

Court File No.

07-CV-341493CP

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992)

B E T W E E N:

SHARUKH PALSETIA

Plaintiff

-and -

MUSA SULEMAN and 1376563 ONTARIO INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

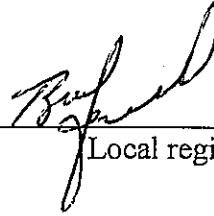
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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

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

Date: October 10, 2007

Issued by _____



Local registrar

Address of
court office 393 University Avenue
Toronto, Ontario
M5G 2J6

TO: **Musa Suleman**
Suite 108
93 Skyway Avenue
Etobicoke, Ontario

TO: **1376563 Ontario Inc.**
c/o Musa Suleman
At Above Address

CLAIM

1. The Plaintiff's claims are against the Defendants for the following:
 - (a) An Order certifying this Action as a Class Proceeding and appointing the Plaintiff as Representative Plaintiff of the Class, being those persons (i) who are Canadian residents, (ii) who gave cheques to Suleman payable to the Defendant, 1376563 Ontario Inc. ("137"), which were in turn deposited by Suleman into a bank account or accounts of 137, (iii) which cheques were all received and deposited by Suleman and 137 in trust by or at the direction of Suleman for the sole and exclusive purpose of using the proceeds from those cheques to acquire shares in STS Inc., (iv) which proceeds were wrongfully disbursed out of trust by or at the direction of Suleman when Suleman and 137 had no right to do so (v) to the resulting detriment of the Plaintiff and the Plaintiff Class to the extent of total loss of the said proceeds from the said Plaintiffs' aforesaid cheques;
 - (b) \$30,000,000.00 in damages on account of misrepresentation, deceit, negligent misrepresentation, breach of trust, breach of fiduciary duty, breach of duties owed as agents for the Plaintiff, misappropriation, a guarantee, breach of contract, knowing assistance of fraud or breach of trust, knowing receipt and subsequent use of trust monies and breach of statutory duty;
 - (c) \$3,000,000.00 in punitive damages;

- (d) An Order requiring Suleman to account to and repay the Plaintiff and the Plaintiff Class any and all monies deposited into the bank account or bank accounts of 137 from the aforesaid cheques given to Suleman by the Plaintiff and the Plaintiff Class;
- (e) An Order declaring that the assets of Suleman and of 137 are subject to a Constructive Trust or Equitable Lien in favour of the Plaintiff and the Plaintiff Class to the extent of the proceeds from the aforesaid cheques given to Suleman by the Plaintiff and the Plaintiff Class that were wrongfully disbursed from the bank account, or accounts of 137 and/or misappropriated and used by Suleman and a Declaration requiring Suleman to deliver up his assets for liquidation to the extent of the said total proceeds;
- (f) An Interim, Interlocutory and Permanent Injunction restraining Suleman from disposing of his personal and corporate assets pending Trial, including an order freezing all personal bank accounts of Suleman and of all bank accounts of corporations under the control of Suleman or with respect to which Suleman is a director, shareholder or signing officer;
- (g) An Interim and Interlocutory Order requiring Suleman to provide full particulars of all assets directly or indirectly acquired with proceeds from the aforesaid cheques given to Suleman by the Plaintiff and the Plaintiff Class including particulars of any and all related immediate and subsequent conveyances, transfers or dispositions of assets and monies in any way relating to the use of the said proceeds;

- (h) Pre-judgment interest pursuant to Section 128 of the *Courts of Justice Act*, as amended;
- (i) Post -judgment interest pursuant to Section 129 of the *Courts of Justice Act*, as amended;
- (j) His costs of this action on a substantial indemnity basis or, alternatively, on a partial indemnity basis, together with G.S.T. thereon;
- (k) Such further and other relief as the Court may deem just.

THE PARTIES

2. The Plaintiff resides in the City of Toronto.

3. Musa Suleman ("Suleman") (i) was at all material times a respected and influential member of his community, (ii) is an accountant who at all material times was relied upon for and performed professional services for many members of his community and (iii) resides in the City of Toronto.

4. 1376563 Ontario Inc. ("137") is a limited company which was incorporated by Suleman on September 24, 1999, for the sole and exclusive purpose of opening a bank account or bank accounts to receive cheques being or to be obtained and received by Suleman from the Plaintiff and the Plaintiff Class in trust on account of, by reason of or for the intended purposes more particularly set out below. 137 was at all times controlled and managed by Suleman.

BACKGROUND

5. Salim Damji ("Damji") is a convicted felon. From in or about late 1999 until his arrest by members of the Metropolitan Toronto Police Fraud Squad on April 26, 2002, he orchestrated a scheme that defrauded members of his community and others in Ontario and elsewhere in Canada of sums approaching \$100 million. Throughout that period, Damji was unemployed and the proceeds of his fraud were his only source of funds.

6. Damji's fraudulent scheme basically involved misrepresentations by Damji, both by Damji himself as well as by Damji's appointed representatives, to members of Damji's community that, *inter alia*, Damji (i) had developed a new and revolutionary teeth whitening product ("the STS Product"), (ii) was engaged in the manufacturing, marketing, sale and distribution of the STS Product in Canada ("the STS Enterprise"), (iii) had organized and held the shares in a corporation to carry on the STS Enterprise known as, *inter alia*, STS Inc. and (iv) was about to sell the STS Product, STS Enterprise and STS Inc. (collectively "STS") to a multinational third party Corporation and/or through an IPO at a substantial financial return (collectively "the STS Misrepresentations" and "STS").

7. None of the STS Misrepresentations were true. There was no STS Product. There was no STS Enterprise. STS Inc. did not and never did exist. There was nothing all. All of the STS Misrepresentations were fraudulent.

8. Damji wrongfully and fraudulently made or caused the STS Misrepresentations to be made to and relied upon by members of the his community with a view to fraudulently inducing them to invest in the non-existent STS.

9. Damji further fraudulently induced members of his community to invest in STS by, more particularly, representing to and assuring them (i) that their investments would be held in trust for the acquisition of shares in STS and (ii) that they could at any time request and in that event would receive a full refund of their investments at any time ("the Trust Terms").

10. Based and relying upon Damji's aforementioned STS Misrepresentations and the Trust Terms, thousands of members of Damji's community invested in STS by, *inter alia*, giving cheques in various amounts in trust to Damji and others including Suleman for investment in STS.

11. Without the knowledge of the aforementioned defrauded investors in STS, Damji misappropriated the money he so fraudulently directly or indirectly obtained from the individuals who thought they were investing in STS and, at that, in trust, and used those monies for various wrongful personal purposes including, *inter alia*, (i) laundering and hiding the monies from third parties for subsequent personal use, (ii) acquiring various assets for himself, members of his family and friends and (iii) personal gambling.

12. On or about April 26, 2002, Damji pleaded guilty to and was convicted of fraud in relation to the above. He was sentenced to imprisonment for 7 ½ years. He has made no restitution to his victims including the Plaintiff and the Plaintiffs Class.

PARTICULARS OF THE PLAINTIFF AND THE PLAINTIFFS CLASS

13. The Plaintiff and all of the other members of the Plaintiff Class were similarly defrauded by Damji.

14. More particularly, repeating and relying upon the allegations set out in paragraphs 5-12 above, the Plaintiff and all of the members of the Plaintiff Class gave cheques to Suleman payable at the request and direction of Suleman to 137. All of those cheques were requested and/or obtained by Suleman for a single exclusive purpose, namely, the purchase and acquisition of shares in STS. All of those cheques were issued by the Plaintiff and the Plaintiff Class and received by Suleman and, through him, 137, subject to an express condition or trust that the proceeds from those cheques were to be held in trust strictly for the acquisition of shares in STS and only used in strict accord with the Trust Terms.

15. Thousands of such cheques from the Plaintiff and the other members of the Plaintiff Class were so received by Suleman and deposited into the bank account or bank accounts of 137 in trust, which were at all times controlled and directed or effectively controlled and directed by Suleman. Ultimately, a total of as much as \$30,000,000.00 came to be so deposited in trust in the said bank account or bank accounts of 137 ("the Trust Monies").

16. Particulars (i) of the resulting losses of the Plaintiff and of the Plaintiff Class and (ii) of the claims against Suleman and 137 are set out below.

THE MISREPRESENTATION CLAIMS AGAINST SULEMAN

17. The Plaintiff states and pleads that Suleman actively contacted, spoke to and represented the following to each of the Plaintiff and the members of the Plaintiff Class:

- (a) That Suleman had personally undertaken, performed and completed due diligence with respect to (i) Damji, (ii) the STS Product, (iii) the STS Enterprise and (iv) STS Inc. (“the Due Diligence”);
- (b) That, as a direct result of his alleged completion of the Due Diligence, Suleman had confirmed, *inter alia*, (i) Damji’s credentials as a dentist, (ii) Damji’s qualifications for developing a revolutionary teeth whitening product, (iii) Damji’s discovery, creation and development of the STS Product, (iv) the existence of the STS Product, (v) the manufacturing, marketing and sale of the STS Product, (vi) the existence of the STS Enterprise, (vii) the existence of the organization for and operations of STS Inc. and (viii) the prospects for the STS Product (collectively “the Representations”).

18. Suleman made the Representations to the Plaintiff and the members of the Plaintiff Class at various times between on or about September 24, 1999, and on or about June 30, 2001.

19. Each and every one of the Representations was utterly and completely false. There was no truth or even any semblance of truth to any of the Representations. The Plaintiff adds, *inter alia*, the following:

- (a) There was no Due Diligence by Suleman. Suleman at best accepted at face value what he was told and given by Damji but led the Plaintiff and the Plaintiff Class to believe otherwise. Minimal Due Diligence would have revealed Damji's fraud and that each of the Representations was totally false;
- (b) Damji was not a dentist and had no qualifications to create the alleged, but non-existent, STS Product. Suleman did not confirm (i) Damji's alleged, but non-existent, credentials as a dentist or (ii) Damji's alleged qualifications to create and develop the STS Product;
- (c) There was no STS Product. Had Suleman taken any steps at all to confirm or reasonably confirm the existence of the STS Product, he would have discovered there was no STS Product;
- (d) There was no STS Enterprise with respect to the alleged, but non-existent, STS Product; more particularly, there was no manufacturing, marketing or sales of the STS Product. Again, minimal due diligence would have revealed there was no STS Enterprise;
- (e) STS Inc. was not even a duly incorporated company, let alone a limited company carrying on a business. There was neither an incorporated company nor a business.

Again, Suleman would have known that had he spent any time at all performing and completing true Due Diligence;

- (f) There were neither corporate books nor financial records for the alleged, but non-existent, STS Inc.;
- (g) Suleman did not contact Colgate Palmolive to confirm it was going to purchase or intended to purchase the shares in STS that were being marketed and sold to Damji's victims including the Plaintiff and the Plaintiff Class.

20. The Plaintiff pleads that, had Suleman undertaken, performed and completed the Due Diligence as he had represented to the Plaintiff and the Plaintiff Class by the Representations, not only would the Representations not have been made but (i) Suleman would have uncovered and revealed Damji's fraud and (ii) thousands of individuals, including the Plaintiff and the Plaintiff Class herein, would not have been defrauded by Damji.

21. The Plaintiff pleads that Suleman made the Representations to the Plaintiff and the Plaintiff Class for the express purposes of (i) having them rely thereon, (ii) inducing and/or causing them into giving Suleman money in trust for the represented, but false, purpose of acquiring shares in the alleged, but non-existent, STS Inc. and, ultimately, (iii) personally and substantially profiting therefrom pursuant to undisclosed arrangements between Suleman and Damji. The Plaintiff pleads that Suleman knew or should have known that the Plaintiff and the Plaintiff Class relied on Suleman's Representations in deciding to give Suleman money in trust for the acquisition of shares

in STS Inc. More particularly, the Plaintiff pleads that no such monies would have been given by them and the Plaintiff Class to Suleman, either in trust or otherwise, to acquire shares in STS Inc. but for the Representations and, at that, to Suleman's knowledge.

22. Relying upon the Representations and, at that, to the knowledge of Suleman, the named Plaintiff gave Suleman the following cheques on the following dates payable to 137 for the exclusive purpose of acquiring shares in STS Inc.:

- (a) a cheque dated September 5, 2000, for \$15,000.00;
- (b) a cheque dated September 12, 2000, for \$7,500.00;
- (c) a cheque dated October 10, 2000, for \$7,500.00.

23. The Plaintiff pleads that Suleman further represented to the Plaintiff and the Plaintiff Class (i) that the Trust Monies would not be disbursed from trust by Suleman from the bank account or accounts of 137 except for sole and exclusive purpose of acquiring and receiving an agreed upon corresponding number of shares in the alleged, but non-existent, STS Inc. and (ii) that, failing the acquisition of such shares, Suleman would return the said Trust Monies to the Plaintiff and to the Plaintiff Class ("the Trust Representation").

24. Relying upon (i) the Representations and, separately, (ii) the Trust Representation, to Suleman's knowledge, the Plaintiff and the Plaintiff Class gave the Trust Monies to Suleman for the exclusive purpose and subject to the Trust Representation as already set out in paragraph 23 above.

25. For reasons best known to himself, Suleman directed the Plaintiff and the Plaintiff Class to make their cheques for the Trust Monies payable to 137 representing to them that (i) he controlled 137 and (ii) would be depositing the Trust Monies in the bank account or bank accounts of 137 in trust strictly for the purpose of facilitating the receipt and disbursal of the Trust Monies in strict accordance with the Representations and the Trust Representation and for no other purpose. The bank account or bank accounts of 137 were no more than the bank account or bank accounts being used by Suleman for receipt, disbursal or return of the Trust Monies as set out above and Suleman is personally responsible and liable for all of the Trust Monies that he deposited into and disbursed from the said bank account or bank accounts of 137.

26. Suleman nevertheless wrongfully disbursed (i) most of the Trust Monies to Damji or at Damji's direction and (ii) other Trust Monies to Suleman or at his direction for his direct or indirect unjust enrichment *inter alia*, contrary to, in violation of and in breach of the Representations and the Trust Representation including, more particularly, without obtaining the agreed upon corresponding number of shares in STS Inc. or any STS shares whatsoever for the Plaintiff and the Plaintiff Class. Ultimately, all of the Trust Monies were so (a) wrongfully (i) disbursed, (ii) used and (iii) ultimately dissipated or hidden by Damji or at Damji's direction or (b) otherwise wrongfully misappropriated, disbursed and/or used in some fashion by Suleman.

27. As the alleged (i) STS Inc., (ii) STS Enterprise and (iii) STS Product did not exist and were all part of Damji's aforementioned fraudulent scheme, the Plaintiff and the Plaintiff Class were

therefore defrauded of and lost the entirety of their Trust Monies by reason of, *inter alia*, Suleman's aforementioned wrongful disbursal and/or misappropriation of the Trust Monies contrary to and in breach of the Representations and the Trust Representation. To this day, the Plaintiff and the Plaintiff Class have recovered nothing on account of their aforesaid lost Trust Monies and have suffered damages equal to the full amount of those Trust Monies.

28. The Plaintiff therefore pleads that Suleman is liable to the Plaintiff and the Plaintiff Class for all of the said Plaintiffs' aforementioned Trust Monies because (i) each and every one of his Representations along with his Trust Representation was completely and totally false, inaccurate and untrue, (ii) the Plaintiff and the Plaintiff Class relied on the truth and accuracy of Suleman's Representations and Trust Representation in deciding to give the Trust Monies to Suleman, (iii) Suleman knew the Plaintiff and the Plaintiff Class were relying upon him for the truth and accuracy of the Representations and of the Trust Representation when the Trust Monies were given to him in trust and (iv) the Plaintiff and the Plaintiff Class lost their Trust Monies as a direct result of Suleman's aforementioned knowingly false, untrue and totally inaccurate Representations and Trust Representation.

29. The Plaintiff pleads that Suleman (i) knowingly, deliberately, deceitfully and/or recklessly made the Representations and the Trust Representation to the Plaintiff and the Plaintiff Class (ii) when he knew or should have known they were false and /or would not be complied with but would

be relied on by the Plaintiff and the Plaintiff Class to their detriment including, *inter alia*, by reason of the fact Suleman had not undertaken, performed and completed the Due Diligence.

30. The Plaintiff pleads that, alternatively to the pleas in paragraph 29 above, Suleman negligently made the Representations and the Trust Representation to the Plaintiff and the Plaintiff Class when he knew or should have known they were false and/or would not be complied with but would be relied on by the Plaintiff and the Plaintiff Class to their detriment including, *inter alia*, by reason of the fact Suleman had not undertaken, performed and completed the Due Diligence.

31. The Plaintiff further pleads that Suleman deliberately, deceitfully, recklessly or negligently misrepresented the Trust Representation to the Plaintiff and the Plaintiff Class when he knew or should have known it was not true and/or would not be complied with by Suleman and Suleman further knew the Plaintiff and the Plaintiff Class were relying on the Trust Representation when they decided to give Suleman the Trust Monies to their detriment.

32. The Plaintiff and the Plaintiff Class (i) lost all of the Trust Monies because Suleman's Representations and Trust Representation were in fact fraudulent, deceitful, reckless or negligent material misrepresentations that were relied on by the Plaintiff and the Plaintiff Class to their detriment and, at that, to the knowledge of Suleman and 137, (ii) plead they are entitled to recover all of the Trust Monies from Suleman because the damages they have sustained in the amount of their lost Trust Monies would not have been sustained by them but for Suleman's misrepresentations

and failure to comply with respect to the Representations and the Trust Representation and (iii) are therefore claiming and seeking recovery of the Trust Monies from Suleman.

THE BREACH OF TRUST CLAIM AGAINST SULEMAN AND 137

33. The Plaintiff and the Plaintiff Class gave the Trust Monies to Suleman in trust subject to the Trust Representation on the strict basis that the Trust Monies would not be disbursed from trust except as follows:

- (a) To acquire and receive the agreed upon corresponding number of shares in STS Inc. based upon the Representations; or
- (b) Failing the acquisition and receipt of the said shares in STS Inc., to return the Trust Monies to the Plaintiff and the Plaintiff Class (collectively "the Trust").

34. The Plaintiff pleads that Suleman accepted receipt of the Trust Monies from the Plaintiff and the Plaintiff Class based upon and in strict accordance with the Trust. The Plaintiff further pleads that Suleman at all times knew that the Trust Monies were given to him by the Plaintiff and the Plaintiff Class relying upon, based on and for disbursement or return strictly in accordance with the Trust.

35. The Plaintiff repeats and relies upon the allegations set out above and pleads that Suleman at all times owed the Plaintiff and the Plaintiff Class a strict duty to fully and strictly comply with the Trust.

36. There were no shares in STS Inc. There was no STS Inc. to begin with. Suleman was never given and never saw any alleged shares in STS Inc. Suleman was never in a position to exchange the Trust Monies for shares in STS Inc. and he was at all times specifically aware of that fact.

37. The Plaintiff pleads that Suleman nevertheless deliberately, wrongfully, recklessly and/or negligently violated and breached the Trust to the direct detriment of the Plaintiff and the Plaintiff Class when Suleman wrongfully disbursed all of the Trust Monies (i) to Damji or at Damji's direction or (ii) to Suleman or for Suleman's unjust personal and corporate benefit when Suleman had no right thereto. The wrongful disbursement of the Trust Monies by Suleman was a glaring and inexcusable breach of the Trust to the detriment of the Plaintiff and of the Plaintiff Class.

38. As a result of Suleman's aforesaid breach of the Trust, all of the Trust Monies of the Plaintiff and of the Plaintiff Class were dissipated or otherwise wrongfully misappropriated. Most of the Trust Monies were wrongfully disbursed out of trust by Suleman to Damji who in turn dissipated, gambled, spent or hid the Trust Monies as part of his aforesaid fraudulent scheme. Some of the Trust Monies were misappropriated and used by Suleman and were also never returned to the Plaintiff and to the Plaintiff Class.

39. The Plaintiff therefore pleads that he and the Plaintiff Class are entitled to recovery of all of their Trust Monies from Suleman by reason of Suleman's aforementioned breach of the Trust for which Suleman is strictly liable to the Plaintiff and the Plaintiff Class. 137 is equally liable to the

Plaintiff and to the Plaintiff Class because of the allegations set out above including, more particularly, the fact the Trust Monies were disbursed from 137's bank account or accounts with knowledge of all of the above. The Plaintiff and the Plaintiff Class are seeking recovery of all of the Trust Monies from Suleman and 137 by reason of their said breaches of the Trust.

THE BREACH OF FIDUCIARY DUTY CLAIM AGAINST SULEMAN AND 137

40. The Plaintiff repeats and relies upon the allegations set out above and plead that Suleman therefore owed the Plaintiff and the Plaintiff Class a fiduciary duty (i) with respect to his acceptance and receipt of the Trust Monies from the Plaintiff and the Plaintiff Class in Trust for deposit into the bank account or accounts of 137 (ii) to strictly comply with the Trust and the Trust Representation.

41. The Plaintiff more particularly further pleads in that regard (i) that he and the Plaintiff Class placed and gave their total and complete trust in and to Suleman when they decided to give and in fact gave Suleman the Trust Monies in trust for use or return to the Plaintiff and the Plaintiff Class in strict accordance with the terms of the Trust, (ii) that Suleman expressly or implicitly accepted those obligations and that fiduciary duty when he agreed and/or undertook to accept and receive the Trust Monies subject to the terms of the Trust and (iii) that the Plaintiff and the Plaintiff Class were completely and totally at the mercy of and vulnerable to Suleman with respect to the Trust Monies they gave to him in trust for use or return to the Plaintiff and the Plaintiff Class in accordance with the terms of the Trust.

42. The Plaintiff pleads that Suleman violated and breached his aforesaid fiduciary duty to the Plaintiff and the Plaintiff Class by violating and breaching the Trust to the direct detriment and loss of the Plaintiff and the Plaintiff Class as already set out above. The Plaintiff further pleads that, as a direct result of Suleman's breach of fiduciary duty to the Plaintiff and the Plaintiff Class, the Plaintiff and the Plaintiff Class suffered damages equal to the total of their Trust Monies.

43. The Plaintiff pleads that Suleman is strictly liable to the Plaintiff and the Plaintiff Class for the loss of the Trust Monies by reason of Suleman's breach of the aforesaid fiduciary duty owed to the Plaintiff and the Plaintiff Class. The Plaintiff and the Plaintiff Class are therefore entitled to, are claiming and are seeking recovery of all of their Trust Monies from Suleman on account of breach of fiduciary duty. Again, 137 is equally liable to the Plaintiff and to the Plaintiff Class by reason of its involvement in and with the aforesaid breaches of fiduciary duty.

THE CLAIMS AGAINST SULEMAN AND 137 FOR BREACHES OF AGENT DUTIES

44. The Plaintiff again repeats and relies upon the allegations already set out above and pleads that Suleman at all times contracted or, alternatively, undertook to act for the Plaintiff and the Plaintiff Class as their agent with respect to their aforementioned acquisition of shares in STS Inc. pursuant to the Trust, the Trust Representation and the Representations.

45. The Plaintiff pleads that Suleman thereby accepted and/or undertook and/or assumed by operation of law the following duties to the Plaintiff and the Plaintiff Class as their agent with respect to the possible acquisition and receipt of shares in STS Inc.:

- (a) To exercise their instructions or limited delegated authority with due care, skill and reasonable dispatch;
- (b) To personally exercise their instructions or limited delegated authority;
- (c) To avoid any conflict of interest with the Plaintiff including, *inter alia*, (i) by not accepting any secret compensation, fee or commission and/or (ii) by not acting for both the Plaintiff and Damji;
- (d) To account to the Plaintiff with respect to the Trust Monies;
- (e) To keep the Trust Monies completely separate and apart from Suleman's other personal or corporate accounts or monies;
- (f) To avoid any conflict of interest between the Plaintiff's interests and Suleman's interests.

46. The Plaintiff states and pleads that Suleman fundamentally and materially violated and breached each and every one of Suleman's aforementioned duties to the Plaintiff and the Plaintiff Class as their agent including, *inter alia*, by reason of the following:

- (a) Suleman deliberately and wrongfully or, alternatively, negligently failed to obey and comply with the Plaintiffs' instructions and limited delegated authority with respect to disbursement or return of the Plaintiffs' Trust Monies in strict accordance with the

Trust. More particularly, Suleman wrongfully disbursed the Trust Monies in breach of the Trust when he had no right, authority or instructions to do so. As there were no shares in STS Inc. to purchase, the Trust Monies could not be and should not have been disbursed from trust as set out above but instead returned to the Plaintiff and the Plaintiff Class in accordance with the Trust;

- (b) Suleman deliberately and wrongfully or, alternatively, negligently placed himself in a fundamental, material and fatal conflict of interest between (i) his duties and obligations to the Plaintiff and the Plaintiff Class as his principals and (ii) his own financial interests relating to his dealings with Damji. More particularly, Suleman negotiated extremely profitable compensation from Damji based on the Trust Monies he collected from the Plaintiff and the Plaintiff Class and disbursed to Damji or at Damji's direction. The more he received and disbursed, the more Suleman stood to earn and/or was paid or paid himself. In the process, Suleman was motivated, and in fact deliberately chose, to disburse the Trust Monies in violation and breach of the Trust because it was in his personal interest to do so. Again, there were no shares in STS Inc. and Suleman had no right or authority to disburse the Trust Monies from Trust. Suleman wrongfully preferred his own financial interests or prospective financial interests and his related dealings and/or commitments with and to Damji over his duties to the Plaintiff and the Plaintiff Class when he wrongfully disbursed the Trust Monies;

- (c) Suleman wrongfully, deliberately and negligently failed to keep the Trust Monies separate and apart from Suleman's monies. Instead, the Trust Monies were regularly intermingled with the personal or corporate accounts or monies of Suleman. Suleman directly or indirectly used the Trust Monies for his own commercial or financial interests;
- (d) Suleman has to date not accounted to the Plaintiff and the Plaintiff Class for the Trust Monies.

47. The Plaintiff pleads that, as a direct result of Suleman's aforementioned breaches of or failures to discharge duties owed to the Plaintiff and the Plaintiff Class as agent for the Plaintiff, the Plaintiff and the Plaintiff Class have again directly sustained damages and losses equal to the total of their Trust Monies. More particularly, none of the Trust Monies would have been lost by the Plaintiff and the Plaintiff Class but for Suleman's breaches of or failure to discharge his said duties.

48. The Plaintiff pleads that Suleman is strictly liable to the Plaintiff and the Plaintiff Class for their losses of the Trust Monies on account of Suleman's said breaches of or failure to discharge his duties as agent for the Plaintiff and the Plaintiff Class.

49. The Plaintiff is therefore claiming and seeking recovery of all of their Trust Monies from both Suleman and 137 due to their aforementioned breaches and failures to discharge agent duties.

50. The Plaintiff and the Plaintiff Class are for the same reasons entitled to a complete Accounting with respect to the Trust Monies received by Suleman and deposited by him into the bank account or accounts of 137 and of the uses made of those monies by Suleman, 137 or Suleman's other corporations or nominees and, at that, both directly or indirectly through other persons or corporate entities. The Plaintiff is claiming and seeking that Accounting in this action.

FRAUD, DECEIT AND FURTHER MISREPRESENTATION, BREACH OF TRUST AND BREACH OF FIDUCIARY DUTY BY SULEMAN

51. At various times shortly after he solicited and received the aforesaid cheques from the Plaintiff and the Plaintiff Class up to on or about June 13, 2001, Suleman gave the Plaintiff and the members of the Plaintiff Class a signed "Acknowledgment, Authorization and Release" stipulating, representing and confirming, *inter alia*, the following:

- (a) Confirming, *inter alia*, receipt of the proceeds from the aforesaid cheques of the Plaintiff and of the Plaintiff Class for the purchase and acquisition of certain numbers of shares in STS for each Plaintiff and each member of the Plaintiff Class as agreed upon between them and Suleman;
- (b) Further confirming that Suleman and 137 were holding the aforesaid alleged, but non-existent, shares in STS that were to be purchased by Suleman for the Plaintiff and the Plaintiff Class from the proceeds of the aforementioned cheques of the Plaintiff and of the Plaintiff Class;

- (c) Confirming that the aforesaid alleged, but non-existent, shares in STS were being held by Suleman and 137 in trust for the Plaintiff and the Plaintiff Class;
- (d) Expressly or implicitly confirming that Suleman and 137 were the agents of the Plaintiff and of the Plaintiff Class with respect to the purchase and sale of the aforesaid alleged, but non-existent, shares in STS for the Plaintiff and the Plaintiff Class (collectively "the Acknowledgment").

52. The Plaintiff pleads that the Acknowledgment from Suleman and, through him, 137 was fraudulent, false, a complete misrepresentation and should never have been given to the Plaintiff and the members of the Plaintiff Class. More particularly, Suleman and 137 held no shares in STS and there were no such shares to begin with. Suleman and 137 had no legal or factual basis for issuing, signing and delivering the Acknowledgment to the Plaintiff and the members of the Plaintiff Class.

53. The Plaintiff pleads that Suleman fraudulently, falsely, deceitfully, recklessly and/or, alternatively, negligently but in any case unlawfully and wrongfully drafted, signed and delivered the Acknowledgment to the Plaintiff and to the members of the Plaintiff Class for the express purpose of misleading the Plaintiff and the members of the Plaintiff Class into believing (i) that STS existed, (ii) that shares in STS existed and (iii) that the proceeds from their aforesaid cheques payable to 137 had been used by Suleman and 137 to purchase shares in STS as agreed upon when Suleman (i) knew or should have known that no such shares in STS existed and (ii) definitely knew that no such shares had been issued and delivered to Suleman and 137 for the Plaintiff and for the Plaintiff Class.

54. The Plaintiff pleads that Suleman and 137 were thereby wrongfully attempting to lull, induce and ultimately deceive the Plaintiff and the members Plaintiff Class into believing that they had nothing to worry about regarding the disposition of the proceeds from their aforesaid cheques when they in fact had every reason to do so. In addition, Suleman and 137 wanted to thereby ensure that the Plaintiff and the Plaintiff Class would not demand the return of the proceeds from their aforesaid cheques so they could continue to unlawfully and wrongfully profit therefrom.

55. The Plaintiff pleads that, by their aforementioned fraudulent, deceitful, reckless and/or, alternatively, negligent but in any case unlawful and wrongful conduct, Suleman and 137 materially and irreparably prejudiced the Plaintiff and the Plaintiff Class and caused them to sustain the loss of their Trust Monies. If Suleman and 137 had not drafted, signed and issued the Acknowledgment to the Plaintiff and the Plaintiff Class and if, as they were required to do, Suleman and 137 had honestly and forthrightly notified the Plaintiff and the members of the Plaintiff Class that they were not in a position to exchange the proceeds from the aforesaid cheques for the agreed upon number of shares in STS, the Plaintiff and the Plaintiff Class would have not proceeded with the proposed, albeit impossible, purchases of shares in STS and/or would have demanded the return of the proceeds from their aforesaid cheques. As doing so would have been contrary to their own personal financial interests, Suleman and 137 deliberately, wrongfully and unlawfully did not do so and instead caused the Plaintiff and the Plaintiff Class to suffer the loss of their Trust Monies.

56. The Plaintiff therefore pleads that the Plaintiff and the Plaintiff Class are entitled to recovery of all of the proceeds from their aforesaid cheques payable to 137 from both Suleman and 137. By their aforementioned unlawful and wrongful conduct, Suleman and 137 caused the said Plaintiff to suffer the complete and total loss of their Trust Monies.

THE GUARANTEE CLAIM AGAINST SULEMAN

57. The Plaintiff states and pleads that Suleman specifically guaranteed the repayment to the Plaintiff and the Plaintiff Class of the proceeds from their aforementioned cheques to 137, upon request for repayment by the Plaintiff and the Plaintiff Class.

58. The Plaintiff pleads that, following the discovery of Damji's aforementioned fraud, the Plaintiff and the members of the Plaintiff Class requested repayment of their Trust Monies from Suleman but that Suleman has to date wrongfully refused or failed to repay the said Trust Monies to the Plaintiff and to the members of the Plaintiff Class.

59. The Plaintiff and the Plaintiff Class are therefore seeking recovery of their Trust Monies from Suleman pursuant to Suleman's aforesaid Guarantee.

KNOWING ASSISTANCE OF DAMJI'S FRAUD AND BREACH OF TRUST BY SULEMAN AND 137

60. By June, 2001, and certainly before December, 2001, Suleman knew or should have known that Damji was defrauding and/or breaching his trust obligations to the Plaintiff and the Plaintiff Class with respect to the proceeds of the aforesaid cheques from the Plaintiff and the Plaintiff Class payable to 137 including, *inter alia*, by reason of the following:

- (a) Suleman was never given and never saw any proof of the existence of STS:
- (b) Suleman was never given and never saw any shares in STS. He had no reason to believe in the legitimacy of STS or in the legitimate existence of STS shares;
- (c) Suleman knew that Damji was not using the monies he was receiving from his victims including, more particularly, from the Plaintiff and the members of the Plaintiff Class for the represented purpose for which those monies were given to him, namely, the purchase and acquisition of shares in STS. For example, Suleman (i) personally forwarded more than \$3,200,000.00 of monies given to him for the acquisition of STS shares to a gambling organization in Costa Rica, (ii) personally transferred more than \$1,800,000.00 of monies given to him for the acquisition of STS shares to a privately held Damji corporation, (iii) personally used monies given to him for the acquisition of STS shares to refund Trust Monies to other victims of Damji's fraud knowing those monies were not being used to acquire shares in STS and (iv) personally intermingled and used some of the proceeds from the aforesaid.

cheques of the Plaintiff and of the Plaintiff Class for his own direct or indirect unjust enrichment;

- (d) Suleman knew or should have known that Damji was laundering monies received from his victims through a cheque cashing business;
- (e) Suleman began requesting payments of Trust Monies in cash when he knew or should have known that the purposes for doing so were (i) to avoid regulatory detection and (ii) facilitate the money laundering or disposition of the said cash by Damji as well as by himself;
- (f) Ultimately, Suleman knew or willfully and/or recklessly shut his eyes to the obvious, namely, Damji's fraud and/or breach of trust with respect to the monies he was obtaining from his victims including the Plaintiff and the members of the Plaintiff Class.

61. The Plaintiff therefore pleads that the Plaintiff and the Plaintiff Class are entitled to recovery of all of their Trust Monies from Suleman and 137 due to their knowing assistance of Damji's aforesaid fraud and breach of trust.

OTHER UNLAWFUL AND WRONGFUL CONDUCT ON THE PART OF SULEMAN

62. The Plaintiff pleads that, by their aforementioned conduct, Suleman and 137 were trading in securities as defined by the *Securities Act*, R.S.O. 1990, c.S. 5, as amended ("the *Securities Act*")

63. The Plaintiff pleads that neither Suleman nor 137 were ever registered to trade in securities pursuant to the provisions of the *Securities Act* and that their aforesaid conduct in trading in securities without being registered to do so was contrary to, in violation of and prohibited by the *Securities Act*.

64. The Plaintiff pleads (i) that the *Securities Act* further prohibits the delivery of securities, such as the alleged, albeit non-existent, shares in STS, without a prospectus. Accordingly, as there was never a prospectus for the issuance and sale of shares in STS, Suleman and 137 further breached and violated the *Securities Act* by purporting to trade in STS shares without a prospectus.

65. The Plaintiff pleads that, by reason of the allegations set out above, the Plaintiff and the Plaintiff Class are or should be entitled to the return of all of their Trust Monies that were solicited by and given to Suleman and, through Suleman, 137 for the purpose and acquiring and purchasing shares in STS.

66. The Plaintiff pleads that, after Suleman was notified of the aforesaid registration and prospectus requirements of the *Securities Act* by a letter from the Ontario Securities Commission (“the Commission”) dated June 13, 2001, Suleman purported to assure the Commission that he and 137 would cease doing so but the Plaintiff states and pleads (i) that Suleman and 137 never notified the Plaintiff or the Plaintiff Class of their aforesaid violations of the *Securities Act*, (ii) never advised the Plaintiff and the Plaintiff Class of their rights on account of those violations, (iii) never advised

the Plaintiff and the Plaintiff Class that they never had the right to sell or see to the sale of shares in STS to the Plaintiff and the Plaintiff Class and (iv) in fact in any event continued to violate the *Securities Act* by continuing to trade in securities in various covert and underhanded ways including, *inter alia*, (i) demanding, receiving and dealing in cash instead of cheques and (ii) depositing cheques and cash into a number of bank accounts other than 137 including (i) a bank account in the joint names of Suleman and one Shiraz Karmali and (ii) bank accounts in the names of other corporate entities.

67. The Plaintiff pleads that, by reason of the aforementioned violations and breaches of the *Securities Act*, the Plaintiff and the Plaintiff Class are or should be entitled to the return of their Trust Monies from Suleman and 137. More particularly, the Plaintiff pleads that Suleman and 137 unlawfully, materially and irreparably caused the Plaintiff and the Plaintiff Class to sustain the loss of their Trust Monies by reason of, *inter alia*, the aforementioned breaches and violations of the *Securities Act* and Suleman's deliberate decision or negligent failure to notify the Plaintiff and the Plaintiff Class of same in a timely manner.

PUNITIVE DAMAGES

68. The Plaintiff pleads that, by reason of the aforementioned fraudulent, deceitful, unlawful, illegal, reckless and callous conduct on the part of Suleman and 137 and, at that, over an extended period of time, the Plaintiff and the Plaintiff Class are or should be entitled to substantial punitive damages from Suleman and 137.

69. In the latter regard, the Plaintiff further pleads that Suleman directly and indirectly substantially benefitted from his aforementioned wrongful conduct. The Plaintiff more particularly pleads that Suleman had little or no disposable wealth when he embarked upon his aforementioned wrongful course of conduct but had accumulated substantial disposal wealth by the time Damji's fraud was uncovered for which the only explanation is the monies Suleman in one way or another was paid, misappropriated or retained from the proceeds of the aforementioned cheques of the Plaintiff and of the Plaintiff Class and, subsequently, other victims as well.

70. The Plaintiff is therefore seeking recovery of substantial punitive damages from Suleman in this action.

ENTITLEMENT TO INTERLOCUTORY AND CONSTRUCTIVE RELIEF

71. The Plaintiff repeats and relies upon all of the allegations already more particularly set out above in this Statement of Claim.

72. The Plaintiff therefore pleads that he is or should be entitled to the interim, final, constructive and declaratory relief already more particularly set out in paragraph 1 of the Statement of Claim.

The Plaintiff proposes that this action be tried in Toronto.

DATE: October 10, 2007

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(Proceedings Under the Class Proceedings Act, 1992)

SHARUKH PALSETIA - and - MUSA SULEMAN and 1376563 ONTARIO INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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