

**IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

HEIKE ENTICKNAP, as Representative Plaintiff

PLAINTIFF

AND

**H M S FINANCIAL INC., SKYWARD MANAGEMENT INC., GARTH S. BAILEY,
GARTH S. BAILEY PROFESSIONAL CORPORATION, 990137 ALBERTA LTD.,
1037149 ALBERTA LTD., operating as CEDAR MANAGEMENT, 1053382 ALBERTA
INC., 1070199 ALBERTA LTD., 1079373 ALBERTA LTD., A-Z INVESTMENT GROUP,
ABBA RESOURCES UNLIMITED, ACADEMY FINANCIAL INC., ACADEMY
FINANCIAL PLANNERS & CONSULTANTS INC., ALTRUISTIC HOLDINGS LTD.,
ASPIRE GROUP INTERNATIONAL REALTY INC., BAILEY DAWS LLP, BOGNER
INDUSTRIES LTD., THE CARPENTER'S SHOP CORPORATION, CEDAR POINTE
CONSULTING GROUP INC., CHASE FORBES TRUST LTD., COMMONWEALTH
MARKETING GROUP LTD., COMMUNITY CREDIT UNION LTD., COMPANIONS
INC., D. K. DEFREITAS PROFESSIONAL CORPORATION, THE DAKOTA
CORPORATION, DANA I. CARLSON, DATAS CONSULTING, DEFREITAS &
ASSOCIATES, DESMOND K. DEFREITAS, DIVERSE EQUITIES INC., ETHAN
EQUITIES INC., FIRST NATIONAL BANK OF SAN DIEGO, FIVE CONTINENTS
CONSULTING CORPORATION, THE HILLPRO GROUP INC., HORIZON BANK
INTERNATIONAL LIMITED, HORIZON FIDUCIARY INC., JESCO INC., KELSO
ENTERPRISES INC., KIRBY AUDIT SERVICES INC., KLASS "A" STRATEGIES INC.,
LABALTA LTD., M & M INVESTMENTS 101 LTD., MAGELLAN MORANDA
INVESTMENTS, MARCOL MANAGEMENT LTD., MCCARTHY TETRAULT LLP,
MCCULLOUGH FINANCIAL CORPORATION, MICHAEL GROSH PROFESSIONAL
CORPORATION, MOUNTAIN STAR CAPITAL CORP., MOUNTAIN VIEW CREDIT
UNION LIMITED, NUMA LTD., PAGET CAPITAL LTD., PARADISE BAY HOLDINGS
INC., PHOENIX GLOBAL RESOURCES LTD., PINE GROVE MANAGEMENT INC.,
SELLARS FINANCIAL INC., TALISMAN FINANCIAL INVESTMENTS INC.,
TAMIKA ENTERPRISES INC., THOR EMPIRE TRUST, TITANIA CONSULTING
INC., TRANSMAX TECHNOLOGIES LTD., TRIPLE-SSS HOLDINGS INC., VITRON
CONSULTING INC., ZINGER BROTHERS HOLDINGS, ZURICH VENTURES INC.,
GUY BAILEY, ALFRED BARNFIELD, CONNIE BARTEL, ROBERT BARTEL,
VICTOR BAUMAN, NANCY BUFORD, CAMERON CAMPBELL, RICK CHILDERS,**

BLAINE A. CISNA, DOUGLAS A. COWAN, STANLEY DEFREITAS, EUGENE LEROY DUCE, ARNOLD DYCK, ALFREDO FARPON, RAY FISHER, JACK FOLSOM, JIM FOLSOM, RICHARD FOWLKS, BARIE FRITZ, ROBERT E. FYN, ALLAN A. GRAY, MICHAEL GROSH, KENDRA HASKETT, ARNOLD HENRY, DAVID HENRY, SAMUEL HIGGINS, WINSTON INDARSINGH, COLLEEN JESPERSEN, JAMES JESPERSEN, MARK JESPERSEN, SHARRELL JESPERSEN, WAYNE JOHNSON, BARBARA L. KING, ARTHUR KLASSEN, RUBY LEACHMAN, GEORGE LENNOX, WILLIAM LENZ, DANIEL LESCAMELA, DANNY R. MACNAUGHTON, NORMA A. MACNAUGHTON, PETER MANOUSOS, MICHAEL MCCULLOUGH, DAVE MILLER, MOHAN MAHARAJ, PETER MOL, BRAD MOONEY, TOM OLDRIDGE, GERTRUDE M. PRETE, DONALD RABBY, AMIN RAMJI, BILKISH RAMJI, STAN W. REMIN, KATHERINE RODRIGUE-BAILEY, JOHN ROMERO, OREST RUSNAK, ARIE SCHALK, RANDALL SEABROOK, ROBERT J. SELLARS, WILLIAM SEREDIUK, PETER L. SHERIDAN, MURRAY STARK, DELMER STROBEL, VERNA STROBEL, MILTON TEIBE, ENRIQUE TOSCANO, LEE-ANNA TOSCANO, JOHN W. WILLOCK, MARGARET WRIGHT, STAN WRIGHT, CLAUDE ZINGER, JOHN DOE, RICHARD DOE and XYZ CORP.

DEFENDANTS

STATEMENT OF CLAIM

The Parties

1. The representative Plaintiff, HEIKE ENTICKNAP (“Enticknap”), is a resident of Calgary, Alberta and brings this action on her own behalf and on behalf of all persons, other than the Defendants, who have invested money with the Defendants and suffered losses.
2. Enticknap and approximately 1,000 other investors, primarily resident in Alberta, are victims of a Ponzi scheme or High Yield investment scheme (“**HMS Scheme**”). The HMS Scheme was characterized by systemic misrepresentations and, or in the alternative, fraudulent conduct. Further particulars of the HMS Scheme are detailed at paragraphs 73 to 79. Enticknap and the other investors are collectively referred to as the “**Plaintiff Investors**”. The Defendants had no legitimate business and the object of the HMS Scheme was to take the Plaintiff Investor funds and convert them to the Defendants’ own use, benefit and enrichment.
3. The Defendants, H M S FINANCIAL INC. (“**HMS**”), SKYWARD MANAGEMENT INC. (“**Skyward**”), 1079373 ALBERTA LTD. (“**1079373**”), TAMIKA ENTERPRISES INC. (“**Tamika**”), THE DAKOTA CORPORATION (“**Dakota**”), D.K. DEFREITAS PROFESSIONAL CORPORATION (“**Defreitas Corporation**”), TITANIA CONSULTING

INC. ("Titania"), PAGET CAPITAL LTD. ("Paget"), PINE GROVE MANAGEMENT INC. ("Pine Grove"), 1053382 ALBERTA INC. ("1053382"), 1070199 ALBERTA LTD. ("1070199"), A-Z INVESTMENT GROUP ("A-Z Investments"), ACADEMY FINANCIAL INC. ("Academy"), ACADEMY FINANCIAL PLANNERS & CONSULTANTS INC. ("Academy Consultants"), COMPANIONS INC. ("Companions"), TALISMAN FINANCIAL INVESTMENTS INC. ("TFI"), ZURICH VENTURES INC. ("Zurich"), GARTH S. BAILEY PROFESSIONAL CORPORATION ("Bailey Corporation"), MICHAEL GROSH PROFESSIONAL CORPORATION ("Grosh Corp."), ALTRUISTIC HOLDINGS LTD. ("Altruistic"), ASPIRE GROUP INTERNATIONAL REALTY INC. ("Aspire"), 1037149 ALBERTA LTD., operating as CEDAR MANAGEMENT ("1037149"), COMMONWEALTH MARKETING GROUP LTD. ("Commonwealth"), DATAS CONSULTING ("Datas"), DIVERSE EQUITIES INC. ("Diverse"), ETHAN EQUITIES INC. ("Ethan"), FIVE CONTINENTS CONSULTING CORPORATION ("Five Continents"), THE HILLPRO GROUP INC. ("Hillpro"), JESCO INC. ("Jesco"), KELSO ENTERPRISES INC. ("Kelso"), KIRBY AUDIT SERVICES INC. ("Kirby"), KLASS "A" STRATEGIES INC. ("Klass A"), LABALTA LTD. ("Labalta"), M & M INVESTMENTS 101 LTD. ("M & M"), MAGELLAN MORANDA INVESTMENTS ("Magellan"), MARCOL MANAGEMENT LTD. (" Marcol"), MCCULLOUGH FINANCIAL CORPORATION ("McCullough Financial"), MOUNTAIN STAR CAPITAL CORP. ("Mountain Star"), PARADISE BAY HOLDINGS INC. ("Paradise Bay"), PHOENIX GLOBAL RESOURCES LTD. ("Phoenix Global"), THOR EMPIRE TRUST, TRIPLE-SSS HOLDINGS INC. ("Triple S"), VITRON CONSULTING INC. ("Vitron"), ZINGER BROTHERS HOLDINGS ("Zinger Holdings"), 990137 ALBERTA LTD. ("990137"), SELLARS FINANCIAL INC. ("Sellars") and HORIZON FIDUCIARY INC., are corporations registered and authorized to carry on business, and did in fact carry on business, in the Province of Alberta.

4. The Defendants, ABBA RESOURCES UNLIMITED ("ABBA"), CEDAR POINTE CONSULTING GROUP INC. ("Cedar Pointe"), NUMA LTD., TRANSMAX TECHNOLOGIES LTD. ("Transmax"), BOGNER INDUSTRIES LTD., THE CARPENTER'S SHOP CORPORATION ("Carpenter's Shop") and BAILEY DAWS LLP, are corporations and limited liability partnerships registered pursuant to the laws of the United States of America and were carrying on business in the United States, Canada and elsewhere.
5. The Defendant, CHASE FORBES TRUST LTD. ("Chase Forbes Trust"), is a corporation incorporated pursuant to the laws of New Zealand. Chase Forbes Trust was controlled by the

defendant MURRAY STARK who acted as its President. Chase Forbes Trust carried on business in Canada, New Zealand and elsewhere and was involved in the HMS Scheme.

6. The Defendants set forth in paragraphs 3 to 5 are at times hereinafter referred to as the “**HMS Corporate Defendants**”. The HMS Corporate Defendants were incorporated for the primary purpose of committing the negligent, or alternatively, the fraudulent acts involved in the HMS Scheme described below. The HMS Corporate Defendants were expressly incorporated and directed to participate in such wrongful acts by their respective directors and officers.
7. The Defendants, ROBERT E. FYN (“Fyn”) and MURRAY STARK (“Stark”), are individuals and reside in Linden, Alberta. Fyn and Stark were directors and the controlling mind of HMS and, in their own right and on behalf of HMS were knowingly involved in the HMS Scheme.
8. The Defendants, BLAINE A. CISNA (“Cisna”) and PETER L. SHERIDAN (“Sheridan”), are individuals and reside in Balzac, Alberta and Beiseker, Alberta respectively. At all material times, Cisna and Sheridan were directors of Skyward, 1079373 and Titania, and in their own right and on behalf of Skyward, 1079373 and Titania, were knowingly involved in the HMS Scheme.
9. The Defendant, RUBY LEACHMAN (“Leachman”), is an individual and resides in Didsbury, Alberta. At all material times, Leachman was the sole director and controlling mind of Tamika and Dakota and in her own right and on behalf of Tamika and Dakota, was knowingly involved in the HMS Scheme.
10. The Defendant, VICTOR BAUMAN (“Bauman”), is an individual and resides in St. Albert, Alberta. At all material times, Bauman was the sole director and controlling mind of Pine Grove and was knowingly involved in the HMS Scheme.
11. The Defendants, DANNY R. MACNAUGHTON and NORMA A. MACNAUGHTON (“MacNaughtons”), are individuals and reside in Calgary, Alberta. At all material times, the MacNaughtons were the directors and controlling mind of 1053382 and were knowingly involved in the HMS Scheme.
12. The Defendants, ALFRED BARNFIELD and BARBARA L. KING (“Barnfields”) are individuals and reside in Crossfield, Alberta. At all material times, the Barnfields were the

directors and controlling mind of 1070199 and were knowingly involved in the HMS Scheme.

13. The Defendant, ROBERT J. SELLARS ("Bob Sellars") is an individual and resides in Calgary, Alberta. At all material times, Bob Sellars was the director and controlling mind of Sellars and was knowingly involved in the HMS Scheme.
14. The Defendant, OREST RUSNAK ("Rusnak") is an individual and resides in Edmonton, Alberta. At all material times, Rusnak was the sole director and controlling mind of A-Z Investments, Academy, Academy Consultants, TFI, Zurich and Companions and was knowingly involved in the HMS Scheme.
15. The Defendants AMIN RAMJI and BILKISH RAMJI ("Ramji"), are individuals and reside in Red Deer, Alberta. At all material times, Ramji were the directors and controlling mind of Altruistic and were knowingly involved in the HMS Scheme.
16. The Defendants WINSTON INDARSINGH ("Indarsingh") and MOHAN MAHARAJ ("Maharaj"), are individuals and reside in Edmonton, Alberta. At all material times, Indarsingh and Maharaj were the directors and controlling mind of Aspire and were knowingly involved in the HMS Scheme.
17. The Defendant, STAN W. REMIN ("Remin"), is an individual and resides in Edmonton, Alberta. At all material times, Remin was the sole director and controlling mind of 1037149 and was knowingly involved in the HMS Scheme.
18. The Defendant, WILLIAM SEREDIUK ("Serediuk"), is an individual and resides in Bieseker, Alberta. At all material times, Serediuk was the sole director and controlling mind of Commonwealth and was knowingly involved in the HMS Scheme.
19. The Defendants, DAVID HENRY ("Henry"), ARNOLD HENRY ("A. Henry") and TOM OLDRIDGE ("Oldridge"), are individuals and reside in Didsbury, Alberta. At all material times, Henry, A. Henry and Oldridge were partners in Datas and were knowingly involved in the HMS Scheme.
20. The Defendants, STAN WRIGHT and MARGARET WRIGHT ("Wrights"), are individuals and reside in Calgary, Alberta. At all material times, the Wrights were the directors and controlling mind of Diverse and were knowingly involved in the HMS Scheme.

21. The Defendant, WAYNE JOHNSON ("Johnson"), is an individual and resides in Calgary, Alberta. At all material times, Johnson was the sole director and controlling mind of Ethan and was knowingly involved in the HMS Scheme.
22. The Defendants, ENRIQUE TOSCANO and LEE-ANNA TOSCANO ("Toscanos"), are individuals and reside in Calgary, Alberta. At all material times, the Toscanos were the directors and controlling mind of Five Continents and were knowingly involved in the HMS Scheme.
23. The Defendants, EUGENE LEROY DUCE ("Duce"), JACK FOLSOM and JIM FOLSOM, are individuals and reside in Hill Spring, Alberta. At all material times, Duce, Jack Folsom and Jim Folsom were the directors and controlling mind of Hillpro and were knowingly involved in the HMS Scheme.
24. The Defendants, JAMES JESPERSEN and SHARRELL JESPERSEN ("Jespersen"), are individuals and reside in Stony Plain, Alberta. At all material times, the Jespersens were the directors and controlling mind of Jesco and were knowingly involved in the HMS Scheme.
25. The Defendant, DONALD RABBY ("Rabby"), is an individual and resides in Edmonton, Alberta. At all material times, Rabby was the sole director and controlling mind of Kelso and was knowingly involved in the HMS Scheme.
26. The Defendant, KATHERINE RODRIGUE-BAILEY ("K. Bailey"), is an individual and resides in Dewinton, Alberta. At all material times, K. Bailey was the sole director and controlling mind of Kirby and was knowingly involved in the HMS Scheme.
27. The Defendant, ARTHUR KLASSEN ("Klassen"), is an individual and resides in North Battleford, Saskatchewan. At all material times, Klassen was the sole director and controlling mind of Klass A and was knowingly involved in the HMS Scheme.
28. The Defendant, DOUGLAS A. COWAN ("Cowan"), is an individual and resides in Stony Plain, Alberta. At all material times, Cowan was the sole director and controlling mind of Labalta and was knowingly involved in the HMS Scheme.

29. The Defendant, BRAD MOONEY (“Mooney”), is an individual and resides in Calgary, Alberta. At all material times, Mooney was a director, or alternatively was affiliated with, M & M and was knowingly involved in the HMS Scheme.
30. The Defendant, DAVE MILLER (“Miller”), is an individual and resides in Calgary, Alberta. At all material times, Miller was a director, or alternatively was affiliated with, Magellan and was knowingly involved in the HMS Scheme.
31. The Defendants, MARK JESPERSEN and COLLEEN JESPERSEN (“M & C Jespersen”), are individuals and reside in Stony Plain, Alberta. At all material times, M & C Jespersen were the directors and controlling mind of Marcol and were knowingly involved in the HMS Scheme.
32. The Defendant, MICHAEL MCCULLOUGH (“McCullough”), is an individual and resides in Calgary, Alberta. At all material times, McCullough was the sole director and controlling mind of McCullough Financial and was knowingly involved in the HMS Scheme.
33. The Defendants, CONNIE BARTEL (“C. Bartel”), ROBERT BARTEL (“R. Bartel”) and RANDALL SEABROOK (“Seabrook”), are individuals and reside in Calgary, Alberta. At all material times, C. Bartel, R. Bartel and Seabrook were the directors and controlling mind of Mountain Star and were knowingly involved in the HMS Scheme.
34. The Defendant, JOHN W. WILLOCK (“Willock”), is an individual and resides in St. Albert, Alberta. At all material times, Willock was the sole director and controlling mind of Paradise Bay and was knowingly involved in the HMS Scheme.
35. The Defendant, ALLAN A. GRAY (“Gray”), is an individual and resides in Chestemere, Alberta. At all material times, Gray was the sole director and controlling mind of Phoenix Global and was knowingly involved in the HMS Scheme.
36. The Defendant, DANIEL LESCAMELA (“Lescamela”), is an individual and resides in Calgary, Alberta. At all material times, Lescamela was a director, or alternatively was affiliated with, Thor Empire Trust and was knowingly involved in the HMS Scheme.
37. The Defendants, DELMER STROBEL and VERNA STROBEL (“Strobels”), are individuals and reside in Calgary, Alberta. At all material times, the Strobels were the directors and controlling mind of Triple S and were knowingly involved in the HMS Scheme.

38. The Defendants, PETER MOL ("Mol") and ARIE SCHALK ("Schalk"), are individuals and reside in Calgary, Alberta. At all material times, Mol and Schalk were the directors and controlling mind of Vitron and were knowingly involved in the HMS Scheme.
39. The Defendant, CLAUDE ZINGER ("Zinger"), is an individual and resides in Coronation, Alberta. At all material times, Zinger was a director, or alternatively was affiliated with, Zinger Holdings and was knowingly involved in the HMS Scheme.
40. The Defendant, WILLIAM LENZ ("Lenz"), is an individual and resides in Calgary, Alberta. At all material times, Lenz was a director, or alternatively was affiliated with, Horizon Fiduciary Inc. and was knowingly involved in the HMS Scheme.
41. The Defendant, GEORGE LENNOX ("Lennox"), is an individual and resides in the City of Calgary in the Province of Alberta. At all material times, Lennox was director, or alternatively was affiliated with, 991037 and was knowingly involved in the HMS Scheme.
42. The Defendant, JOHN ROMERO ("Romero"), is an individual and resides in the City of Imperial Beach, California, U.S.A. At all material times, Romero was a director, or alternatively was affiliated with, ABBA and was knowingly involved in the HMS Scheme.
43. The Defendant, RICK CHILDERS ("Childers"), is an individual and resides in the City of Corona, California, U.S.A. At all material times, Childers was a director, or alternatively was affiliated with, Cedar Pointe and was knowingly involved in the HMS Scheme.
44. The Defendant, RAY FISHER ("Fisher"), is an individual and resides in the City of Arden, North Carolina, U.S.A. At all material times, Fisher was a director, or alternatively was affiliated with, Carpenter's Shop and was knowingly involved in the HMS Scheme.
45. The Defendant, ALFREDO FARPON ("Farpon"), is an individual and resides in the City of Houston, Texas, U.S.A. At all material times, Farpon was a director, or alternatively was affiliated with, NUMA Ltd. and was knowingly involved in the HMS Scheme.
46. The Defendant, SAMUEL HIGGINS ("Higgins"), is an individual and resides in the City of Tijuana, Mexico. At all material times, Higgins was a director, or alternatively was affiliated with, Transmax and was knowingly involved in the HMS Scheme.

47. The Defendants, MILTON TEIBE ("Teibe") and JOHN WILLOCK ("Willock"), are directors of companies currently unknown to the Plaintiff Investors and are residents of Alberta. Teibe and Willock were involved personally, or on behalf of unknown corporations, in the HMS Scheme.
48. The Defendants described in paragraphs 7 to 47 above are also at times hereinafter referred to as the "**HMS Director Defendants**".
49. The Defendant, GARTH S. BAILEY ("Bailey"), is a resident of De Winton, Alberta and is a barrister and solicitor licensed to practice law in the Province of Alberta. At all material times, Bailey was the sole director and the controlling mind of Bailey Corporation and acted as legal counsel for the HMS Corporate Defendants and HMS Director Defendants. Bailey negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Bailey owed a duty of care and fiduciary duties to the Plaintiff Investors.
50. The Defendant, MCCARTHY TETRAULT LLP ("McCarthy"), is a law firm practicing in the Province of Alberta. At material times, Bailey was associated with McCarthy while providing legal services to the HMS Corporate Defendants and HMS Director Defendants.
51. The Defendant, DANA I. CARLSON ("Carlson"), is a resident of Red Deer, Alberta and is a barrister and solicitor licensed to practice law in the Province of Alberta. Carlson negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Carlson owed a duty of care and fiduciary duties to the Plaintiff Investors.
52. The defendant, PETER MANOUSOS ("Manousos"), is a resident of Calgary, Alberta and is a barrister and solicitor licensed to practice law in the Province of Alberta. Manousos negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Manousos owed a duty of care and fiduciary duties to the Plaintiff Investors.
53. The Defendant, MICHAEL GROSH ("Grosh"), is a resident of Calgary, Alberta and is a barrister and solicitor licensed to practice law in the Province of Alberta and was the sole shareholder and directing mind of Grosh Corp. Grosh and Grosh Corp. negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Grosh owed a duty of care and fiduciary duties to the Plaintiff Investors.
54. The Defendant, GUY BAILEY ("Guy Bailey"), is a resident of Florida, U.S.A and is a barrister and solicitor authorized to practice law in the State of Florida and elsewhere. At all

material times, Guy Bailey was a partner of the law firm Bailey Daws. Guy Bailey and Bailey Daws negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Guy Bailey and Bailey Daws owed a duty of care and fiduciary duties to the Plaintiff Investors.

55. The Defendant, RICHARD FOWLKS (“Fowlks”), is a resident of Portland, Oregon U.S.A and is a barrister and solicitor authorized to practice law in the State of Oregon and elsewhere. At all material times, Fowlks negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Fowlks owed a duty of care and fiduciary duties to the Plaintiff Investors.
56. The Defendant, CAMERON CAMPBELL (“Campbell”), is a resident of La Jolla, California U.S.A and is a barrister and solicitor authorized to practice law in the State of California and elsewhere. At all material times, Campbell negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Campbell owed a duty of care and fiduciary duties to the Plaintiff Investors.
57. The Defendants, Bailey, Bailey Corporation, McCarthy, Carlson, Manousos, Grosh, Grosh Professional Corp., Guy Bailey, Bailey Daws LLP, Fowlks and Campbell are at times collectively hereinafter referred to as the “**Lawyers**”.
58. The Defendant, DESMOND K. DEFREITAS (“Defreitas”), is a resident of Calgary, Alberta and is a chartered accountant authorized to carry on business as a chartered accountant in the Province of Alberta. At all material times, Defreitas was the sole director and directing mind of Defreitas Corporation. At all material times, Defreitas and Defreitas Corporation negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Defreitas and Defreitas Corporation owed a duty of care and fiduciary duties to the Plaintiff Investors.
59. The Defendant, STANLEY DEFREITAS (“Stanley Defreitas”), is a resident of Toronto, Ontario and is a chartered accountant authorized to practice in the Province of Ontario and elsewhere. At all material times, Stanley Defreitas was a director, partner or employee of DEFREITAS & ASSOCIATES, an accounting firm authorized to carry on business in the Province of Ontario and elsewhere. At all material times, Stanley Defreitas and Defreitas & Associates negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Stanley Defreitas and Defreitas & Associates owed a duty of care and fiduciary duties to the Plaintiff Investors.

60. The Defendants, Defreitas, Stanley Defreitas, Defreitas Corporation and Defreitas & Associates are at times collectively hereinafter referred to as the “**Accountants**”.
61. The Defendants, ARNOLD DYCK (“Dyck”) and GERTRUDE M. PRETE (“Prete”), are individuals and reside in the City of Lethbridge and the Town of Cardston respectively, in the Province of Alberta. At all material times, Dyck and Prete, acted as promoters of the HMS Scheme. Dyck and Prete were paid a commission for monies invested through them by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
62. The Defendants, NANCY BUFORD (“Buford”) and BARIE FRITZ (“Fritz”), are individuals and reside in the Cities of Las Vegas, Nevada and Albuquerque, New Mexico respectively, in the United States of America. At all material times, Buford and Fritz, acted as promoters of the HMS Scheme. Buford and Fritz were paid commissions by the HMS Corporate Defendants or HMS Director Defendants one or any of them, for monies invested through them in the HMS Scheme.
63. The Defendant, KENDRA HASKETT (“Haskett”), was at all material times an employee of HMS and the Executive Assistant to Fyn, and was involved in the HMS Scheme.
64. The Defendant JOHN DOE is a person, or persons, who also acted as promoter of the HMS Scheme but whose identity is not currently known to the Plaintiff Investors.
65. The Defendants set out in paragraphs 61 to 64 are at times collectively referred to hereinafter as the “**HMS Scheme Promoters**” and were knowingly involved in the HMS Scheme.
66. The Defendants, RICHARD DOE and XYZ CORP., are individuals and corporations, whose identity is currently unknown to the Plaintiff Investors, who participated in the HMS Scheme and who directly or indirectly caused injury to the Plaintiff and Investors.
67. All of the Defendants as set out in paragraph 3 to 66 are, with the exception of the Lawyers and Accountants, at times, hereinafter collectively referred to as the “**HMS Defendants**”.
68. The Defendant, MOUNTAIN VIEW CREDIT UNION LIMITED (“Mountain View”), is a credit union, and is authorized to carry on business in the Province of Alberta. At all material times, Mountain View accepted deposits from the HMS Defendants.

69. The Defendant, COMMUNITY CREDIT UNION LTD. ("Community Credit"), is a credit union, and is authorized to carry on business in the Province of Alberta. At all material times, Community Credit accepted deposits from the HMS Defendants.
70. The Defendant, HORIZON BANK INTERNATIONAL LIMITED ("Horizon Bank"), is a chartered bank registered to carry on business in the Virgin Islands including St. Vincent and the Grand Cayman. At all material times, Horizon Bank accepted deposits from the HMS Defendants.
71. The Defendant, the FIRST NATIONAL BANK OF SAN DIEGO ("First National"), is a chartered bank registered to carry on business in the state of California. At all material times, First National accepted deposits from the HMS Defendants.
72. The Defendants as set out in paragraphs 68 to 71 are, at times, hereinafter collectively referred to as the "**Financial Institutions**". At all material times, the Financial Institutions also received deposits from the Lawyers and Accountants.

The HMS Scheme

73. The HMS Defendants, other than the Lawyers and Accountants, were engaged in a coordinated illegal or unlawful Ponzi scheme to obtain funds from the Plaintiff Investors with the sole objective of using those funds for their own benefit and enrichment contrary to s.380 (1) of the *Criminal Code of Canada* and ss.52-60 of the *Competition Act*. These funds were used to unjustly enrich the HMS Defendants and are subject to a constructive trust in favour of the Plaintiff Investors.
74. The HMS Defendants represented to the Plaintiff Investors that they were investing funds in a private investment capital corporation that would place funds in major projects worldwide and obtain a high return. The Plaintiff Investors were presented with a written offering setting out the business plan and investment objectives of the HMS Defendants contrary to ss. 203-205 of the *Securities Act*. The Plaintiff Investors are deemed to have relied on the representations contained in the written offering they were provided.
75. Further, systemic representations were made that all of the investments were protected against loss by bonds and cash that were verified and held in trust by Bailey or the other Lawyers, as security. Further, that the security held in trust by Bailey and the other Lawyers

would be sufficient to payout all investors in the unlikely event of a default with respect to the investments.

76. On many occasions the Plaintiff Investors paid their investments directly to Bailey and the Lawyers. The Plaintiff Investors reasonably understood that Bailey, and the other Lawyers, were representing them and would look after their interests with respect to the security which they held to guarantee repayment to the Plaintiff Investors.
77. As it turns out, there do not appear to have been any material projects worldwide that were ever funded by the monies of the Plaintiff, and other investors. Rather, the HMS Defendants placed the investment funds in trust accounts of Bailey, Carlson, Cameron and the other Lawyers, or their clients. Thereafter, the funds were simply directed to accounts inside and outside of Canada, never to be seen again by the Plaintiff Investors.
78. Further, and contrary to the offering memorandum presented to all of the Plaintiff Investors, the HMS Defendants, Lawyers and Accountants converted the Plaintiff Investors funds to their own personal use and did not invest the funds for any legitimate investment.
79. The Plaintiff Investors have been provided with ongoing promises of payment but, despite demands for repayment of their funds the Plaintiff Investors have not received repayment of the amounts invested, which total approximately \$100,000,000.00. The Plaintiff Investors have demanded that Bailey and Carlson:
 - (a) Realize on the security, which was represented to be held by the lawyers to guarantee repayment of the investment; and
 - (b) Realize on the funds forwarded to the Plaintiff Investors.

Bailey and Carlson have failed to respond.

The Lawyers

80. At all material times (between 2001 and the present date), the Lawyers were providing legal services to the various Defendant companies and individuals involved in the HMS Scheme as well as the Plaintiff Investors. Further, the Lawyers knew or ought to have known that the Plaintiff Investors would reasonably rely on the Lawyers to advise them if the representations

of the HMS Scheme were untrue and that, in particular, the Lawyers were not holding security in trust for repayment of their investments.

81. The Lawyers provided advice to the HMS Defendants which enabled the HMS Defendants to operate the HMS Scheme.
82. The Lawyers knew or ought to have known that the HMS Defendants were representing to the Plaintiff Investors that the Lawyers, as part of their services as Barristers & Solicitors, held bonds and cash in trust for the benefit of the Plaintiff Investors, in case there was any default in payment of the invested funds. Accordingly, the Lawyers knew, or ought to have known, that they were providing legal services to the benefit of both the HMS Defendants as well as the Plaintiff Investors.
83. The Lawyers knew or ought to have known that the HMS Defendants directed the Plaintiff Investors to make their investment payable to the Lawyers. By arranging the HMS Scheme to operate in this manner, the Plaintiff Investors reasonably relied on the Lawyers, and duty of care and fiduciary duties arose as between the Lawyers and the Plaintiff Investors.
84. McCarthy Tetrault LLP negligently supervised Bailey in his provision of legal services to the HMS Defendants particulars of which include the following:
 - (a) Failure to adequately supervise the professional services being provided by Bailey, while a member of McCarthy Tetrault;
 - (b) Failure to make reasonable inquiries with respect to Bailey's provision of legal services for the HMS Defendants; and
 - (c) Failure to prevent the establishment and operation of the HMS Scheme, being facilitated by Bailey while a member of McCarthy Tetrault.

The Accountants

85. The Accountants provided accounting services to the HMS Defendants and knew or should have known that funds in their care were being used and transferred in a highly unusual manner which was completely out of character with any legitimate investment structure. Accordingly, the Accountants knew, or ought to have known, by virtue of the flow of funds, their clients were engaged in the HMS Scheme or other unlawful operations. The

Accountants were obliged to notify authorities of these transactions and were obliged to refrain from participating in these operations.

86. The Accountants' conduct constitutes knowing assistance and/or knowing participation in the operation of the HMS Scheme and is in breach of their fiduciary obligations to the Plaintiff Investors.

The Financial Institutions

87. The Financial Institutions provided banking services to the HMS Defendants, Lawyers and Accountants and knew or ought to have known that funds were being transferred in a highly unusual manner which was completely out of character for HMS Defendants, Lawyers and Accountants. Accordingly, the Financial Institutions knew, or ought to have known, by virtue of the flow of funds, that their clients were engaged in the HMS Scheme or other unlawful operations. The Financial Institutions were obliged to notify authorities of these transactions and were obliged to refrain from participating in these operations.
88. The HMS Defendants, Lawyers and Accountants made use of the Financial Institutions in providing banking services for the operation of the HMS Scheme.
89. The Financial Institutions had a duty to make reasonable inquiries to understand that the nature of its customers' business and banking services and to refrain from participating in banking transactions that appear wrongful or illegal.
90. The HMS Defendants, Lawyers and Accountants used the Financial Institutions simply as a conduit to deliver Plaintiff Investors' funds inside the Province of Alberta, outside the Province of Alberta and ultimately to the United States, the Caribbean, and other places and individuals not presently known to the Plaintiff Investors and to convert the Plaintiff Investors' funds to their own personal use.
91. The Financial Institutions knew, or ought to have known, by virtue of these banking transactions that their HMS Defendant clients were engaged in the HMS Scheme, or other unlawful or illegal conduct. The Financial Institutions were obliged to not participate in such activity and to notify authorities of these transactions, which they failed to do.

92. The Financial Institutions' conduct constitutes knowing assistance and/or knowing participation in the operation of the HMS Scheme and is in breach of the HMS Defendants' fiduciary obligations to the Plaintiff Investors.
93. The Financial Institutions knowingly or negligently assisted and knowingly or negligently participated in the operation of the HMS Scheme which resulted in the loss of the Plaintiff Investor's funds.

Contractual, Tort and Fiduciary Duties of the Defendants

94. The Plaintiff Investors state that, by virtue of the facts set forth in paragraphs 73 to 93, the HMS Defendants, Lawyers, Accountants and Financial Institutions owe them contractual obligations, a duty of care, and/or fiduciary duties including:
 - (a) To comply with the systematic representations made to the Plaintiff Investors;
 - (b) To cease participating in, or providing assistance with respect to, the HMS Scheme when they knew or ought to have known that the systematic representations made to the Plaintiff Investors were untrue;
 - (c) To advise the Plaintiff Investors that the Lawyers and Accountants were not acting on their behalf and were not providing solicitor/client services to or for their benefit, or accounting services to them or for their benefit;
 - (d) To avoid placing their personal interests in a position where they would conflict with those of the Plaintiff Investors; and
 - (e) To take reasonable care to ensure the Plaintiff Investors' funds were not being handled in a manner that was unlawful or likely to result in a total loss of the Plaintiff Investors' funds.
95. Further, the HMS Director Defendants, Accountants, and Lawyers owed fiduciary duties to the Plaintiff Investors which, by their conduct and negligence, they breached.
96. The Plaintiff Investors state that, in the circumstances described above, the Plaintiff Investors' funds are held on an express trust, or constructive trust, by all Defendants who may

have come into possession of these funds. The Plaintiff Investors claim that the funds can be traced and restored to the possession of the Plaintiff Investors.

Breach of Duties

Lawyers

97. The Plaintiff Investors state that the Lawyers breached their duty of care, contractual obligations, and fiduciary duties owed to them, and/or committed a breach of trust particulars of which include:
- (a) Acting on behalf of the Plaintiff Investors without receiving adequate, or any, instructions from the Plaintiff Investors;
 - (b) Accepting the Plaintiff Investors' funds and accepting directions from the HMS Defendants to use those funds in a manner which the Lawyers knew or ought to have known would be in breach of contractual obligations, duty of care, and fiduciary duties owed by the HMS Defendants and/or the Lawyers to the Plaintiff Investors;
 - (c) Accepting the Plaintiff Investors' funds, with the understanding that those funds would be held in trust, or assets equivalent to the same to be held in trust, as security for the Plaintiff Investors' funds, and acting in a manner inconsistent with that state of affairs;
 - (d) Accepting instructions from the HMS Defendants to divert Plaintiff Investors' funds outside of Canada for no apparent legitimate investment or business purposes;
 - (e) Providing legal services that facilitated the operation of the HMS Scheme without adequate or any proper advice or warning to the Plaintiff Investors;
 - (f) Permitting the Plaintiff Investors to make funds payable to the Lawyers;
 - (g) Failing to make any, or any proper inquiries as to the nature of the business that the HMS Defendants were involved with notwithstanding they were retained by them and were using trust accounts to direct money;

- (h) Were reckless or willfully blind to the actions and activities of the HMS Defendants and in doing so aided and assisted the HMS Defendants in the furtherance of the HMS Scheme contrary to the *Criminal Code*;
- (i) Failing to hold bonds, or other security, in trust for the repayment of the Plaintiff Investors' funds; and
- (j) Such further and other particulars which are not yet known to the Plaintiff Investors.

HMS Defendants

98. Further, and without limiting the foregoing, the Plaintiff Investors state that the remaining HMS Defendants, were in breach of contract, duty of care, fiduciary duties, statutory duties and/or committed a breach of trust owed to the Plaintiff Investors, particulars of which include:
- (a) The establishment and operation of the HMS Scheme;
 - (b) Engaging in trading in securities, in violation of the *Securities Act*;
 - (c) Conversion of the Plaintiff Investors' funds for the benefit of themselves, or affiliated entities;
 - (d) Making systemic representations that they knew, or ought to have known were false, misleading and inaccurate;
 - (e) Failing to properly account for any of the funds invested by the Plaintiff Investors;
 - (f) Failing to have in place the necessary security, by way of bonds or otherwise, to guarantee the purported investments;
 - (g) Organizing and promoting the HMS Scheme in contravention of the *Criminal Code of Canada* and the *Competition Act*; and
 - (h) Such further and other particulars which are not yet known to the Plaintiff Investors.

Accountants

99. Further, and without limiting the foregoing, the Accountants were in breach of contract, duty of care, fiduciary duties and/or breach of trust owed to the Plaintiff Investors, particulars of which include:
- (a) failing to properly investigate the activities of the HMS Defendants and Lawyers and report any suspicious activity, or alternatively, decline to participate in the activity;
 - (b) facilitating the transfer of money between the HMS Defendants, Lawyers and the unknown John Doe and ABC Corp. defendants when they knew, or should have known that the facilitation was backed by no legitimate business purpose;
 - (c) failing to properly advise the Plaintiff Investors about the nature of the HMS Scheme when they knew or should have known of its existence; and
 - (d) such further and other particulars which are not yet known to the Plaintiff Investors.

Financial Institutions

100. The Plaintiff Investors state that the Financial Institutions were in breach of contract, duty of care and/or committed a breach of trust owed to the Plaintiff Investors, particulars of which include:
- (a) Providing banking services which facilitated the operation of the HMS Scheme;
 - (b) Accepting instructions from the HMS Defendants, Lawyers and Accountants to transfer funds of Plaintiff Investors outside of Canada;
 - (c) Providing banking services for the HMS Defendants Lawyers and Accountants in a manner where they knew or ought to have known that those banking services were likely to result in the loss of the Plaintiff Investors' funds; and
 - (d) Failing to notify authorities of the unusual banking activities of the HMS Defendants Lawyers and Accountants in violation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

101. Further, or in the alternative to the above, the HMS Defendants, Lawyers, Accountants and Financial Institutions were knowingly engaged in the HMS Scheme with the intention of defrauding the Plaintiff Investors of their funds with the object of enriching themselves. The HMS Director Defendants, Lawyers and Accountants participated in this fraud and directed their corporate entities to facilitate the fraud. Particulars of the fraud are set out in the description of the HMS Scheme above. The actions of all of these Defendants were in contravention of the *Criminal Code of Canada* and the *Competition Act*.
102. Further, or in the alternative to the above, the HMS Defendants, Lawyers, Accountants, Credit Unions and Horizon Bank participated in a conspiracy designed to implement and carry out the HMS Scheme as described above. The object and purpose of the conspiracy was to cause harm to the Plaintiff Investors to the benefit of these Defendants.
103. As a result of the conduct of the Defendants as hereinbefore set out, the Plaintiff investors have sustained loss and damage including the loss of their initial investment, interest and loss of investment opportunity.

Legislation

104. The Plaintiff Investors plead and rely upon the provisions of the *Securities Act* R.S.A. 2000, c. s-4, *Criminal Code of Canada* R.S.C. 1985 c. C-46, *Competition Act*, R.S.C. 1985 c. C-34, *Legal Professions Act*, R.S.A. 2000, c L-8, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c.17 and the regulations thereto, *Class Proceedings Act*, S.A. 2003 c. C-16.5 and the *Judgment Interest Act*, R.S.A. 2000, c. J-1, all as amended.

Time and Place of Trial

105. The Plaintiff and Class members propose that the trial of the common issues take place at the Courthouse in Calgary, Alberta and further estimate that the trial of the common issues will take no more than 25 days.

WHEREFORE, the Plaintiff Investors claim against the Defendants jointly and severally, or alternatively as against each of them, as follows:

- (a) Damages in the amount of \$100,000,000.00;
- (b) Loss of investment opportunity in an amount to be proven at trial;
- (c) As against the Director Defendants, Lawyers and Accountants, a declaration that assets held by these defendants are subject to a trust and an order directing that the Plaintiff Investors have equitable title to them;
- (d) A declaration that the Director Defendants, Lawyers and Defreitas were unjustly enriched by the sum of \$100,000,000.00 and an order tracing said funds;
- (e) A declaration the HMS Scheme constituted a fraud pursuant to the *Criminal Code of Canada* and was carried out in violation of the *Securities Act*.
- (f) Interest pursuant to the *Judgment Interest Act*;
- (g) Punitive and Aggravated Damages in the amount of \$10,000,000.00; and
- (h) Costs, including costs on a solicitor and client basis.

DATED at the City of Calgary, in the Province of Alberta, this 2nd day of June, 2005; AND DELIVERED by McNally Cuming Raymaker, Barristers and Solicitors, solicitors for the Plaintiff Investors, whose address for service is in care of said solicitors at #1500, 635 - 8th Avenue S.W., Calgary, Alberta T2P 3M3.

ISSUED OUT of the Office of the Clerk of the Court of Queen's Bench, Judicial District of Calgary, this 2nd day of June, 2005.

V.A. BRANDT



CLERK OF THE COURT

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

HEIKE ENTICKNAP, as Representative Plaintiff

Plaintiff

- and -

H M S FINANCIAL INC., SKYWARD MANAGEMENT INC., GARTH S. BAILEY, GARTH S. BAILEY PROFESSIONAL CORPORATION, 990137 ALBERTA LTD., 1037149 ALBERTA LTD., operating as CEDAR MANAGEMENT, 1053382 ALBERTA INC., 1070199 ALBERTA LTD., 1079373 ALBERTA LTD., A-Z INVESTMENT GROUP, ABBA RESOURCES UNLIMITED, ACADEMY FINANCIAL INC., ACADEMY FINANCIAL PLANNERS & CONSULTANTS INC., ALTRUISTIC HOLDINGS LTD., ASPIRE GROUP INTERNATIONAL REALTY INC., BAILEY DAWS LLP, BOGNER INDUSTRIES LTD., THE CARPENTER'S SHOP CORPORATION, CEDAR POINTE CONSULTING GROUP INC., CHASE FORBES TRUST LTD., COMMONWEALTH MARKETING GROUP LTD., COMMUNITY CREDIT UNION LTD., COMPANIONS INC., D. K. DEFREITAS PROFESSIONAL CORPORATION, THE DAKOTA CORPORATION, DANA I. CARLSON, DATAS CONSULTING, DEFREITAS & ASSOCIATES, DESMOND K. DEFREITAS, DIVERSE EQUITIES INC., ETHAN EQUITIES INC., FIRST NATIONAL BANK OF SAN DIEGO, FIVE CONTINENTS CONSULTING CORPORATION, THE HILLPRO GROUP INC., HORIZON BANK INTERNATIONAL LIMITED, HORIZON FIDUCIARY INC., JESCO INC., KELSO ENTERPRISES INC., KIRBY AUDIT SERVICES INC., KLASS "A" STRATEGIES INC., LABALTA LTD., M & M INVESTMENTS 101 LTD., MAGELLAN MORANDA INVESTMENTS, MARCOL MANAGEMENT LTD., MCCARTHY TETRAULT LLP, MCCULLOUGH FINANCIAL CORPORATION, MICHAEL GROSH PROFESSIONAL CORPORATION, MOUNTAIN STAR CAPITAL CORP., MOUNTAIN VIEW CREDIT UNION LIMITED, NUMA LTD., PAGET CAPITAL LTD., PARADISE BAY HOLDINGS INC., PHOENIX GLOBAL RESOURCES LTD., PINE GROVE MANAGEMENT INC., SELLARS FINANCIAL INC., TALISMAN FINANCIAL INVESTMENTS INC., TAMIKA ENTERPRISES INC., THOR EMPIRE TRUST, TITANIA CONSULTING INC., TRANSMAX TECHNOLOGIES LTD., TRIPLE-SSS HOLDINGS INC., VITRON CONSULTING INC., ZINGER BROTHERS HOLDINGS, ZURICH VENTURES INC., GUY BAILEY, ALFRED BARNFIELD, CONNIE BARTEL, ROBERT BARTEL, VICTOR BAUMAN, NANCY BUFORD, CAMERON CAMPBELL, RICK CHILDERS, BLAINE A. CISNA, DOUGLAS A. COWAN, STANLEY DEFREITAS, EUGENE LEROY DUCE, ARNOLD DYCK, ALFREDO FARPON, RAY FISHER, JACK FOLSOM, JIM FOLSOM, RICHARD FOWLKS, BARIE FRITZ, ROBERT E. FYN, ALLAN A. GRAY, MICHAEL GROSH, KENDRA HASKETT, ARNOLD HENRY, DAVID HENRY, SAMUEL HIGGINS, WINSTON INDARSINGH, COLLEEN JESPERSEN, JAMES JESPERSEN, MARK JESPERSEN, SHARRELL JESPERSEN, WAYNE JOHNSON, BARBARA L. KING, ARTHUR KLASSEN, RUBY LEACHMAN, GEORGE LENNOX, WILLIAM LENZ, DANIEL LESCAMELA, DANNY R. MACNAUGHTON, NORMA A. MACNAUGHTON, PETER MANOUSOS, MICHAEL MCCULLOUGH, DAVE MILLER, MOHAN MAHARAJ, PETER MOL, BRAD MOONEY, TOM OLDRIDGE, GERTRUDE M. PRETE, DONALD RABBY, AMIN RAMJI, BILKISH RAMJI, STAN W. REMIN, KATHERINE RODRIGUE-BAILEY, JOHN ROMERO, OREST RUSNAK, ARIE SCHALK, RANDALL SEABROOK, ROBERT J. SELLARS, WILLIAM SEREDIUK, PETER L. SHERIDAN, MURRAY STARK, DELMER STROBEL, VERNA STROBEL, MILTON TEIBE, ENRIQUE TOSCANO, LEE-ANNA TOSCANO, JOHN W. WILLOCK, MARGARET WRIGHT, STAN WRIGHT, CLAUDE ZINGER, JOHN DOE, RICHARD DOE and XYZ CORP.

Defendants

STATEMENT OF CLAIM

McNALLY CUMING RAYMAKER

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