evidence of Gary Stevens making the initial wire transfers either by himself or through his agent for that purpose, Donald Smith.

The enclosed document entitled “2018.11.28 Exhibits A-E to Letter HIL to Judge Diamond” contains evidence of wire transfers directed by AESS to Sandy Hutchens’s bank account in the name of the Stevenses. Exhibit E shows the internal Westmoreland documents that order wire transfers from AESS’s “escrow” to Hutchens’s entity 241 Lloyd Street’s bank account at KEB Hana Bank Canada that cover the time period of November 2014 through January 2015. We have highlighted the transfers that match up with the date and value of the tranfers made by AESS to 241 Lloyd Street, minues \$10 transfer fees.

My clients claim a proprietary interest in these funds.

I trust the foregoing is satisfactory. If you require any clarification or further information, please let me know.

Yours truly,

A handwritten signature in black ink, appearing to read "Justin Necpal", written in a cursive style.

Justin Necpal

JN/sp
Enclosures

APPENDIX 13

File No. 10197

March 6, 2019

BY EMAIL & FAX

Philip Smith
Donnelly & Murphy Lawyers PC
18 The Square,
Goderich, Ontario, N7A 3Y7

Dear Mr. Smith:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Interim Receiver Information Request**

I write as counsel to A. Farber & Partners Inc. (the “Receiver”), in its capacity as interim receiver pursuant to the February 28, 2019 order of Justice Penny in this matter (the “Order”).

Pursuant to paragraph 2(f) of the Order, the Receiver intends to examine Sandy Hutchens under oath. We would like to conduct that examination on March 11 or 12, 2019. **Please advise if he is available on one of those two dates, or if not, what his earliest availability is.** I have seen your email of this morning to Mr. Nepal advising that you are away next week, as am I. My associate will attend the examination and I ask that you similarly arrange to have a colleague or agent attend, so that the examination can be completed in advance of the motion’s return on March 18.

In addition, pursuant to paragraphs 2 to 6 of the Order, **we ask that Mr. Hutchens provide the following information and records.** Owing to the short time frame for the Receiver’s work, Mr. Hutchens may produce responsive information and materials on a rolling basis.

1. Provide a statement of net worth itemizing Mr. Hutchens’ assets and liabilities, including real properties, cash, vehicles, securities, term deposits, investments and other assets;
2. Provide copies of Mr. Hutchens’ complete tax returns for 2014-2018;
3. Provide copies of the complete (a) tax returns and (b) financial statements for 2014-2016 for the corporations listed in Schedule A to the Order and for the owners of (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury (collectively, the “Companies”). If any these records are not in Mr. Hutchens’ power, possession or control, please advise where they are located;
4. Identify the shareholders of the Companies, and their respective shareholdings;
5. Provide the name(s) and contact information (address, email address, phone number, and fax number) of the accountant(s) who completed 2 and 3 above;
6. Provide the name(s) and contact information (address, email address, phone number, and fax number) of any other person(s) who maintains the books and records of the Companies and the properties listed in Schedule B to the Order (the “Properties”);
7. Identify and provide unfettered access to the electronic devices that contain or did contain books and records of the Companies. The Receiver intends to create images of the hard drives of these devices. Please advise whether Mr. Hutchens has any concerns about privileged or irrelevant, confidential contents, in which case we can discuss appropriate arrangements;
8. Provide a list of corporations for which Mr. Hutchens is an officer, director, and the position(s) Mr. Hutchens holds;

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9. Provide a list of corporations, partnerships and trusts in which Mr. Hutchens owns shares or units (directly, indirectly or beneficially), and a description of the nature of his ownership interest (type of shares held, percentage of total equity);
10. Provide a list of all bank accounts (institution, branch, account number) directly or indirectly controlled by Mr. Hutchens, Sandy Hutchens, the Companies, and Dina Brik (to the extent that is within Mr. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present;
11. Provide a list of all registered and non-registered investment accounts directly or indirectly controlled by Mr. Hutchens, the Companies, Tanya Hutchens, and Dina Brik (to the extent that is within Mr. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present;
12. Identify Mr. Hutchens' sources of income for the past three years, and provide supporting documentation (pay slips, T4s, etc.);
13. Provide a list of all properties other than the Properties and (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury, in which Mr. Hutchens, Mr. Hutchens or the Companies directly or indirectly own a legal or beneficial interest, or which any of them possess or control, and provide details of the nature of their ownership interest;
14. For the Properties and for (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; (d) 380 Elgin Street, Sudbury; and (e) any of the properties identified in response to 13 above:
 - a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s). **Please provide this information as a priority so that the Receiver can contact the property manager(s) as soon as possible to coordinate site visits;**
 - b. Advise the aggregate monthly rental income;
 - c. Identify where rental proceeds are deposited;
 - d. Provide a rental roll with tenants and monthly rent amount; and
 - e. Provide copies of all current rental/lease agreements;
15. Identify the source(s) of the following payments, and produce supporting account and transaction records:
 - a. The \$505 filing fee paid on or about March 1, 2019 for the filing of Mr. Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193260), and provide supporting account and transaction records;
 - b. The \$505 filing fee paid on or about March 1, 2019 for the filing of Tanya Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193261), and provide supporting account and transaction records; and
 - c. The payment to Meridian to discharge its mortgage on 1479 Maple Street, Innisfil (approximately \$204,000);
16. For each of the following property sales, (a) provide copies of agreements of purchase and sale; (b) provide statements of closing adjustments; and (c) provide an accounting of the sale proceeds (i.e., where were they deposited and subsequent flow of funds) and corresponding bank and transaction records:
 - a. 364 Morris Street, Sudbury (sold for \$900,000 February 25, 2016);
 - b. 625 Ash Street, Sudbury (sold for \$225,000 November 6, 2016);
 - c. 720 Cambrian Heights Sudbury (sold for \$3,100,000 September 15, 2017); and
 - d. 193 Mountain Street, Sudbury (sold for \$400,000 November 16, 2018);
17. At the hearing in this matter on February 28, 2019, counsel for Mrs. Hutchens took the position that she and Mr. Hutchens hold the Properties and perhaps other assets in trust for their children, directly or via the Companies. Please provide:
 - a. A description of the nature of any such trusts, including the date and circumstances of their creation, the identities of all trustees and beneficiaries, and the assets over which each trust extends; and
 - b. Documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s) existence and operation;

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18. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties¹ in the name of Adroit Advocates LLC in the registered amount of \$2 million, and provide corresponding records; and
19. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties² in the name of Dina Brik in the registered amount of \$150,000, and provide corresponding records.

Yours truly,



Daniel Naymark

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

¹ 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

² 3415 Errington Avenue, Chelmsford and 3419 Errington Avenue, Chelmsford.

APPENDIX 14

File No. 10197

March 26, 2019

BY EMAIL

Philip Smith
Donnelly & Murphy Lawyers PC
18 The Square,
Goderich, Ontario, N7A 3Y7

Dear Mr. Smith:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Receiver Information Request**

I write further to my correspondence of March 6 and 11, 2019, and the order of Justice Penny dated March 18, 2019.

Mr. Hutchens has not yet made himself available for examination under oath. Please advise his availability for examination the weeks of April 8 and 15, 2019.

In addition, Mr. Hutchens has yet to produce the following information and records, which we requested on March 6 and 11, 2019. Justice Penny has ordered Mr. Hutchens to do so by no later than April 18, 2019, and we ask that he do so as soon as possible, on a rolling basis if necessary.

1. Provide a statement of net worth itemizing Mr. Hutchens' assets and liabilities, including real properties, cash, vehicles, securities, term deposits, investments and other assets;
2. Identify the shareholders of Lilly Brook Developments Inc.;
3. Identify and provide unfettered access to the electronic devices that contain or did contain books and records of the Companies. The Receiver intends to create images of the hard drives of these devices. Please advise whether Mr. Hutchens has any concerns about privileged or irrelevant, confidential contents, in which case we can discuss appropriate arrangements;
4. Provide a list of all registered and non-registered investment accounts directly or indirectly controlled by Mr. Hutchens, the Companies, Tanya Hutchens, and Dina Brik (to the extent that is within Mr. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present;
5. Identify Mr. Hutchens' sources of income for the past three years, and provide supporting documentation (pay slips, T4s, etc.);

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6. Further to your partial response on March 8, 2019, for the Properties and for (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; (d) 380 Elgin Street, Sudbury; and (e) any of the properties identified in response to 13 above:
 - a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s);
 - b. Advise the aggregate monthly rental income;
 - c. Identify where rental proceeds are deposited;
 - d. Provide a rental roll with tenants and monthly rent amount; and
 - e. Provide copies of all current rental/lease agreements;
7. Further to your partial response on March 8, 2019, produce supporting account and transaction records for the following payments:
 - a. The \$505 filing fee paid on or about March 1, 2019 for the filing of Mr. Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193260), and provide supporting account and transaction records; and
 - b. The \$505 filing fee paid on or about March 1, 2019 for the filing of Tanya Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193261), and provide supporting account and transaction records; and
8. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties¹ in the name of Adroit Advocates LLC in the registered amount of \$2 million, and provide corresponding records.

Yours truly,



Daniel Naymark

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

¹ 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

APPENDIX 15

Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request
Date: Wednesday, April 10, 2019 at 2:08:02 PM Eastern Daylight Time
From: Phil Smith
To: Daniel Naymark
CC: Terrence Liu
Attachments: image001.png

Further to my email below, and in reviewing his records in anticipation of his examination on Friday, my client advises me that the Sources of Income documentation which was attached to my below email neglected to include income that he had received from Jan Luistermans (who in turn had received funds from Dina Brik).

Those payments were received between July 31, 2018 and December 12, 2018 to my client's BCU account, and he will elaborate further about the details of the those payments on his examination this coming Friday.

Lastly, in advance of my client's examination, please provide me with a copy of any documentation you anticipate cross examining him on.

Sincerely,
Phil J. Smith, J.D., B.Math
DONNELLY MURPHY LAWYERS P.C.
519-524-2154 x 310

From: Phil Smith
Sent: Tuesday, April 2, 2019 10:25 PM
To: Daniel Naymark <dnaymark@naymarklaw.com>
Cc: Terrence Liu <tliu@naymarklaw.com>; Susan Patterson <admin@naymarklaw.com>; Gary Caplan <GCaplan@mcr.law>
Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Good evening Daniel,
Further to my email below I am attaching the RESP statement of Breiana's RESP, along with a statement setting out my client's sources of income for the past 3 years.

Supporting documentation for said sources of income can be obtained here:
https://drive.google.com/drive/folders/126pxA6X5RWQ2vy0aEc_EPbOCpkOK_7-K?usp=sharing

At the attached link you should find the following files:

1. 241 Lloyd Highlighted March 2016 to May 24 2017
2. 1755 Regent Highlighted Mar 2016 to May 2017
3. BCU Acct 2
4. BCU SH Personal Highlighted Mar 2016 to Mar 2018
5. Letter from Empire Life dated Dec 2016
6. Summary of Credit Card Payments

Sincerely,
Phil J. Smith, J.D., B.Math
DONNELLY MURPHY LAWYERS P.C.
519-524-2154 x 310

From: Daniel Naymark <dnaymark@naymarklaw.com>
Sent: March 29, 2019 2:04 PM
To: Phil Smith <psmith@dmlaw.ca>
Cc: Terrence Liu <tliu@naymarklaw.com>; Susan Patterson <admin@naymarklaw.com>
Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Thanks Phil. April 1 is certainly much better.

Our preference is to conduct the examination in Toronto but we will come to a Simcoe reporter if Mr. Hutchens requires it.

Suse, please hold off booking Neeson's for the time being.

Daniel

--
Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: Phil Smith <psmith@dmlaw.ca>
Date: Friday, March 29, 2019 at 9:41 AM
To: Daniel Naymark <dnaymark@naymarklaw.com>
Cc: Terrence Liu <tliu@naymarklaw.com>
Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Good morning Daniel,
That was my typo below. I had meant to indicate my client anticipates having an answer on his sources of income prior to this Monday, *April 1*.

Additionally, my client resides in Innisfil. I'll speak to him regarding his willingness to travel to Toronto for an examination, but he has a right to be examined in Simcoe County if he so insists.

Sincerely,
Phil J. Smith, J.D., B.Math
DONNELLY MURPHY LAWYERS P.C.
519-524-2154 x 310

From: Daniel Naymark <dnaymark@naymarklaw.com>
Sent: Friday, March 29, 2019 9:31 AM
To: Phil Smith <psmith@dmlaw.ca>
Cc: Terrence Liu <tliu@naymarklaw.com>
Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

I confirm receipt of this email and attachment. Thank you.

The Receiver does not waive compliance with the ordered deadline of April 18, 2019 for compliance with requests still outstanding. That includes the request for Mr. Hutchens' sources of income which he advises below he will not provide prior to May 1, 2019, which we do not consider a compliant response.

We will examine Mr. Hutchens on April 12 at 10 am at Neeson's.

 Daniel Naymark
 NAYMARK LAW
 t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: Phil Smith <psmith@dmlaw.ca>
Date: Thursday, March 28, 2019 at 10:07 PM
To: Daniel Naymark <dnaymark@naymarklaw.com>
Subject: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Good evening counsel, further to your attached letter dated March 26, 2019, I can provide the following further answers. The numbers below correspondence to the numbers in your letter:

1. A net worth statement, dated March 25, 2019, is attached;
2. Mr. Hutchens *understanding* is that the shareholders of Lillybrook are Chuck Lilly and Paul Ferguson. The shareholders may very well have changed over time – my client doesn't have firsthand knowledge of who the current shareholders are;
3. My client has located a computer – it does not appear operational and he doesn't know if it has any relevant documents on the harddrive. He has provided the computer to a technician to confirm whether or not the hard drive is operational and if so, whether it contains any relevant documentation. I will advise once I know more;
4. My client is still attempting to locate a statement for the approximate \$4k RESP he believes he holds at TD Bank. Other than that one RESP, my client is not aware of any other registered or non-registered investment accounts held by himself, Tanya Hutchens, Dina Brik, or companies under the control of the same;
5. My client is currently compiling this information regarding his sources of income for the past 3 years. I expect to have it by Monday, May 1
6. As set out in my prior correspondence, Mr. Hutchens, nor any company controlled by Mr. Hutchens, nor any company controlled by Tanya Hutchens, ever owned the properties located at 241 Lloyd Street, Sudbury; 480 Linda Street, Sudbury; 1755 Regent Street, Sudbury; or 308 Elgin Street, Sudbury.

With respect to 42 Clemow Avenue: the sole tenant at that property is Don Neville (tel: 226-222-1750). Mr. Neville is the property manager for the Sudbury trust properties and as a term of his compensation he is permitted to reside at 42 Clemow rent-free. There is no written lease with Mr. Neville that my client is aware of (although it is possible Tanya Hutchens had him sign one – as she is

the one who directs Mr. Neville).

7. As set out in my prior correspondence, my client borrowed the money for the \$505 filing fees from his daughter Jennifer. I'm unclear what kind of 'supporting documentation' you require on this.
8. As set out in my prior correspondence, the mortgage relates to the provision of legal services. I have directly requested the related mortgage documentation from Steven Klenda and his legal counsel Brett Moldaver. I will provide the same once received.

With respect to an examination-under-oath, my client can make himself available on Friday, April 12th. If you can kindly confirm your availability for the same.

Sincerely,
Phil J. Smith, J.D., B.Math
DONNELLY MURPHY LAWYERS P.C.
519-524-2154 x 310

From: Daniel Naymark <dnaymark@naymarklaw.com>
Sent: Tuesday, March 26, 2019 9:09 PM
To: Phil Smith <psmith@dmlaw.ca>
Cc: Paul Denton <pdenton@farbergroup.com>; Terrence Liu <tliu@naymarklaw.com>; Megha Sharma <msharma@farbergroup.com>
Subject: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Please see the attached letter.

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Daniel Naymark
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Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Interim Receiver Information Request
Date: Monday, March 25, 2019 at 10:32:09 PM Eastern Daylight Time
From: Phil Smith
To: Daniel Naymark
CC: Elizabeth Lentz, Gary Caplan, Zibarras, James

Good evening counsel, this email is further to my email below and the First Report of the Receiver, dated March 19, 2019.

I want to specifically deal with the "Additional Properties" listed in that report.

As set out in my email below,

"Mr. Hutchens, nor any company controlled by Mr. Hutchens, nor any company controlled by Tanya Hutchens, ever owned the properties located at 241 Lloyd Street, Sudbury; 480 Linda Street, Sudbury; 1755 Regent Street, Sudbury; or 380 Elgin Street, Sudbury."

Upon reading the March 19 report- it appears the allegation that my client is connected to these real properties stems from the fact that there are holding companies incorporated with similar names.

I can confirm that there was an attempted to purchase 241 Lloyd St, 480 Linda St, and 1755 Regent Street, from their prior owners – the Kennedy family. Unfortunately the sale never closed, but not before my client had incorporated the related holding companies, in anticipation of the closing. To be clear: Mr. Hutchens, Mrs. Hutchens, nor any company controlled by them ever took title to that real property.

My client has no connection to 480 Lind Street Holdings Corp or 502 Holdings Inc. Nor does Mrs. Hutchens.

The same is the case for 247 Shaugnessy Street Inc. There was a failed purchase for that real property and 308 Elgin from George Soule. The fact that those land are currently marketed for sale in a package deal with 300 Elgin St, 233 Shaugnessy and 241 Shaugnessy appears to be your basis for listing all those parcels as "Additional Properties". My client has never owned any of those real properties, nor has Mrs. Hutchens, nor has any entity controlled by the Hutchens. They have no connection to George Soule.

Sincerely,

Phil J. Smith, J.D., B.Math
DONNELLY MURPHY LAWYERS P.C.
519-524-2154 x 310

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Subject: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Interim Receiver Information Request
Date: Friday, March 8, 2019 at 5:25:41 PM Eastern Standard Time
From: Phil Smith
To: Daniel Naymark
CC: Elizabeth Lentz, Gary Caplan (GCaplan@mcr.law), Sachdeva, Bobby

Good afternoon counsel,
Further to my email from earlier today, please find below my client's answers to the questions posed in your March 6, 2019 letter.

I do stipulate that the below information has been gathered together *very quickly* given the tight timeframe imposed by the Court, and is accordingly subject to modification upon a more fulsome review of the records, as those records are made available to me and my client.

Sincerely,
Phil J. Smith, J.D., B.Math
DONNELLY MURPHY LAWYERS P.C.
519-524-2154 x 310

-
1. Provide a statement of net worth itemizing Mr. Hutchens' assets and liabilities, including real properties, cash, vehicles, securities, term deposits, investments and other assets;
Status: Making inquires and gathering documentation in order to produce this.
 2. Provide copies of Mr. Hutchens' complete tax returns for 2014-2018;
Answer: No tax returns have been prepared or filed for 2014-2018
 3. Provide copies of the complete (a) tax returns and (b) financial statements for 2014-2016 for the corporations listed in Schedule A to the Order and for the owners of (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury (collectively, the "Companies"). If any these records are not in Mr. Hutchens' power, possession or control, please advise where they are located;
Answer: Mr. Hutchens is not aware of any prepared or filed tax returns for the above listed corporations, for 2014-2016.
 4. Identify the shareholders of the Companies, and their respective shareholdings;
Answer:

100% of shares are held by Tanya Hutchens, in trust for the children:

- 29 Laren Street Inc.
- 3415 Errington Avenue Inc.
- 3419 Errington Avenue Inc.
- 331 Regent Street Inc.
- 110-114 Pine Street Inc.
- 15-16 Keziah Court Inc.
- 193 Mountain Street Inc.
- 625 Ash Street Inc.
- 101 Service Road Inc.
- JBD Hutchens Family Holdings Inc.
- 17 Serpentine Street Inc.

40% shared are held by Lilly Brook Developments Inc., and 60% shares are held by Tanya Hutchens, in trust for the children:

- 364 Morris Street Inc.
- 367-369 Howey Drive Inc.
- 720 Cambrian Heights Inc.

100% shares are held by Sandy Hutchens:

- 146 Whittaker Street Inc.

5. Provide the name(s) and contact information (address, email address, phone number, and fax number) of the accountant(s) who completed 2 and 3 above;

Answer: n/a

6. Provide the name(s) and contact information (address, email address, phone number, and fax number) of any other person(s) who maintains the books and records of the Companies and the properties listed in Schedule B to the Order (the "Properties");

Answer: Tanya Hutchens

7. Identify and provide unfettered access to the electronic devices that contain or did contain books and records of the Companies. The Receiver intends to create images of the hard drives of these devices. Please advise whether Mr. Hutchens has any concerns about privileged or irrelevant, confidential contents, in which case we can discuss appropriate arrangements;

Status: My client is investigating this.

8. Provide a list of corporations for which Mr. Hutchens is an officer, director, and the position(s) Mr. Hutchens holds;

Answer:

- 146 Whittaker Street Inc – president
- Westmoreland Equity Fund LLC – president
- Canadian Funding Corporation – president
- First Central Mortgage Corp – president
- First Central Holdings – president
- Northern Capital – president
- Great Eastern US – president

9. Provide a list of corporations, partnerships and trusts in which Mr. Hutchens owns shares or units (directly, indirectly or beneficially), and a description of the nature of his ownership interest (type of shares held, percentage of total equity);

Answer:

100% shares are held by Sandy Hutchens:

- 146 Whittaker Street Inc.
- Westmoreland Equity Fund LLC
- Canadian Funding Corporation
- First Central Mortgage Corp
- First Central Holdings
- Northern Capital
- Great Eastern US

10. Provide a list of all bank accounts (institution, branch, account number) directly or indirectly controlled by Mr. Hutchens, Sandy Hutchens, the Companies, and Dina Brik (to the extent that is within Mr. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present;

Answer: Mr. Hutchens' only bank account is with Buduchnist Credit Union, account #601007078362. The historic to present bank statements in this account were recently produced in the Colorado proceeding. I will obtain a copy from US counsel.

Mr. Hutchens is unaware of Dina Brik's current bank accounts.

11. Provide a list of all registered and non-registered investment accounts directly or indirectly controlled by Mr. Hutchens, the Companies, Tanya Hutchens, and Dina Brik (to the extent that is within Mr. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present;

Status: Mr. Hutchens in making inquiries. There may be an RESP for one of the children, holding under \$4k.

12. Identify Mr. Hutchens' sources of income for the past three years, and provide supporting documentation (pay slips, T4s, etc.);

Status: Making inquiries and gathering documentation.

13. Provide a list of all properties other than the Properties and (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury, in which Mr. Hutchens, Mr. Hutchens or the Companies directly or indirectly own a legal or beneficial interest, or which any of them possess or control, and provide details of the nature of their ownership interest;

Answer: 42 Clemow Avenue, Sudbury, is held by Mr. Hutchens and the Estate of Judith Hutchens (of which Mr. Hutchens is executor), in trust for Joshua Hutchens and Daniel Hutchens.

14. For the Properties and for (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; (d) 380 Elgin Street, Sudbury; and (e) any of the properties identified in response to 13 above:

- a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s). Please provide this information as a priority so that the Receiver can contact the property manager(s) as soon as possible to coordinate site visits;
- b. Advise the aggregate monthly rental income;
- c. identify where rental proceeds are deposited;
- d. Provide a rental roll with tenants and monthly rent amount; and
- e. Provide copies of all current rental/lease agreements;

Partial Answer: Mr. Hutchens, nor any company controlled by Mr. Hutchens, nor any company controlled by Tanya Hutchens, ever owned the properties located at 241 Lloyd Street, Sudbury; 480 Linda Street, Sudbury; 1755 Regent Street, Sudbury; or 380 Elgin Street, Sudbury.

There will be income and expenses relating to 42 Clemow. That documentation is being gathered.

15. Identify the source(s) of the following payments, and produce supporting account and transaction records:
- a. The \$505 filing fee paid on or about March 1, 2019 for the filing of Mr. Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193260), and provide supporting account and transaction records;
 - b. The \$505 filing fee paid on or about March 1, 2019 for the filing of Tanya Hutchens' notice

of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193261), and provide supporting account and transaction records; and

- c. The payment to Meridian to discharge its mortgage on 1479 Maple Street, Innisfil (approximately \$204,000);

Answer: Mr. Hutchens borrowed the money from his daughter Jennifer for the filing fees. Mr. Hutchens is unaware of the source of funds used to discharge the Maple Street mortgage. That question is better directed to Tanya Hutchens.

16. For each of the following property sales, (a) provide copies of agreements of purchase and sale; (b) provide statements of closing adjustments; and (c) provide an accounting of the sale proceeds (i.e., where were they deposited and subsequent flow of funds) and corresponding bank and transaction records:

- a. 364 Morris Street, Sudbury (sold for \$900,000 February 25, 2016);
- b. 625 Ash Street, Sudbury (sold for \$225,000 November 6, 2016);
- c. 720 Cambrian Heights Sudbury (sold for \$3,100,000 September 15, 2017); and
- d. 193 Mountain Street, Sudbury (sold for \$400,000 November 16, 2018);

Answer: 625 Ash Street was sold under power of sale on November 6, 2015 for \$225,000. There were no surplus funds from the sale; no funds were provided to my client or Tanya Hutchens (or any related company). A copy of the requested documents relating to this Power of Sale, and the related Power of Sale for 15-16 Keziah Court are retrievable here:

https://drive.google.com/drive/folders/1Yhu7_N3xRxWZgiHtUDmkZs4NiepkAH2F?usp=sharing

The relevant document is entitled: "16-02-17 Letter from Huneault re accounting.pdf"

With respect to 364 Morris Street, 720 Cambrian, and 193 Mountain Street, Mr. Hutchens is unaware of the exact details; Those questions are better directed to Tanya Hutchens.

17. At the hearing in this matter on February 28, 2019, counsel for Mrs. Hutchens took the position that she and Mr. Hutchens hold the Properties and perhaps other assets in trust for their children, directly or via the Companies. Please provide:

- a. A description of the nature of any such trusts, including the date and circumstances of their creation, the identities of all trustees and beneficiaries, and the assets over which each trust extends; and
- b. Documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s)

existence and operation;

Answer: Tanya Hutchens will be providing this documentation requested.

18. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties in the name of Adroit Advocates LLC in the registered amount of \$2 million, and provide corresponding records; and

Answer: This mortgage relates to legal fees. Mr. Hutchens is requesting the corresponding records.

19. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties in the name of Dina Brik in the registered amount of \$150,000, and provide corresponding records

Answer: Mr. Hutchens is unaware on the details of this debt. This question is better directed to Tanya Hutchens.

APPENDIX 16

**Undertakings from the examination of Sandy Craig Hutchens
held on April 12, 2019**

| UNDERTAKINGS | | | |
|---------------------|--------------------|----------------------|--|
| No. | Page # | Question # | Response |
| 1. | 24-25 | 91-92 | <p>Undertaking</p> <p>To review the list of corporations set out in answers 8 and 9 of Phil Smith’s email, dated March 8, 2019 (Exhibit 2), and advise if there are any other active corporations – except for 241 Lloyd Street Inc., 480 Linda Street Inc., and Cahill International – of which Mr. Hutchens is an officer, director, or shareholder.</p> <p>Response</p> <p>Status: My client is reviewing his records and will advise shortly.</p> |
| 2. | 55-56 | 226 | <p>Undertaking</p> <p>To provide the index or indices of Mr. Hutchens’ physical files, which indicate what documents he has and where they are stored.</p> <p>Response</p> <p>Answer: Please find attached two indexes of open/closed files, which reference physical ‘box numbers’.</p> |
| 3. | 57 | 230 | <p>Undertaking</p> <p>To provide an electronic copy of the bank statements that Mr. Hutchens produced in the Colorado action.</p> <p>Response</p> <p>Answer: Please find enclosed, copies of all TD, Meridian, BCU and KEB bank accounts that were produced in the Colorado proceeding.</p> |
| 4. | 62-65; 155; 160 | 238-244; 632; 659 | <p>Undertaking</p> <p>To provide the tax returns for the following businesses or entities, including any legal entities operating under one of these names: Canada Funding Corporation; 308 Elgin Street; First Central Holdings; Great Eastern Investment Fund; Northern Capital; Westmoreland Equity Fund; the Estate of Judith Hutchens; and 146 Whitaker Street Inc.</p> <p>Response</p> <p>Answer: My client doesn’t have any tax returns for any of these listed corporations in his possession. It is possible said documents would be in the possession of former accountants Marty Lapedus or Morey Posner. He is willing to sign an authorization for the same.</p> |

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| 5. | 66; 155; 160 | 244; 632; 659 | To provide all financial statements prepared for the following businesses or entities, including any legal entities operating under one of these names: Canada Funding Corporation; 308 Elgin Street; First Central Holdings; Great Eastern Investment Fund; Northern Capital; Westmoreland Equity Fund; the Estate of Judith Hutchens; and 146 Whitaker Street Inc. | Answer: My client doesn't have any financial statements for any of these listed corporations in his possession. It is possible said documents would be in the possession of former accountants Marty Lapedus or Morey Posner. He is willing to sign an authorization for the same. |
| 6. | 67-69; 155; 160 | 244; 632; 659 | To provide all bank account statements, or if Mr. Hutchens does not have possession of these statements, authorization to obtain them from the relevant financial institutions, for the following businesses or entities, including any legal entities operating under one of these names: Canada Funding Corporation; 308 Elgin Street; First Central Holdings; Great Eastern Investment Fund; Northern Capital; Westmoreland Equity Fund; the Estate of Judith Hutchens; and 146 Whitaker Street Inc. | Answer: Bank statements have been provided for Canadian Funding Corp, 308 Elgin, First Central, Estate of Judith Hutchens, 146 Whitaker had a bank account with TD. My client doesn't have the statements but I am attaching a copy of an old cheque which contains the account details. My client will sign an authorisation for disclosure of the full account if requested. The following companies never held a bank account: Great Eastern, Northern Capital, Westmoreland, |
| 7. | 71 | 254 | To provide an accounting of all monies that Mr. Hutchens paid to Ms. Hutchens, pursuant to sections 4(a), 6(a), 8(a), and 8(b) of the separation agreement (Exhibit 6). | Status: My client is reviewing his records and is actively working on this accounting. |

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| 8. | 77 | 274 | To provide a copy of the source documents that Mr. Hutchens intends to provide to his accountant to prepare his tax returns up to and including 2018. | Answer: the banker boxes of documentation, as discussed on my client's examination, are ready for pickup. The receiver can contact my client directly to coordinate pickup arrangements. |
| 9. | 98-99 | 376 | To provide an accounting of all of the loans that Mr. Hutchens provided to "the trust", which includes the properties that Mr. Hutchens considers to be held in trust for his children. | Status: My client is reviewing his records and is actively working on this accounting. |
| 10. | 99; 289 | 376; 1168-1172 | To provide an accounting of how Mr. Hutchens spent the funds that he obtained from Jan Luistermans, including an explanation for each transfer with the description "Transfer out to Chequing 1" in Exhibit 20. | Answer: Please find attached. |
| 11. | 102-105 | 380-387 | To advise if Mr. Hutchens, Ms. Hutchens, or any other entities that either of them control directly or indirectly, has a legal or beneficial interest in any real properties, aside from (a) 1573 Houston; (b) 1760 Cross Street; (c) 175 Hilda; and (d) the properties listed in Schedule B to the Order of Justice Penny, dated March 18, 2019 (Exhibit 7). | Answer: Mr. Hutchens doesn't have a legal or beneficial interest in any other real property. To the best of his knowledge, neither does Ms. Hutchens. |
| 12. | 108-109 | 397 | To provide the trust agreement relating to 42 Clemow. | Answer: Please find attached trust instruments dated September 1, 2005, and December 7, 2005 with respect to 42 Clemow |

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| 13. | 112-114 | 414-415 | To provide (a) documents showing the source of funds paid to Mr. Hawkins, whether it was paid for a mortgage loan or for the purchase of 42 Clemow; and (b) all supporting documentation for the agreement to convey 42 Clemow to Mr. Hutchens. | Status: My client is corresponding with his former real estate lawyers in order to try and determine this answer. |
| 14. | 117-118 | 434-436 | To advise of what Mr. Hutchens did with the \$100,000 from Mr. Henderson and to provide supporting documentation, including any documents showing that these funds were transferred to his children. | Status: My client is corresponding with his former real estate lawyers in order to try and determine this answer. |
| 15. | 132-133 | 504 | To provide tax returns and financial statements for the Estate of Judith Hutchens for the last three years in which they were prepared. | Answer: My client doesn't have any tax returns or financial statements for this Estate. It is possible said documents would be in the possession of former accountants Marty Lapedus or Morey Posner. He is willing to sign an authorization for the same. |
| 16. | 181-182 | 752 | To advise of when 99 Douglas was sold, the sale price, and what was done with the proceeds, and to provide supporting documentation for this information. | Status: My client is corresponding with his former real estate lawyers in order to try and determine this answer. |
| 17. | 182 | 756 | To advise of when 557 Lorne was sold, the sale price, and what was done with the proceeds, and to provide supporting documentation for this information. | Status: My client is corresponding with his former real estate lawyers in order to try and determine this answer. |
| 18. | 183-185 | 762 | To advise of when 435 Clinton Street was sold, the sale price, and what was done with the proceeds, and to provide supporting documentation for this information. | Status: My client is corresponding with his former real estate lawyers in order to try and determine this answer. |

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| 19. | 194 | 802 | To advise of what was done with the sale proceeds of 47 Pico in April of 2008, and to provide supporting documentation for that information. | Answer: My client has no record of this. He suggests the question be posed to Ms. Hutchens, or her real estate lawyer of that time. Status: My client is reviewing his records and is actively working on this accounting. |
| 20. | 198-199 | 820 | To advise of, and identify, any money that Mr. Hutchens paid to the trust for expenses that was not a loan. | Status: My client is continuing to review his records, but is doubtful we will be able to locate the answer to this question without the cooperation of Ms. Hutchens and specifically disclosure from her prior real estate lawyers (cooperation which he has requested) |
| 21. | 209; 213 | 845; 852 | To advise of the source of the purchase funds, other than from the mortgages registered on title, for each of the properties listed in Exhibit 14, and to provide supporting documentation for this information. | Status: My client is continuing to review his records, but is doubtful we will be able to locate the answer to this question without the cooperation of Ms. Hutchens and specifically disclosure from her prior real estate lawyers (cooperation which he has requested) |
| 22. | 209-210; 213 | 845; 852 | To advise of the source of funds used for any mortgage payout over \$50,000 on any of the properties listed in Exhibit 14, and to provide supporting documentation for this information. | Status: My client is continuing to review his records, but is doubtful we will be able to locate the answer to this question without the cooperation of Ms. Hutchens and specifically disclosure from her prior real estate lawyers (cooperation which he has requested) |
| 23. | 212; 213 | 849; 852 | To advise of what happened to the proceeds of sale for each of the sales listed in Exhibit 14, except for the sales of 625 Ash Street and 15-16 Keziah Court, and to provide supporting documentation for this information. | Status: My client is continuing to review his records, but is doubtful we will be able to locate the answer to this question without the cooperation of Ms. Hutchens and specifically disclosure from her prior real estate lawyers (cooperation which he has requested) |

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| 24. | 214 | 856 | To advise of whether any of the amounts in the “original cost” or “sale price” columns in Exhibit 14 are inaccurate. If so, to advise of the correct amounts and provide supporting documentation for this information. | Status: My client is reviewing his records and is actively working on this accounting. |
| 25. | 216-220 | 859-884 | To advise of when each of the following Sudbury properties (listed in Exhibit 15) were sold, what happened to the proceeds of sale, and to provide supporting documentation for that information: 299 College Street; 228 College Street; 24 Bloor Street; 32 Bloor Street, 1282 Howey Drive, 35 Front Street, 435 Clinton Avenue, and 40 Clemow. | Status: My client is corresponding with his former real estate lawyers in order to try and determine this answer. |
| 26. | 245 | 991 | To provide the final statement for Mr. Hutchens’ RSP account with CIBC Wood Gundy. | Answer: My client has searched his records and is unable to locate the final statement. He can provide an authorization for direct disclosure if so requested. |
| 27. | 251-252 | 1014 | To provide an updated version of Exhibit 17 that is coherent and decipherable on its face, with an explanation as to what information is contained in the coloured rows. | Answer: My client is unable to decipher what information was attempting to be conveyed by exhibit 17. |
| 28. | 270-271 | 1098 | To identify the destination for all payments over \$500.00 that are labelled “Utility Bill Payment”, with no payee identified in the Buduchmist Credit Union account statements for 1755 Regent Street Inc. (Exhibit 18; see e.g., June 16, 2016 payments). | Status: my client is corresponding with the bank manager to determine the answer to this question. |

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| 29. | 272-275 | 1104-1113 | To provide statements for the past three years for all of Mr. Hutchens' current credits from Capital One, President's Choice, the Bank of Montreal, Fido, and Walmart. | <p>Answer: My client doesn't have three years of statements in his possession, however he will sign an authorization permitting direct disclosure of the same.</p> <p>I can confirm that his current credit cards are held with:</p> <ul style="list-style-type: none"> - BMO - Walmart - Rogers/Fido - Capital One - PC Financial <p>The above credit cards are all Mastercards. The above listed name on all these cards are Sandy Hutchens, and the listed address is 1779 Cross Street.</p> |
| 30. | 282 | 1141 | To identify the destination for all payments over \$500.00 that are labelled "Utility Bill Payment", with no payee identified in the Buduchmist Credit Union account statements for 241 Lloyd Street Inc. (Exhibit 19). | <p>Status: my client is corresponding with the bank manager to determine the answer to this question.</p> |
| 31. | 286 | 1152 | To provide any monthly statements in Mr. Hutchens' power, possession, or control, for his two personal accounts at Buduchmist Credit Union. | <p>Answer: Please find attached.</p> |
| 32. | 291-292 | 1187 | To advise of why Mr. Hutchens gave \$25,800.00 to Jan Luistermans on January 15, 2019, and to provide supporting documentation for this information. | <p>Answer: Please see answer in undertaking 10</p> |

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| 33. | 297-298 | 1208 | To provide all of Mr. Hutchens' statements from Money Mart, including from any accounts, pay-as-you-go cards, prepaid cards, or any other type of product or service from Money Mart. | <p>Answer: Included in undertaking 10 are Money Mart statements going back to March, 2018.</p> <p>Documentation going further back then that will need to be obtained from Money Mart directly. My client is content to provide an authorization for the same.</p> |
| 34. | 300 | 1211 | To provide all of the statements for all of Mr. Hutchens' debit cards, credit cards, and prepaid cards of any kind. | <p>Answer: This appears redundant with undertakings 33, 29, 31; answered above.</p> |
| 35. | 305-306 | 1243 | To provide all bank account statements for the following corporations, which have not already been produced, for as far back as they are available: 241 Lloyd Street Inc.; 480 Linda Street Inc.; Cahill International; 308 Elgin Street Inc.; 1755 Regent Street Inc.; and the corporations listed in answer 8 of Exhibit 2. | <p>Answer: Cahill International never held a bank account.</p> <p>The bank accounts for the remaining corporations are included in undertaking 3</p> |

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| 36. | 306 | 1243 | <p>To provide tax returns and financial statements for the last three years in which they were generated for the following corporations: 241 Lloyd Street Inc.; 480 Linda Street Inc.; Cahill International; 308 Elgin Street Inc.; 1755 Regent Street Inc.; and the corporations listed in answer 8 of Exhibit 2.</p> | <p>Answer: My client conducted a thorough search of his records and was able to locate a set of T2 and Notices of Assessment for 101 Service, 241 Lloyd, 480 Linda, and 1755 Regent. Those are attached.</p> <p>It is possible additional documents would be in the possession of former accountants Marty Lapedus or Morey Posner. He is willing to sign an authorization for the same.</p> |
| 37. | 306 | 1243 | <p>To provide a list of all of the current assets owned by each of the following corporations: 241 Lloyd Street Inc.; 480 Linda Street Inc.; Cahill International; 308 Elgin Street Inc.; 1755 Regent Street Inc.; and the corporations listed in answer 8 of Exhibit 2.</p> | <p>Answer: None of the corporations listed hold any assets.</p> |
| 38. | 306 | 1243 | <p>To provide the corporate ledgers of the following corporations: 241 Lloyd Street Inc.; 480 Linda Street Inc.; Cahill International; 308 Elgin Street Inc.; 1755 Regent Street Inc.; and the corporations listed in answer 8 of Exhibit 2.</p> | <p>Answer: My client doesn't believe corporate ledgers for any of those listed corporations were created.</p> |

APPENDIX 17

File No. 10197

March 6, 2019

BY EMAIL & FAX

Gary Caplan
Mason Caplan Roti LLP
350 Bay Street, Suite 600
Toronto, Ontario, M5H 2S6

Dear Mr. Caplan:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Interim Receiver Information Request**

I write as counsel to A. Farber & Partners Inc. (the “Receiver”), in its capacity as interim receiver pursuant to the February 28, 2019 order of Justice Penny in this matter (the “Order”).

Pursuant to paragraph 2(f) of the Order, the Receiver intends to examine Tanya Hutchens under oath. We would like to conduct that examination on March 11 or 12, 2019. **Please advise if she is available on one of those two dates, or if not, what her earliest availability is.**

In addition, pursuant to paragraphs 2 to 6 of the Order, **we ask that Mrs. Hutchens provide the following information and records.** Owing to the short time frame for the Receiver’s work, Mrs. Hutchens may produce responsive information and materials on a rolling basis.

1. Provide a statement of net worth itemizing Mrs. Hutchens’ assets and liabilities, including real properties, cash, vehicles, securities, term deposits, investments and other assets;
2. Provide copies of Mrs. Hutchens’ complete tax returns for 2014-2018;
3. Provide copies of the complete (a) tax returns and (b) financial statements for 2014-2018 for the corporations listed in Schedule A to the Order and for the owners of (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury (collectively, the “Companies”). If any these records are not in Mrs. Hutchens’ power, possession or control, please advise where they are located;
4. Identify the shareholders of the Companies, and their respective shareholdings;
5. Provide the name(s) and contact information (address, email address, phone number, and fax number) of the accountant(s) who completed 2 and 3 above;
6. Provide the name(s) and contact information (address, email address, phone number, and fax number) of any other person(s) who maintains the books and records of the Companies and the properties listed in Schedule B to the Order (the “Properties”);
7. Identify and provide unfettered access to the electronic devices that contain or did contain books and records of the Companies. The Receiver intends to create images of the hard drives of these devices. Please advise whether Mrs. Hutchens has any concerns about privileged or irrelevant, confidential contents, in which case we can discuss appropriate arrangements;
8. Provide a list of corporations for which Mrs. Hutchens is an officer, director, and the position(s) Mrs. Hutchens holds;
9. Provide a list of corporations, partnerships and trusts in which Mrs. Hutchens owns shares or units (directly, indirectly or beneficially), and a description of the nature of her ownership interest (type of shares held, percentage of total equity);

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10. Provide a list of all bank accounts (institution, branch, account number) directly or indirectly controlled by Mrs. Hutchens, the Companies, Sandy Hutchens, and Dina Brik (to the extent that is within Mrs. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present;
11. Provide a list of all registered and non-registered investment accounts directly or indirectly controlled by Mrs. Hutchens, Sandy Hutchens, the Companies, and Dina Brik (to the extent that is within Mrs. Hutchens' knowledge), and provide copies of the account statements for each of those accounts from February 2015 to present;
12. Identify Mrs. Hutchens' sources of income for the past three years, and provide supporting documentation (pay slips, T4s, etc.);
13. Provide a list of all properties other than the Properties and (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury, in which Mrs. Hutchens, Mr. Hutchens or the Companies directly or indirectly own a legal or beneficial interest, or which any of them possess or control, and provide details of the nature of their ownership interest;
14. For the Properties and for (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; (d) 380 Elgin Street, Sudbury; and (e) any of the properties identified in response to 13 above:
 - a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s). **Please provide this information as a priority so that the Receiver can contact the property manager(s) as soon as possible to coordinate site visits;**
 - b. Advise the aggregate monthly rental income;
 - c. Identify where rental proceeds are deposited;
 - d. Provide a rental roll with tenants and monthly rent amount; and
 - e. Provide copies of all current rental/lease agreements;
15. Identify the source(s) of the following payments, and produce supporting account and transaction records:
 - a. Payments to Mrs. Hutchens' credit card, which we understand from counsel in the Colorado proceeding totalled \$143,130 between August 2016 and May 2018 (and perhaps more since), and provide supporting account and transaction records;
 - b. The \$505 filing fee paid on or about March 1, 2019 for the filing of Mrs. Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193261), and provide supporting account and transaction records; and
 - c. The payment to Meridian to discharge its mortgage on 1479 Maple Street, Innisfil (approximately \$204,000);
16. For each of the following mortgages assumed by Mrs. Hutchens or related entities, (a) advise the terms by which Mrs. Hutchens assumed the mortgages and provide copies of any assumption/assignment agreements; and (b) advise the source of funds with which Mrs. Hutchens or related entities paid to assume the mortgages, and provide corresponding bank and transaction records:
 - a. 29 Lauren Street, Sudbury – mortgage assumed from BMO (face value of \$800k) March 24, 2016
 - b. 367-369 Howey Drive - mortgage assumed from BMO (Face value \$915k) on Sept 20, 2017
 - c. 110-114 Pine Street, Sudbury – mortgage assumed from Canadian Western Trust (face value \$602k) on March 27, 2017 and Barbara Carpenter (face value \$125k) August 19, 2014
 - d. 17 Serpentine Street, Sudbury - mortgage assumed from Canadian Western (face value \$200k) on March 27, 2017 and Lapelle Management (face value \$51k) on Jan 7, 2016
17. Provide copies of all mortgage agreements held by Mrs. Hutchens or related entities on any of the Properties.
18. For each of the following property sales, (a) provide copies of agreements of purchase and sale; (b) provide statements of closing adjustments; and (c) provide an accounting of the sale proceeds (i.e., where were they deposited and subsequent flow of funds) and corresponding bank and transaction records:
 - a. 364 Morris Street, Sudbury (sold for \$900,000 February 25, 2016);
 - b. 625 Ash Street, Sudbury (sold for \$225,000 November 6, 2016);
 - c. 720 Cambrian Heights Sudbury (sold for \$3,100,000 September 15, 2017); and
 - d. 193 Mountain Street, Sudbury (sold for \$400,000 November 16, 2018);

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19. At the hearing in this matter on February 28, 2019, you indicated that Mrs. Hutchens holds the Properties and perhaps other assets in trust for her children, directly or via the Companies. Please provide:
 - a. A description of the nature of any such trusts, including the date and circumstances of their creation, the identities of all trustees and beneficiaries, and the assets over which each trust extends; and
 - b. Documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s) existence and operation;
20. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties¹ in the name of Adroit Advocates LLC in the registered amount of \$2 million, and provide corresponding records; and
21. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties² in the name of Dina Brik in the registered amount of \$150,000, and provide corresponding records.

Yours truly,



Daniel Naymark

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

¹ 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

² 3415 Errington Avenue, Chelmsford and 3419 Errington Avenue, Chelmsford.

APPENDIX 18

File No. 10197

March 26, 2019

BY EMAIL

Gary Caplan
Mason Caplan Roti LLP
350 Bay Street, Suite 600
Toronto, Ontario, M5H 2S6

Dear Mr. Caplan:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Receiver Information Request**

I write further to my correspondence of March 6 and 13, 2019, and the order of Justice Penny dated March 18, 2019.

Mrs. Hutchens has not yet made herself available for examination under oath. Please advise her availability for examination the weeks of April 8 and 15, 2019.

In addition, Mrs. Hutchens has yet to produce the following information and records, which we requested on March 6 and 11, 2019. Justice Penny has ordered Mr. Hutchens to do so by no later than April 18, 2019, and we ask that he do so as soon as possible, on a rolling basis if necessary.

1. Provide a statement of net worth itemizing Mrs. Hutchens' assets and liabilities, including real properties, cash, vehicles, securities, term deposits, investments and other assets;
2. Identify and provide unfettered access to the electronic devices that contain or did contain books and records of the Companies. The Receiver intends to create images of the hard drives of these devices. Please advise whether Mrs. Hutchens has any concerns about privileged or irrelevant, confidential contents, in which case we can discuss appropriate arrangements;
3. Provide a list of corporations for which Ms. Hutchens is an officer, director, and the position(s) Mrs. Hutchens holds, which are not already included in your response on March 11, 2019, if any;
4. Provide a list of corporations, partnerships and trusts in which Mrs. Hutchens owns shares or units (directly, indirectly or beneficially), and a description of the nature of her ownership interest (type of shares held, percentage of total equity), which are not already included in your response on March 11, 2019, if any;

N A Y M A R K L A W

5. Further to your response on March 11, 2019, please provide copies of the account statements for Ms. Dina Brik's account with BMO (account no. 1998-893) from February 2015 to present;
6. Further to your response on March 11, 2019, please provide copies of the account statements Ms. Hutchens' RRSP account with Meridian Credit Union from February 2015 to present;
7. Further to your response on March 11, 2019, please provide supporting documentation for Ms. Hutchens' receipt of management fees (pay slips, T4s, etc.), which you have identified as her only source of income;
8. For the Properties and for (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury:
 - a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s);
 - b. Advise the aggregate monthly rental income;
 - c. Identify where rental proceeds are deposited;
 - d. Provide a rental roll with tenants and monthly rent amount; and
 - e. Provide copies of all current rental/lease agreements;
9. Identify the source(s) of the following payments, and produce supporting account and transaction records:
 - a. Payments to Mrs. Hutchens' credit card, which we understand from counsel in the Colorado proceeding totaled \$143,130 between August 2016 and May 2018 (and perhaps more since), and provide supporting account and transaction records;
 - b. The \$505 filing fee paid on or about March 1, 2019 for the filing of Mrs. Hutchens' notice of appeal in Case Number 2:18-cv-00692-PD (Stevens et al. v. Westmoreland Equity Fund, LLC et al.) (receipt number PPE193261), and provide supporting account and transaction records; and
 - c. The payment to Meridian to discharge its mortgage on 1479 Maple Street, Innisfil (approximately \$204,000);
10. For each of the following mortgages assumed by Mrs. Hutchens or related entities, (a) advise the terms by which Mrs. Hutchens assumed the mortgages and provide copies of any assumption/assignment agreements; and (b) advise the source of funds with which Mrs. Hutchens or related entities paid to assume the mortgages, and provide corresponding bank and transaction records:
 - a. 29 Lauren Street, Sudbury – mortgage assumed from BMO (face value of \$800k) March 24, 2016
 - b. 367-369 Howey Drive - mortgage assumed from BMO (Face value \$915k) on Sept 20, 2017
 - c. 110-114 Pine Street, Sudbury – mortgage assumed from Canadian Western Trust (face value \$602k) on March 27, 2017 and Barbara Carpenter (face value \$125k) August 19, 2014

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- d. 17 Serpentine Street, Sudbury - mortgage assumed from Canadian Western (face value \$200k) on March 27, 2017 and Lapelle Management (face value \$51k) on Jan 7, 2016
- 11. Provide copies of all mortgage agreements held by Mrs. Hutchens or related entities on any of the Properties, which you have not already provided.
- 12. For each of the following property sales, (a) provide copies of agreements of purchase and sale; (b) provide statements of closing adjustments; and (c) provide an accounting of the sale proceeds (i.e., where were they deposited and subsequent flow of funds) and corresponding bank and transaction records:
 - a. 364 Morris Street, Sudbury (sold for \$900,000 February 25, 2016);
 - b. 625 Ash Street, Sudbury (sold for \$225,000 November 6, 2016);
 - c. 720 Cambrian Heights Sudbury (sold for \$3,100,000 September 15, 2017); and
 - d. 193 Mountain Street, Sudbury (sold for \$400,000 November 16, 2018);
- 13. At the hearing in this matter on February 28, 2019, you indicated that Mrs. Hutchens holds the Properties and perhaps other assets in trust for her children, directly or via the Companies. Please provide, in addition to the trust agreements that you have already provided:
 - a. A description of the nature of any such trusts, including the date and circumstances of their creation, the identities of all trustees and beneficiaries, and the assets over which each trust extends; and
 - b. Documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s) existence and operation;
- 14. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties¹ in the name of Adroit Advocates LLC in the registered amount of \$2 million, and provide corresponding records;
- 15. Advise the nature and amount of the debt corresponding to the mortgages held on certain of the properties² in the name of Dina Brik in the registered amount of \$150,000, and provide corresponding records; and
- 16. The four banker's boxes of documents and corporate Minute Books that Ms. Hutchens has already located.

Yours truly,

Daniel Naymark

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

¹ 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

² 3415 Errington Avenue, Chelmsford and 3419 Errington Avenue, Chelmsford.

APPENDIX 19

Subject: FW: Hutchens et al
Date: Tuesday, April 16, 2019 at 5:53:05 PM Eastern Daylight Time
From: Paul J. Denton
To: Daniel Naymark
CC: Terrence Liu, Noah Litwack, Megha Sharma
Attachments: BMO Bank AC 1998-893.pdf

Daniel,

Per our call just now, please see the information requests to Tanya below all unanswered at this time.

regards

Paul J. Denton, CA (NZ), CIRP, LIT
Managing Director | Restructuring
T: +1 (416) 496-3773 | M: +1 (416) 846-0069
farbergroup.com



150 York Street, Suite 1600
Toronto, ON, Canada, M5H 3S5

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From: Paul J. Denton
Sent: Tuesday, April 16, 2019 8:50 AM
To: tanya Hutch <tanyahut12@gmail.com>
Cc: Megha Sharma <msharma@farbergroup.com>; Noah Litwack <nlitwack@farbergroup.com>;
gcaplan@mcr.law
Subject: RE: Hutchens et al

Tanya

I have had no response on the below. I believe the requested analysis is straight forward and we do urgently need this information.

I left a voice mail also this morning on this matter.

Please confirm you are dealing with. If you have any queries I can be reached on 416 496-3773

Thank you

Paul J. Denton, CA (NZ), CIRP, LIT
Managing Director | Restructuring
T: +1 (416) 496-3773 | M: +1 (416) 846-0069
farbergroup.com

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From: Paul J. Denton

Sent: Wednesday, April 10, 2019 12:29 PM

To: tanya Hutch <tanyahut12@gmail.com>

Cc: Megha Sharma <msharma@farbergroup.com>; Noah Litwack <nlitwack@farbergroup.com>;
gcaplan@mcr.law

Subject: Re: Hutchens et al

Tanya,

I am following up on our brief meeting on Monday April 8 wherein you provide surplus proceeds of \$4,500 for the Receiver to deposit. There was a hold back of around \$2,000 for bona fide business payments, likely insurance. You indicated you would get back to the Receiver Tuesday April 9 with an accounting of the rents received and expenses paid from the BMO Bank Account number 1998-893 (the "**BMO Account**").

From an overall perspective we request the following be provided on an urgent basis:

The period March 18 to March 26, 2019

You provided us the BMO Account bank statements up until March 26, 2019. We are interested in the period from March 18, the date of the updated Court Order and March 26, 2019. The relevant bank statement has been attached for your reference.

The attached BMO Account bank statement shows that as on March 19, 2019, the Account had a balance of \$7,397.64. There has been one deposit of \$100 to this Account after March 19, 2019.

Further, there have been several withdrawals from this Account amounting to \$6,044.50 as can be seen from bank statement through to March 26. Could you please explain the deposit and the purpose of each of the withdrawals made from this Account at the earliest.

The period March 26 to April 10, 2019

For the period March 26 to today, April 10, please provide a full accounting of the receipts, which we would assume are April rents and each disbursement made. The receipts do need to be properly described in terms of which tenant and which property, so we can properly reconcile the rent roll. Likewise disbursements.

Tanya we really do need this attended to on a urgent basis, as there are a number of significant challenges faced with the property portfolio. A more accurate snapshot of the financial position of each of the properties is needed as part of the Receiver's overall assessment to better inform how to the address these challenges.

If other receipts or disbursements have flowed into other bank accounts in this overall period March 18 to April 10, 2019 we need to be apprised of that in detail also.

Thank you

Paul J. Denton, CA (NZ), CIRP, LIT
Managing Director | Restructuring
T: +1 (416) 496-3773 | M: +1 (416) 846-0069
farbergroup.com

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Subject: Re: [**EXT**] Re: Continuation of Tanya's Examination
Date: Wednesday, April 17, 2019 at 3:05:40 PM Eastern Daylight Time
From: Daniel Naymark
To: Sachdeva, Bobby
CC: Terrence Liu, Paul Denton, Megha Sharma
Attachments: image001.png

I just saw this after sending my last email to you, sorry.

What can you tell us about her condition, ideally corroborated in writing by a doctor? We will need to assess whether her failure to attend is justified. Please appreciate that this is the second last-minute cancellation in three attempts to examine, and we are now looking at another late cancellation fee, a good deal of missing information about assets, and issues of non-compliance with Justice Penny's orders.

Next week, we can examine Tuesday afternoon or Thursday any time after the chambers appointment in this matter. If the living expenses/legal fees motion settles as hoped, that will free up Friday as well.

Daniel

--
Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: "Sachdeva, Bobby" <bsachdeva@millerthomson.com>
Date: Wednesday, April 17, 2019 at 2:43 PM
To: Daniel Naymark <dnaymark@naymarklaw.com>
Subject: Re: [**EXT**] Re: Continuation of Tanya's Examination

Daniel

Tanya called me about 20 mins ago and advised that she is not well today and does not expect her condition will improve by tomorrow afternoon. All I can tell you is that she did not sound well on by the call to me.

She asked that we reschedule the continued examination to next week. Please provide your available dates for next week and we will respond in Short order.

Thanks for your understanding

Bobby

BOBBY H. SACHDEVA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6670

Fax: +1 905.660.0139

Email: bsachdeva@millerthomson.com

millerthomson.com



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On Apr 15, 2019, at 2:59 PM, Daniel Naymark <dnyaymark@naymarklaw.com> wrote:

Are we confirmed for Thurs afternoon?

--

Daniel Naymark

NAYMARK LAW

t: (416) 640-6078 | f: (647) 660-5060

dnyaymark@naymarklaw.com

From: Daniel Naymark <dnyaymark@naymarklaw.com>
Date: Saturday, April 13, 2019 at 6:04 PM
To: "Sachdeva, Bobby" <bsachdeva@millerthomson.com>
Subject: Re: **[**EXT**]** Re: Continuation of Tanya's Examination

Thanks.

--

Daniel Naymark

NAYMARK LAW

t: (416) 640-6078 | f: (647) 660-5060

dnyaymark@naymarklaw.com

From: Sachdeva, Bobby <bsachdeva@millerthomson.com>
Sent: Saturday, April 13, 2019 5:53:35 PM
To: Daniel Naymark
Subject: Re: **[**EXT**]** Re: Continuation of Tanya's Examination

Will confirm with Tanya and get back to you by Monday.

Regards

Bobby

BOBBY H. SACHDEVA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6670

Fax: +1 905.660.0139

Email: bsachdeva@millerthomson.com

millerthomson.com

<image001.png>

Please consider the environment before printing this email.

On Apr 13, 2019, at 5:35 PM, Daniel Naymark <dnaymark@naymarklaw.com> wrote:

2 is better if that's OK.

--

Daniel Naymark

NAYMARK LAW

t: (416) 640-6078 | f: (647) 660-5060

dnaymark@naymarklaw.com

From: "Sachdeva, Bobby" <bsachdeva@millerthomson.com>

Date: Saturday, April 13, 2019 at 5:24 PM

To: Daniel Naymark <dnaymark@naymarklaw.com>

Subject: Re: **[**EXT**]** Re: Continuation of Tanya's Examination

Can we go 10 to 12 pm?

Otherwise let's start at 2 pm.

Sent from my iPhone

BOBBY H. SACHDEVA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6670

Fax: +1 905.660.0139

Email: bsachdeva@millerthomson.com

millerthomson.com

<image001.png>

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On Apr 13, 2019, at 5:20 PM, Daniel Naymark <dnaymark@naymarklaw.com> wrote:

I gather from Gary that Bobby will be attending – Bobby, please let us know if you prefer 10 am or 1 pm for the examination and we'll book it.

--

Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: Gary Caplan <GCaplan@mcr.law>
Date: Wednesday, April 10, 2019 at 8:44 AM
To: Daniel Naymark <dnaymark@naymarklaw.com>, James Zibarras <jzibarras@millierthomson.com>, "Sachdeva, Bobby" <bsachdeva@millierthomson.com>, "kboyd@millierthomson.com" <kboyd@millierthomson.com>
Cc: Terrence Liu <tliu@naymarklaw.com>, Paul Denton <pdenton@farbergroup.com>, Megha Sharma <msharma@farbergroup.com>
Subject: RE: Continuation of Tanya's Examination

Next Thursday is ok with me but I will defer to james and bobby.

Gary M. Caplan, LL.B. LL.M
Barrister, Certified Mediator, Chartered Arbitrator
Certified Specialist in Civil Litigation
Tel: (416) 596-7796 | Fax: (855) 880-6271 | gcaplan@mcr.law
<image001.jpg>
350 Bay Street, Suite 600
Toronto, Ontario M5H 2S6
www.mcr.law

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From: Daniel Naymark [<mailto:dnaymark@naymarklaw.com>]
Sent: Tuesday, April 09, 2019 10:21 PM
To: Gary Caplan; James Zibarras; Sachdeva, Bobby; kboyd@millierthomson.com
Cc: Terrence Liu; Paul Denton; Megha Sharma
Subject: Continuation of Tanya's Examination

We would like to schedule the next portion of Tanya's examination. Having spent some time with her on

Thursday, I better appreciate (and agree with) Gary's suggestion that we schedule shorter blocks. She indicated at her examination that she can be available any day this week or next. Would 3 hours at either 10 am or 1 pm next Tuesday or Thursday work for one of you? We'd book her at Network again.

--
Daniel Naymark
dnaymark@naymarklaw.com

<image002.png>
171 John Street, Suite 101
Toronto, ON M5T 1X3
t: (416) 640-6078 | f: (647) 660-5060
www.naymarklaw.com

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Subject: Re: [**EXT**] Tanya Undertakings and net worth statement
Date: Wednesday, April 17, 2019 at 5:16:44 PM Eastern Daylight Time
From: Sachdeva, Bobby
To: Daniel Naymark
CC: Terrence Liu, Paul Denton, Megha Sharma, Dusseault, Madeleine
Attachments: image001.png, image007b80.PNG

We are working on them Daniel.

Regards
Bobby

Sent from my iPhone

BOBBY H. SACHDEVA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700
Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6670

Fax: +1 905.660.0139

Email: bsachdeva@millerthomson.com

millerthomson.com



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On Apr 17, 2019, at 2:51 PM, Daniel Naymark <dnaymark@naymarklaw.com> wrote:

Hi Bobby,

At Tanya's initial examination, we flagged a handful of undertakings as particularly urgent. I don't believe she's yet answered them, other than providing some cash to Farber. Would you please arrange for her to have these answers to us either in advance of or at tomorrow afternoon's examination? They were:

1. Transfer funds in the BMO account for the #d company in Dina Brik's name, that she uses to collect rent. (I understand she has at least partly complied with this request.)
2. Provide a copy of the spreadsheet she maintained of revenues and expenses for each property, which she said was current to around a year ago
3. Provide her texts/notes-to-self recording property expenses as incurred
4. Provide a copy of every lease for every current tenant

Also, Tanya has not yet provided much of the information and documents requested in our March 6 and 26 letters to Gary (attached for ease of reference). Her deadline for complying with the February 28th order (pursuant to which these requests were made) is tomorrow. The outstanding requests include a statement of net worth. To the extent we will not have complete answers by tomorrow, and without waiving her

obligations to comply with the court orders, would she please at least provide her statement of net worth in advance of tomorrow's examination, or failing that, bring it with her?

Thank you,
Daniel

--

Daniel Naymark
dnaymark@naymarklaw.com

<image001.png>
171 John Street, Suite 101
Toronto, ON M5T 1X3
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Subject: Re: Dina Brik contact
Date: Monday, April 22, 2019 at 9:38:55 AM Eastern Daylight Time
From: Gary Caplan
To: Daniel Naymark
CC: Sachdeva, Bobby, James Zibarras, Boyd, Keegan, Phil Smith, Terrence Liu
Attachments: image001.png, image001.png

I don't

Ask tanya

She may have been copied on earlier emails

Sent from my iPhone

Please excuse autocorrect fumbles, terse replies and grammatical atrocities

On Apr 22, 2019, at 08:00, Daniel Naymark <dnaymark@naymarklaw.com> wrote:

Would one of you please get us an email address for Dina Brik, so we can serve her with materials pursuant to the protocol?

We also have an information request to send her, done most easily through email.

Thanks

—

Daniel Naymark

dnaymark@naymarklaw.com

NAYMARK LAW

171 John Street, Suite 101

Toronto, ON M5T 1X3

t: (416) 640-6078 | f: (647) 660-5060

www.naymarklaw.com

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Subject: Request for contact information of Ms. Dina Brik
Date: Monday, April 22, 2019 at 12:57:02 PM Eastern Daylight Time
From: Terrence Liu
To: tanyahut12@gmail.com
CC: Gary Caplan, Daniel Naymark, Paul J. Denton, Megha Sharma
Priority: High

Ms. Hutchens,

I am counsel for the Receiver. We met at your previous examination on April 4, 2019.

Your counsel has suggested that we ask you directly for an email address and phone number that we can use to contact your mother, Ms. Dina Brik.

Also, please confirm that your mother's current home address is 468 Beverley Glen Boulevard, and if this is not correct please provide us with her current home address.

Please provide us with this information as soon as possible.

Regards,

Terrence Liu

--

Terrence Liu
NAYMARK LAW
t: (416) 640-2256 | f: (647) 660-5060
tliu@naymarklaw.com

[This page intentionally left blank]

Thursday, May 16, 2019 at 2:34:13 PM Eastern Daylight Time

Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Listing of Properties [MTDMS-Legal.FID8004534]
Date: Friday, May 3, 2019 at 6:12:39 PM Eastern Daylight Time
From: Sachdeva, Bobby
To: Daniel Naymark, Phil Smith, Paul J. Denton, gcaplan@mcr.law
CC: Terrence Liu, Noah Litwack
Attachments: image001.png, imagee87b8c.PNG

Daniel

I am trying.

BOBBY H. SACHDEVA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700
Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6670

Fax: +1 905.660.0139

Email: bsachdeva@millerthomson.com

millerthomson.com



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From: Daniel Naymark [mailto:dnyaymark@naymarklaw.com]
Sent: Friday, May 3, 2019 4:33 PM
To: Phil Smith <psmith@dmlaw.ca>; Paul J. Denton <pdenton@farbergroup.com>; gcaplan@mcr.law; Sachdeva, Bobby <bsachdeva@millerthomson.com>
Cc: Terrence Liu <tliu@naymarklaw.com>; Noah Litwack <nlitwack@farbergroup.com>
Subject: **[**EXT**]** Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Listing of Properties

Bobby,

Have you had any response from Tanya on this?

Can she at least give us a two-hour window when prospective realtors would be able to come see the property?

Thank you,
Daniel

--

Daniel Naymark
NAYMARK LAW

t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: Daniel Naymark <dnaymark@naymarklaw.com>
Date: Wednesday, May 1, 2019 at 7:23 PM
To: Phil Smith <psmith@dmlaw.ca>, Paul Denton <pdenton@farbergroup.com>, Gary Caplan <gcaplan@mcr.law>, Bobby Sachdeva <bsachdeva@millერთhompson.com>
Cc: Terrence Liu <tliu@naymarklaw.com>, Noah Litwack <nlitwack@farbergroup.com>
Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Listing of Properties

Thank you for this response, Phil. Paul will be in touch shortly with timing for access to 1790 Cross and is in direct contact with the tenants for the other properties.

May we please hear from counsel for Tanya?

--

Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: Phil Smith <psmith@dmlaw.ca>
Sent: Wednesday, May 1, 2019 12:40 PM
To: Daniel Naymark; Paul J. Denton; gcaplan@mcr.law; bsachdeva@millერთhompson.com
Cc: Terrence Liu; Noah Litwack
Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Listing of Properties

Good afternoon Daniel,
Please provide me a proposed time for the 1790 Cross Street inspection.

The 1779 Cross Street, and Simcoe Blvd inspections would need to be coordinated, and on proper notice, to the tenants there.

My client isn't in possession of 33 Theodore; that question needs to be directed to Tanya.

Sincerely,
Phil J. Smith, J.D., B.Math
DONNELLY MURPHY LAWYERS P.C.
519-524-2154 x 310

From: Daniel Naymark <dnaymark@naymarklaw.com>
Sent: Wednesday, May 1, 2019 12:35 PM
To: Paul J. Denton <pdenton@farbergroup.com>; gcaplan@mcr.law; bsachdeva@millერთhompson.com; Phil Smith <psmith@dmlaw.ca>
Cc: Terrence Liu <tliu@naymarklaw.com>; Noah Litwack <nlitwack@farbergroup.com>
Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Listing of Properties

Counsel,

We have had no response at all to the requests below. If we do not have a response by 5:00 pm tomorrow facilitating timely access, we will consider that we confront a contempt situation and proceed accordingly.

--

Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnyaymark@naymarklaw.com

From: Paul Denton <pdenton@farbergroup.com>
Date: Monday, April 29, 2019 at 3:25 PM
To: Gary Caplan <gcaplan@mcr.law>, "bsachdeva@millerthomson.com" <bsachdeva@millerthomson.com>, Phil Smith <psmith@dmlaw.ca>
Cc: Daniel Naymark <dnyaymark@naymarklaw.com>, Terrence Liu <tliu@naymarklaw.com>, Noah Litwack <nlitwack@farbergroup.com>
Subject: FW: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - Listing of Properties

Gary, Bobby and Phil,

Further to the below, the intent is to seek multiple listing proposals from realtors so they need the opportunity to review and inspect the properties. We also plan to seek an appraisal for each property as well.

Accordingly, we would like to coordinate access this week for realtors and an appraiser for the properties at:

- 33 Theodore Place, Thornhill
- 1779 Cross Street, Innisfil
- 1790 Cross Street, Innisfil
- 1889 Simcoe Blvd, Innisfil

Preferably the Innisfil properties can be arranged at the same time. Requisite notice will need to be given to 1790 Cross Street and 1889 Simcoe Blvd, which we understand are tenanted by third parties as well.

Can you please liaise with Tanya and Sandy and by return give us windows of time that could work this week.

Gentlemen, would appreciate your assistance in this matter by return.

Thank you

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Paul J. Denton, CA (NZ), CIRP, LIT
Managing Director | Restructuring
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From: Paul J. Denton
Sent: Thursday, April 25, 2019 6:47 PM
To: bsachdeva@millertomson.com; gcaplan@mcr.law
Cc: Daniel Naymark <dnaymark@naymarklaw.com>; Terrence Liu <tliu@naymarklaw.com>; Noah Litwack <nlitwack@farbergroup.com>
Subject: FW: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - April 25, 2019 Chambers Appointment and Draft Order

Bobby and Gary,

We want to arrange access for prospective realtors and an appraiser to review the 5 properties now approved for sale.

We do have access to 42 Clemow Ave in Sudbury, but would like to arrange access to the 4 other properties: 33 Theodore, 1779 and 1790 Cross and 1889 Simcoe Blvd Innisfil.

Can I please liaise with you tomorrow, Friday to coordinate same.

Thank you

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From: Daniel Naymark <dnaymark@naymarklaw.com>
Sent: Thursday, April 25, 2019 10:51 AM
To: GCaplan@mcr.law; psmith@dmlaw.ca; bsachdeva@millertomson.com; jzibarras@millertomson.com; brett@moldaverbarristers.com; adamico@flettbeccario.com; ahassan@necpal.com; Justin Necpal

<justin@necpal.com>;dan.mackeigan@siskinds.com; cole.vegso@siskinds.com; Noah Litwack
<nlitwack@farbergroup.com>; Megha Sharma <msharma@farbergroup.com>;ronaldhenderson@live.ca;
majhuneault@weaversimmons.com

Cc: Terrence Liu <tliu@naymarklaw.com>; Hylton Levy <hlevy@farbergroup.com>; Paul J. Denton
<pdenton@farbergroup.com>

Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - April 25, 2019 Chambers Appointment and Draft Order

Members of the Service List,

At this morning's chambers appointment, Justice Penny signed the draft order in the form attached to my email below. A copy of the issued and entered order is attached.

Justice Penny also set a return date of **July 5, 2019** for the Applicants' application for recognition and enforcement, and set a timetable for pre-hearing steps. His endorsement containing that timetable is also attached. For ease of reference, the timetable is:

Responding Record by **May 10, 2019**

Receiver's Report by **May 14, 2019** (rather than April 30 as initially scheduled in His Honour's March 18, 2019 order)

Completion of Cross-Examinations by **May 24, 2019**

Applicants' Factum by **May 31, 2019**

Respondents' Factum by **June 7, 2019**

Reply Factum by **June 11, 2019**

Yours truly,

--

Daniel Naymark

NAYMARK LAW

t: (416) 640-6078 | f: (647) 660-5060

dnaymark@naymarklaw.com

From: Daniel Naymark <dnaymark@naymarklaw.com>

Date: Monday, April 22, 2019 at 12:36 PM

To: "GCaplan@mcr.law" <GCaplan@mcr.law>, Phil Smith <psmith@dmlaw.ca>, "bsachdeva@millertthomson.com" <bsachdeva@millertthomson.com>, James Zibarras <jzibarras@millertthomson.com>, "brett@moldaverbarristers.com" <brett@moldaverbarristers.com>, "adamico@flettbeccario.com" <adamico@flettbeccario.com>, Anisah Hassan <ahassan@necpal.com>, Justin Necpal <justin@necpal.com>, "dan.mackeigan@siskinds.com" <dan.mackeigan@siskinds.com>, "cole.vegso@siskinds.com" <cole.vegso@siskinds.com>, "hlevy@farbergroup.com" <hlevy@farbergroup.com>, Paul Denton <pdenton@farbergroup.com>, Noah Litwack <nlitwack@farbergroup.com>, "msharma@farbergroup.com" <msharma@farbergroup.com>, "ronaldhenderson@live.ca" <ronaldhenderson@live.ca>, "majhuneault@weaversimmons.com" <majhuneault@weaversimmons.com>

Cc: Terrence Liu <tliu@naymarklaw.com>, Hylton Levy <hlevy@farbergroup.com>, Paul Denton <pdenton@farbergroup.com>

Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - April 25, 2019 Chambers Appointment and Draft Order

I failed to attach the draft order to my email below, sorry. Here it is.

--

Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: Daniel Naymark
Sent: Monday, April 22, 2019 8:13:37 AM
To: GCaplan@mcr.law; psmith@dmlaw.ca; bsachdeva@millertomson.com; jzibarras@millertomson.com; brett@moldaverbarristers.com; adamico@flettbeccario.com; ahassan@necpal.com; Justin Necpal; dan.mackeigan@siskinds.com; cole.vegso@siskinds.com; hlevy@farbergroup.com; pdenton@farbergroup.com; nlitwack@farbergroup.com; msharma@farbergroup.com; majhuneault@weaversummons.com; ronaldhenderson@live.ca
Cc: Terrence Liu; Hylton Levy; Paul Denton
Subject: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) - April 25, 2019 Chambers Appointment and Draft Order

Members of the Service List,

The Applicants have scheduled a chambers appointment with Justice Penny for this coming Thursday, April 25, 2019 at 9:30 am. There are two orders of business for the appointment: (a) setting a date and timetable for a further hearing in this matter in accordance with Penny J.'s March 18, 2019 endorsement; and (b) requesting the issuance of a draft order regarding the sale of certain properties, and provision for the Debtors' living expenses and legal fees. A copy of the draft order, to which the interested parties (consisting of most members of this Service List) have consented, is attached. If any others wish to oppose it or have questions, please let me know as soon as possible and in any event prior to Thursday's appointment.

--

Daniel Naymark
dnaymark@naymarklaw.com

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Thursday, May 16, 2019 at 2:34:56 PM Eastern Daylight Time

Subject: Fwd: Tanya and 33 Theodore
Date: Monday, May 6, 2019 at 9:08:46 AM Eastern Daylight Time
From: Daniel Naymark
To: Hylton Levy, Paul Denton, Megha Sharma, Noah Litwack
CC: Terrence Liu
Attachments: image7f6b28.PNG

See below. Does this work? If so, let me know who is coming and I will confirm with Bobby.

--

Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: Sachdeva, Bobby <bsachdeva@millerthomson.com>
Sent: Monday, May 6, 2019 9:06:55 AM
To: Daniel Naymark
Cc: tanyahut12@gmail.com
Subject: Tanya and 33 Theodore

Daniel

Further to my Vmm left with you this morning Tanya tells me this Friday will not work for the Realtor to visit. Make it a week today between 12 and 3 pm.

Please confirm at your earliest and provide us with the name of whoever will be attending.

Regards

Bobby

Sent from my iPhone

BOBBY H. SACHDEVA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6670

Fax: +1 905.660.0139

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Thursday, May 16, 2019 at 2:35:23 PM Eastern Daylight Time

Subject: Bank Statement March to May 5, 2019.PDF [MTDMS-Legal.FID8004534]
Date: Monday, May 6, 2019 at 3:37:58 PM Eastern Daylight Time
From: Sachdeva, Bobby
To: Daniel Naymark, Terrence Liu
CC: 'tanya Hutch', Dusseault, Madeleine
Attachments: imageb51275.PNG, 39272587_1_Bank Statement March to May 5, 2019 .PDF

Dear Daniel and Terrence,

As I advised Daniel, Tanya dropped off a number of documents today which we are sifting through. These docs are for the purpose of answering her undertakings from the two examinations. We expect to provide the answers to you tomorrow.

For now, Tanya did want us to send over this bank statement for the period of March to May 5, 2019 today and this document is attached.

Regards

Bobby

BOBBY H. SACHDEVA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6670

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APPENDIX 20

**Undertakings from the examination of Tanya Hutchens
held on April 4, 2019**

| UNDERTAKINGS | | | | |
|---------------------|---------------|-------------------|--|-----------------|
| No. | Page # | Question # | Undertaking | Response |
| 1. | 14 | 22 | To review the letter from Mr. Caplan to Mr. Naymark, dated March 11, 2019 (Exhibit 3), and advise if there are any additional corrections to the responses set out in that letter. | |
| 2. | 18 & 38 | 42 & 138 | To provide rent rolls for 29 Laren Street, which must include the following information for all of its tenants: full names; amount of monthly rent; security deposits or rents paid for the first and/or last month of the tenancy, if any; and whether the tenant pays rent through the use of social assistance money. | |
| 3. | 21 | 52 | To provide a copy of the letter from Mr. Hutchens or his agents, which directed the tenants to stop paying rent to either Ms. Hutchens or one of her numbered companies, in or around the summer of 2018. | |
| 4. | 24 | 67 | To provide a copy of the document from the woman whom Mr. Hutchens engaged in or around the summer of 2018, which advised the tenants that she was the new property manager in an attempt to replace the existing property manager that Ms. Hutchens had been using. | |

| | | | | |
|----|----|-----|--|--|
| 5. | 32 | 104 | To provide all documents and correspondence related to Mr. Hutchens' attempt to interfere with the management of the properties in or around the summer of 2018, including all correspondence related to Ms. Hutchens' loss of access to her mother's BMO account (e.g., correspondence from Mr. Hutchens to Ms. Dina Brik) and all correspondence sent to the tenants from either Mr. Hutchens and/or the property manager that he engaged. | |
| 6. | 45 | 163 | To provide the spreadsheet or set of spreadsheets that Ms. Hutchens uses to track rent and expenses for all of the rental properties. | |
| 7. | 47 | 172 | To provide all of Ms. Hutchens' notes to herself, whether via text message or any other medium, regarding receipts, disbursements or any other financial information for the rental properties from the last point in time when her spreadsheet (referred to in undertaking #6) was current to the present day. | |
| 8. | 54 | 197 | To provide a copy of every lease for every current tenant, regardless of when their lease began, for all of the properties subject to the Order of Justice Penny, dated March 18, 2019 (Exhibit 1). | |
| 9. | 62 | 229 | To provide the closing documentation from the sale of 193 Mountain Street. | |

| | | | | |
|-----|--------|---------------------|--|--|
| 10. | 63 | 230 | To advise where the proceeds from the sale of 193 Mountain Street went and to provide the corresponding transaction documents and/or financial records. | |
| 11. | 65-67 | 233-236, 240-241 | To provide details of the settlement with the City of Sudbury regarding 193 Mountain Street and to provide an accounting of the \$550,000 received as part of that settlement, including where the money went. | |
| 12. | 86 | 317 | To provide a copy of the lease for 1790 Cross Street. | |
| 13. | 88-89 | 325 | To provide a copy of the lease for 1889 Simcoe Boulevard. | |
| 14. | 95-96 | 361 | To advise if there was an agreement regarding the eight percent management fee that Ms. Hutchens received, and if so, to provide a copy of that agreement. | |
| 15. | 99-100 | 382 | To advise of how Ms. Hutchens paid for the purchase of 1573 Houston Avenue. | |
| 16. | 100 | 383 | To provide all underlying financial records regarding the payments made to purchase 1573 Houston Avenue. | |

| | | | | |
|-----|-----|-----|--|--|
| 17. | 103 | 391 | To provide a copy of the listing agreement for 1573 Houston Street. | |
| 18. | 110 | 428 | To advise if Ms. Hutchens owns or controls any properties, directly or indirectly, other than the properties listed in the Order of Justice Penny, dated March 18, 2019 (Exhibit 1), 1573 Houston Avenue, 1760 Cross Street, and 175 Hilda Avenue. | |

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**Undertakings from the continued examination of Tanya Hutchens
held on April 25, 2019**

| UNDERTAKINGS | | | | |
|---------------------|---------------|-------------------|---|---|
| No. | Page # | Question # | Undertaking | Response |
| 19. | 139 | 523 | To provide a net worth statement. | Answered during examination – no further response required. |
| 20. | 159-160 | 644 | To provide any documentation, which Ms. Hutchens has or can obtain, evidencing the sale of 131 Beecroft after 1998. | |
| 21. | 175 | 736 | To provide the following documents for each of the properties listed in Exhibit 8, with the exception of 625 Ash Street and 15-16 Keziah Court: (a) Agreements of purchase and sale; (b) statements of closing adjustments; and (c) an accounting of sale proceeds with corresponding records. If any of these documents are not in Ms. Hutchens’s possession, but are in the possession of counsel who handled the transactions, Ms. Hutchens will provide a direction and authorization for the Receiver to obtain such documents from counsel. | |
| 22. | 215 | 987 | To provide all available account statements for 2321678 Ontario Limited’s account with the Bank of Montreal for the last three years before the account was closed. | |

| | | | | |
|-----|------|-----------|--|--|
| 23. | 220 | 1005 | To provide a copy of cheque no. 681, dated July 30, 2018, from the Bank of Montreal. If this is no longer in Ms. Hutchens' possession, to provide the Receiver with an authorization and direction to obtain it from the bank. | |
| 24. | 220 | 1005 | To provide a copy of the police report arising from Ms. Hutchens' complaint regarding the \$300,000 that was transferred to Mr. Luistermans, some or all of which Mr. Luistermans transferred to Mr. Hutchens, and to provide the name of the police officer whom Ms. Hutchens dealt with. | |
| 25. | 221 | 1110 | To provide a copy of all correspondence between Ms. Hutchens and Mr. Luistermans regarding the \$300,000 that was transferred to him. | |
| 26. | 2323 | 1068 | To advise of the source of funds for the \$38,778.07 deposit made on December 19, 2017 into the Bank of Montreal Account controlled by Ms. Hutchens. | |
| 27. | 242 | 1119 | To provide account statements from Ian Mills' account from the date on which Ms. Hutchens began to use that account to the present. | |
| 28. | 244 | 1125-1127 | To advise of the source(s) of the funds used to pay Ms. Hutchens' Costco Mastercard, from July 10, 2018 to March 9, 2019. | |

UNDER ADVISEMENTS

| No. | Page # | Question # | Undertaking | Response |
|------------|---------------|-------------------|---|-----------------|
| 1. | 142-143 | 538-539 | To advise of any attempts that Ms. Hutchens made to disclose to the other parties, prior to her last examination, any properties that are not listed in Schedule B to the Order of Justice Penny, dated March 18, 2019 (Exhibit 1). | |

REFUSALS

| No. | Page # | Question # | Undertaking | Response |
|------------|---------------|-------------------|---|---|
| 1. | 139 | 523 | To provide a copy of the net worth statement that Ms. Hutchens says she provided to Mr. Caplan about one month ago. | Answered during examination – no further response required. |

APPENDIX 21

File No. 10197

March 6, 2019

BY EMAIL & FAX

Bobby Sachdeva
James Zibarras
Miller Thomson
100 New Park Place, Suite 700
Vaughan, Ontario, L4K 0H9

Dear Mr. Sachdeva and Mr. Zibarras:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Interim Receiver Information Request**

I write as counsel to A. Farber & Partners Inc. (the “Receiver”), in its capacity as interim receiver pursuant to the February 28, 2019 order of Justice Penny in this matter (the “Order”).

Pursuant to paragraphs 2 to 6 of the Order, we ask that your clients provide the following information and records. Owing to the short time frame for the Receiver’s work, Mr. Hutchens may produce responsive information and materials on a rolling basis.

1. For each of your clients, provide a current, itemized balance sheet;
2. Provide copies of your clients’ complete (a) tax returns and (b) financial statements for 2014-2018;
3. Provide the name(s) and contact information (address, email address, phone number, and fax number) of the accountant(s) who completed 2 above;
4. Provide the name(s) and contact information (address, email address, phone number, and fax number) of any other person(s) who maintains your clients’ books and records;
5. Identify your clients’ shareholders, and their respective shareholdings;
6. Provide copies of your clients’ corporate minute books, or identify where they are located for inspection and copying if copies are not readily available;
7. Identify and provide unfettered access to the electronic devices that contain or did contain your clients’ books and records. The Receiver intends to create images of the hard drives of these devices. Please advise whether your clients have any concerns about privileged or irrelevant, confidential contents, in which case we can discuss appropriate arrangements;
8. For each of the properties owned by your clients (listed in Schedule B to the Order):
 - a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s). **Please provide this information as a priority so that the Receiver can contact the property manager(s) as soon as possible to coordinate site visits;**
 - b. Advise the aggregate monthly rental income;
 - c. Identify where rental proceeds are deposited;
 - d. Provide a rental roll with tenants and monthly rent amount; and
 - e. Provide copies of all current rental/lease agreements;
9. Provide a list of all bank accounts (institution, branch, account number) held in the name of your clients, or used to receive revenues generated by your clients or to pay their expenses, and provide copies of the account statements for each of those accounts from February 2015 to present;

NAYMARK LAW

10. At the hearing in this matter on February 28, 2019, counsel for Mrs. Hutchens took the position that she and Mr. Hutchens hold the properties owned by the Companies and perhaps other assets in trust for their children, directly or via your clients. Please provide:
 - a. A description of the nature of any such trusts, including the date and circumstances of their creation, the identities of all trustees and beneficiaries, and the assets over which each trust extends; and
 - b. Documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s) existence and operation;
11. Advise the nature and amount of the debt corresponding to the mortgages held on certain of your clients' properties¹ in the name of Adroit Advocates LLC in the registered amount of \$2 million, and provide corresponding records; and
12. Advise the nature and amount of the debt corresponding to the mortgages held on certain of your clients' properties² in the name of Dina Brik in the registered amount of \$150,000, and provide corresponding records.

Yours truly,



Daniel Naymark

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

¹ 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

² 3415 Errington Avenue, Chelmsford and 3419 Errington Avenue, Chelmsford.

APPENDIX 22

File No. 10197

March 26, 2019

BY EMAIL

Bobby Sachdeva
James Zibarras
Miller Thomson
100 New Park Place, Suite 700
Vaughan, Ontario, L4K 0H9

Dear Mr. Sachdeva and Mr. Zibarras:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Receiver Information Request**

I write further to my correspondence of March 6, 2019, and the order of Justice Penny, dated March 18, 2019.

Your clients have yet to produce the following information and records, which we requested on March 6 and 11, 2019. We ask that they do so as soon as possible, on a rolling basis if necessary.

1. For each of your clients, provide a current, itemized balance sheet;
2. Provide copies of your clients' complete (a) tax returns and (b) financial statements for 2014-2018;
3. Provide the name(s) and contact information (address, email address, phone number, and fax number) of the accountant(s) who completed 2 above;
4. Provide the name(s) and contact information (address, email address, phone number, and fax number) of any other person(s) who maintains your clients' books and records;
5. Identify your clients' shareholders, and their respective shareholdings;
6. Provide copies of your clients' corporate minute books, or identify where they are located for inspection and copying if copies are not readily available;
7. Identify and provide unfettered access to the electronic devices that contain or did contain your clients' books and records. The Receiver intends to create images of the hard drives of these devices. Please advise whether your clients have any concerns about privileged or irrelevant, confidential contents, in which case we can discuss appropriate arrangements;
8. For each of the properties owned by your clients (listed in Schedule B to the Order):

NAYMARK LAW

- a. Identify how each property is managed, and provide the name and contact information (address, email address, phone number, and fax number) for any property manager(s);
 - b. Advise the aggregate monthly rental income;
 - c. Identify where rental proceeds are deposited;
 - d. Provide a rental roll with tenants and monthly rent amount; and
 - e. Provide copies of all current rental/lease agreements;
9. Provide a list of all bank accounts (institution, branch, account number) held in the name of your clients, or used to receive revenues generated by your clients or to pay their expenses, and provide copies of the account statements for each of those accounts from February 2015 to present;
10. At the hearing in this matter on February 28, 2019, counsel for Mrs. Hutchens took the position that she and Mr. Hutchens hold the properties owned by the Companies and perhaps other assets in trust for their children, directly or via your clients. Further to the trust agreements that you have already provided, please provide any additional documents corresponding to the claimed trust(s), including any trust declarations or deeds, trust financial statements, tax filings, and communications regarding the trust(s) existence and operation;
11. Advise the nature and amount of the debt corresponding to the mortgages held on certain of your clients' properties¹ in the name of Adroit Advocates LLC in the registered amount of \$2 million, and provide corresponding records; and
12. Advise the nature and amount of the debt corresponding to the mortgages held on certain of your clients' properties² in the name of Dina Brik in the registered amount of \$150,000, and provide corresponding records.

Yours truly,



Daniel Naymark

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

¹ 29 Laren Street, Sudbury; 110-114 Pine Street, Sudbury; 3415 Errington Avenue, Chelmsford; 3419 Errington Avenue, Chelmsford; 331 Regent Street, Sudbury; 17 Serpentine Street, Sudbury.

² 3415 Errington Avenue, Chelmsford and 3419 Errington Avenue, Chelmsford.

APPENDIX 23

File No. 10197

March 6, 2019

BY EMAIL & FAX

Dan McKeigan
Cole Vegso
Siskinds LLP
680 Waterloo Street
London, Ontario, N6A 3V8

Dear Messrs. McKeigan and Vegso:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Interim Receiver Information Request**

I write as counsel to A. Farber & Partners Inc. (the “Receiver”), in its capacity as interim receiver pursuant to the February 28, 2019 order of Justice Penny in this matter (the “Order”). A copy of the Order is enclosed.

We understand that you act for the plaintiffs in the enforcement action in the Superior Court of Justice bearing London Court File No. 2651/17. Pursuant to paragraphs 2 to 6 of the Order, **we ask that your clients provide the following information and records.** Owing to the short time frame for the Receiver’s work, your clients may produce responsive information and materials on a rolling basis.

1. Advise whether your clients assert a proprietary interest in funds paid to the respondents in the proceeding in which the Order has issued and/or affiliated entities, and/or in accounts or assets into which such funds can be traced; and
2. If the answer to 1 above is “yes”:
 - a. A summary of your clients’ funds paid to the respondents and/or affiliated entities, in respect of which they assert a proprietary tracing, with supporting records; and
 - b. A summary of the subsequent flow of such funds, to the extent your clients have that information, with supporting records.

Yours truly,



Daniel Naymark

Encl.

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

APPENDIX 24

680 Waterloo Street, London, ON N6A 3V8

SISKINDS | THE
LAW
FIRM

EMAIL cole.vegso@siskinds.com

FILE NO. 848613/CSV/kk

Delivered By Email

March 12, 2019

Mr. Daniel Naymark
Naymark Law
171 John Street, Suite 101
Toronto, ON M5T 1X3

Dear Mr. Naymark:

**Re: Stevens et al v. Hutchens, et al
Interim Receiver Information Request - Response**

We acknowledge receipt of your letter dated March 6, 2019.

In response, specifically with respect to your question number one, our clients seek a proprietary interest in the respondents'/Hutchens' assets.

With respect to question two, we have enclosed the documents and records that we have relating to the amount advanced from our client to the Hutchens. This includes various judgments of the District Court of Colorado, where that court held that our clients have a constructive trust in certain properties (which either has been proven and/or could be proven with proper documentation that we do not have but presume the Hutchens possess). Specifically, we have included:

1. A summary letter from our clients to us dated July 31, 2018. That letter refers to 17 different documents which we have tabbed and are providing to you. We have included that letter for your review, as it includes a helpful summary of the documents that are enclosed herein. Please be advised that we do not have instructions to waive privilege over those documents where privilege properly attaches;
2. A copy of various judgments and motion materials relating to same from the District Court of Colorado; and
3. Our motion record in Superior Court of Justice, London Court File No. 2651/17.

We have reviewed the Interim Order dated February 28, 2019, that appoints the interim receiver. We are concerned that the last sentence in paragraph four of the Order. Specifically, no disclosure of Records due to statutory provisions prohibiting such disclosure. We interpret this to prevent us from disclosing information that is subject to the deemed undertaking rule in our

DIRECT
TELEPHONE (519) 660-7755
FACSIMILE (519) 660-7756

HEAD OFFICE
TELEPHONE (519) 672-2121
FACSIMILE (519) 672-6065

3829305.2

680 Waterloo Street, London, ON N6A 3V8

SISKINDS | THE
LAW
FIRM

clients' Ontario action. There are two categories of documents that we have not included as we believe they are subject to the deemed undertaking rule. First, sale related documents from Meridian bank, who holds mortgages against a number of the properties. Second, the alleged Hutchens' children trust agreements relating to the properties. Kindly advise how to proceed relating to these two categories of documents.

We trust this is satisfactory and look forward to your response.

Yours truly,

Siskinds LLP



Per:
Cole S.C. Vegso

CSV/kk

Enclosure

cc. Paul Denton
Megha Sharma
Terrence Liu

APPENDIX 25

File No. 10197

March 6, 2019

BY EMAIL to posner.morry@gmail.com

Murray Posner

Dear Mr. Posner:

**Re: *Stevens et. al. v. Hutchens et. al.* (Court File No. CV-18-608271-00CL)
Interim Receiver Information Request**

I write as counsel to A. Farber & Partners Inc. (the “Receiver”), in its capacity as interim receiver pursuant to the February 28, 2019 order of Justice Penny in this matter (the “Order”). A copy of the Order is enclosed.

I understand that you are or have been the accountant for the respondents (Sandy Hutchens and Tanya Hutchens), and/or affiliated entities including the corporations listed at Schedule A to the Order.

Pursuant to paragraph 2(f) of the Order, the Receiver intends to examine you under oath. We would like to conduct that examination on March 11 or 12, 2019. **Please advise if you are available on one of those two dates, or if not, what your earliest availability is.**

In addition, pursuant to paragraphs 2 to 6 of the Order, **please provide the following information and records** in advance of your examination:

1. Provide copies of Mr. Hutchens’ and Mrs. Hutchens’ complete tax returns for 2014-2018; and
2. Provide copies of the complete (a) tax returns and (b) financial statements for 2014-2018 for the corporations listed in Schedule A to the Order and for the owners of (a) 241 Lloyd Street, Sudbury; (b) 480 Linda Street, Sudbury; (c) 1755 Regent Street, Sudbury; and (d) 380 Elgin Street, Sudbury. If any these records are not in your power, possession or control but you are aware of their location, please advise where they are located.

Yours truly,



Daniel Naymark

Encl.

- c. Terrence Liu (Naymark Law)
Paul Denton and Megha Sharma (A. Farber & Partners Inc.)

APPENDIX 26

Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request
Date: Tuesday, May 14, 2019 at 5:48:59 PM Eastern Daylight Time
From: Daniel Naymark
To: MORRY POSNER
Attachments: image001.png

Thank you. Would you please send me the most recent returns for the companies on behalf of whom they instructed you as well?

--
Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: MORRY POSNER <posner.morry@gmail.com>
Date: Tuesday, May 14, 2019 at 10:27 AM
To: Daniel Naymark <dnaymark@naymarklaw.com>
Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Mr. Naymark

Attached are the last tax returns filed for the Hutchens.

Morry Posner

From: Daniel Naymark [mailto:dnaymark@naymarklaw.com]
Sent: May 2, 2019 1:24 PM
To: MORRY POSNER <posner.morry@gmail.com>
Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Mr. Posner,

Thank you for this information, and I apologize for taking some time to get back to you. We are gathering information from other sources and reconsidering whether, in light of the information below, it will in fact be necessary to examine you. We have not reached a final determination at this time, but are not now asking for an examination to be scheduled.

In the meantime, please send me the last set of returns you filed and financial statements you prepared for each of the Hutchens entities, and for Mr. and Mrs. Hutchens themselves. If you can send them electronically, that would be ideal.

Thank you,
Daniel

Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: MORRY POSNER <posner.morry@gmail.com>
Date: Tuesday, April 16, 2019 at 8:30 AM
To: Daniel Naymark <dnaymark@naymarklaw.com>
Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Mr. Naymark

I have not been filing returns for any of the Hutchens' companies since the 2015 year. I have no records of filings for the Estate of Judith Hutchens. The last filings I recall were for some inactive companies that were incorporated but inactive and required nil returns to bring them up to date. The only contact I have had with the Hutchens was by Email or telephone.

The reason for the contact was to attempt to collect my last billing to Mr. Hutchens of approximately \$2500. He was advised at that time that I would do no further work for him until I was paid and received a retainer for future work. I have received neither.

At the time of the Colorado trial the Hutchens were saying we have to get up to date but they never supplied any financial information to do it. At that time I was their accountant but did no work for them as previously stated.

Morry Posner

From: Daniel Naymark [<mailto:dnaymark@naymarklaw.com>]
Sent: April 15, 2019 4:19 PM
To: MORRY POSNER <posner.morry@gmail.com>
Cc: Terrence Liu <tliu@naymarklaw.com>; Paul Denton <pdenton@farbergroup.com>; Megha Sharma <msharma@farbergroup.com>
Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Mr. Posner,

We have been told by Mr. Hutchens that you have been filing returns for the estate of Judith Hutchens and various inactive corporations for the past several years, and that you have financial information from him. We have also seen the transcript of your testimony at the Hutchens' trial in Colorado in which you stated you were their accountant as of that time (spring 2017).

Do I understand correctly that contrary to this information, you have had no contact with the Hutchens of any kind since some time in 2015?

--
Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: MORRY POSNER <posner.morry@gmail.com>
Date: Monday, April 15, 2019 at 4:03 PM
To: Daniel Naymark <dnyaymark@naymarklaw.com>
Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Mr. Naymark

I do not have any financial information or banking documents from the Hutchens since 2015.

I therefore have not done any work for them since then.

Once again I must protest that an afternoon off at this time to testify to what I have just written is a waste of time that I do not have.

Morry Posner

From: Daniel Naymark [<mailto:dnyaymark@naymarklaw.com>]
Sent: April 15, 2019 2:44 PM
To: MORRY POSNER <posner.morry@gmail.com>
Cc: Terrence Liu <tliu@naymarklaw.com>; Paul Denton <pdenton@farbergroup.com>; Megha Sharma <msharma@farbergroup.com>
Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Mr. Posner,

You have not responded to my email below. I remind you that your obligation to provide us with requested information and attend for an interview is required by court order, and that failure to comply is a potentially serious matter.

We require your attendance for an examination under oath. At this point, that clearly will not occur on the dates I proposed in my email below. We are available on any of the following dates and times:

- April 23 at 2:00 pm
- April 24 at 10:00 am
- April 25 at 2:00 pm

Please respond with your preferred time as soon as possible.

Thank you,

--
Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnyaymark@naymarklaw.com

From: Daniel Naymark <dnyaymark@naymarklaw.com>

Date: Tuesday, April 9, 2019 at 2:55 PM

To: MORRY POSNER <posner.morry@gmail.com>

Cc: Terrence Liu <tliu@naymarklaw.com>, Paul Denton <pdenton@farbergroup.com>, Megha Sharma <msharma@farbergroup.com>

Subject: Re: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Mr. Posner,

Thank you for your email below. We have determined that we still wish to proceed with an examination. With apologies to your busy season, we must complete the examination in time to report to the court before end of month. Can you be available downtown next Tuesday or Thursday at 10 am?

Also, acknowledging that you do not have tax returns or financial statements, please send us whatever financial records you have received from Mr. or Mrs. Hutchens, whether related to their personal affairs or the affairs of other entities or persons, from 2015 onwards.

Thank you.

--

Daniel Naymark

NAYMARK LAW

t: (416) 640-6078 | f: (647) 660-5060

dnaymark@naymarklaw.com

From: MORRY POSNER <posner.morry@gmail.com>

Date: Wednesday, March 27, 2019 at 8:56 AM

To: Daniel Naymark <dnaymark@naymarklaw.com>

Subject: RE: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Re the above noted file

I have searched my records and they indicate that the last personal tax returns filed for Sandy Hutchens and Tanya Hutchens were for 2014.

No returns were filed by me since that year.

Re the corporations

I have some of them but only to 2012. Any returns filed by me to 2014 are with Sandy Hutchens and his lawyers.

There have been no Corporation statements or tax returns filed after 2014 by me.

As you may be aware I as a sole practitioner Accountant am extremely busy until April 30. I could meet with you in May although I do not see what information my testimony could provide.

Morry Posner

From: Daniel Naymark [<mailto:dnaymark@naymarklaw.com>]

Sent: March 26, 2019 9:09 PM

To: posner.morry@gmail.com

Cc: Terrence Liu <tliu@naymarklaw.com>; Paul Denton <pdenton@farbergroup.com>; Megha Sharma <msharma@farbergroup.com>

Subject: Stevens et. al. v. Hutchens et. al. (Court File No. CV-18-608271-00CL) Receiver Information Request

Please see the attached letter.

--

Daniel Naymark

dnaymark@naymarklaw.com

NAYMARK LAW

171 John Street, Suite 101

Toronto, ON M5T 1X3

t: (416) 640-6078 | f: (647) 660-5060

www.naymarklaw.com

STEVENS *et al.*
Applicants

-and-

HUTCHENS *et al.*
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

SECOND REPORT OF THE RECEIVER
VOLUME I OF II

NAYMARK LAW
171 John Street, Suite 101
Toronto, ON M5T 1X3

Daniel Z. Naymark LSO#: 56889G
Tel: (416) 640-6078
Fax: (647) 660-5060
dnaymark@naymarklaw.com

Terrence Liu LSO#: 64130M
Tel: (416) 640-2256
Fax: (647) 660-5060
tliu@naymarklaw.com

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