

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

BETWEEN:

AMIR MIRSHAHI

-and-

MUSA SULEMAN and 1501747 ONTARIO INC.

AMENDED THIS
MODIFIED
 RÈGLE 26.09
 THE ORDER OF
L'ORDONNANCE
DATED / FAIT LE
26.09.09
Justice
Dated / Fait le
26.09.09
Justice
Dated / Fait le
26.09.09
Justice

REGISTRAR
SUPERIOR COURT OF JUSTICE
SECRETIÈRE
COUR SUPÉRIEURE DE JUSTICE

DEFENDANTS

10/9

FORSUANT TO
CONFORMÉMENT À

THIRD FRESH AS AMENDED 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: April 28, 2008

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: **1501747 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 who reside in Canada and those Corporations whose head offices are in Canada, (i) who or which gave cheques, bank drafts and cash for the purpose of acquiring shares in STS Inc., (ii) which cheques, bank drafts and cash were subsequently either directly given to or indirectly received by the Defendants for the purpose of paying for and acquiring shares in STS Inc. and/or in exchange for shares in STS Inc., (iii) which cheques, bank drafts and cash were deposited by or on behalf of the Defendant, Musa Suleman ("Suleman"), into the bank account or accounts of the Defendant, 1501747 Ontario Inc. ("150"), (iv) the proceeds of which cheques, bank drafts and cash were wrongfully disbursed out of the bank account or accounts of 150 by or at the direction of Suleman and 150 (v) to the resulting detriment of the Plaintiff and the Plaintiff Class to the extent of the total loss of the said proceeds from the said aforesaid cheques, bank drafts and cash of the Plaintiff and of the Plaintiff Class;
 - (b) \$10,000,000.00 in damages on account of knowing assistance of fraud or breach of trust, knowing receipt and subsequent use of trust monies, oppression remedy compensation and relief pursuant to S.248 of the *Ontario Business Corporations Act*, as amended, conspiracy to injure, breach of fiduciary duty, negligence, and breach of trust;

- (c) \$1,000,000.00 in punitive damages;
- (d) An Order requiring Suleman and 150 to account to and repay the Plaintiff and the Plaintiff Class any and all monies deposited into the bank account or bank accounts of 150 from the aforesaid cheques, bank drafts and cash of the Plaintiff and of the Plaintiff Class, which were either directly given to or indirectly received by Suleman and 150;
- (e) An Order declaring that the assets of Suleman and of 150 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, bank drafts and cash of the Plaintiff and the Plaintiff Class which were either directly given to or indirectly received by Suleman and 150 and were subsequently wrongfully disbursed by Suleman and 150 from the bank account or accounts of 150 and/or misappropriated and used by Suleman and 150 and, secondly, 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 the proceeds from the aforesaid cheques,

bank drafts and cash of the Plaintiff and the Plaintiff Class which were either directly given to or indirectly received by Suleman and 150 including particulars of any and all related immediate and subsequent conveyances, transfers or dispositions of assets and monies and all subsequent acquisitions and accruals in any way relating to the use of the said proceeds, a Tracing Order relating thereto and Judgment for recovery of all monies relating thereto and accruing therefrom;

- (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 Unionville, Ontario.

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. 1501747 Ontario Inc. ("150") is a limited company which was incorporated by Suleman on or about November 20, 2001, for the sole and exclusive purpose of opening a bank account or bank accounts to receive cheques, bank drafts and cash from the Plaintiff and the Plaintiff Class for the payment for and acquisition of shares in STS Inc. and in exchange for such shares. 150 was at all times controlled and managed by Suleman.

BACKGROUND RELATING TO SALIM DAMJI

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. Damji subsequently 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.

BACKGROUND RELATING TO THE CLAIMS HEREIN AGAINST THE DEFENDANTS

13. By 2000, Suleman began assisting Damji in soliciting, obtaining and receiving monies from Damji Victims for the alleged purpose of purchasing shares in STS.

14. In or about June, 2001, the Ontario Securities Commission ("the Commission") notified Suleman that his solicitation and receipt of monies for the purchase of shares in STS was contrary to the *Securities Act*. To avoid prosecution, Suleman promised the Commission to cease and desist from doing so in the future.

15. From mid-June, 2001, Suleman specifically knew that the obtaining and receipt of monies for the purpose of purchasing shares in STS was contrary to Sections 1 and 25 of the *Securities Act*, statutorily prohibited and unlawful.

16. However, notwithstanding (i) that knowledge and (ii) his promise to cease and desist from further doing so, Suleman nevertheless unlawfully and wrongfully continued to solicit, obtain and receive monies for the supposed purchase of shares in STS.

17. To do so, Suleman deliberately, knowingly and wrongfully caused 150 to be incorporated and set up to thereafter receive yet more monies from yet additional Damji Victims for the supposed purchase of shares in STS. In this case, those additional Damji Victims are the Plaintiff and the Plaintiff Class.

18. To do so and to also avoid detection and prosecution by the Commission for violating the *Securities Act*, Suleman acted, *inter alia*, as follows:

- (a) he arranged for a number of third parties to collect and then give him monies from the Plaintiff and the Plaintiff Class for the purpose of purchasing STS shares;
- (b) he gave instructions for the said monies being paid by cheque or bank draft to be made payable to Damji, as opposed to 150 or another Suleman company, but deposited the said cheques and bank drafts into the bank account or bank accounts of 150 following his receipt of same;
- (c) he asked for payments to be made in cash;
- (d) he ceased handing out the Acknowledgments;

- (e) he did all of that with a view to avoiding detection and prosecution by the Commission so that he could continue obtaining and collecting the said monies from the Plaintiff and the Plaintiff Class.

19. Suleman and 150 so obtained and deposited cheques, money orders and cash into the bank account or accounts of 150 from the Plaintiff and the Plaintiff Class herein, who all gave those monies for the intended purpose of acquiring shares in STS.

20. The Plaintiff issued bank drafts in the amounts of \$5,000.00, \$50,000.00 and \$5,000.00 to acquire shares in STS as set out above. All of the said drafts came into the hands of Suleman and were all deposited into the bank account or accounts of 150 on or about February 19, 2002, in the same manner and for the same purposes as all of the monies of the Plaintiff Class.

21. To date, the Plaintiff and the Plaintiff Class herein have not recovered on account of their aforesaid monies which were given to or received by Suleman and deposited into the bank account or accounts of 150 to acquire shares in STS.

22. Suleman and 150 wrongfully disbursed all of the aforesaid monies of the Plaintiff and the Plaintiff Class which were deposited into the bank or accounts of 150, to the detriment and loss of the Plaintiff and the Plaintiff Class. More particularly, Suleman and 150 wrongfully disbursed the

said monies (i) to a gambling organization in Costa Rica, (ii) to a privately held corporation, (iii) by way of a donation, (iv) to various third parties and (v) to or for the ultimate benefit of Suleman.

**THE CONSPIRACY, BREACH OF STATUTE AND OPPRESSION
REMEDY CLAIMS AGAINST SULEMAN AND 150**

23. The Plaintiff pleads that, by their aforementioned conduct from and after mid-June, 2001, Suleman and 150 knowingly traded in Securities as defined by the *Securities Act*, R.S.O. 1990, c.S. 5, as amended ("the *Securities Act*").

24. The Plaintiff states that neither Suleman nor 150 were ever registered to trade in Securities pursuant to Sections 1 and 25 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*.

25. The Plaintiff pleads that the *Securities Act* also prohibits, *inter alia*, the sale and/or delivery of Securities such as the alleged, albeit non-existent, shares in STS, without a prospectus. As there was never a prospectus for the issuance and sale of shares in STS, Suleman and 150 further breached and violated Sections 1 and 25 of the *Securities Act* by purporting to trade in STS shares without a prospectus.

26. Suleman was notified of the aforesaid registration and prospectus requirements of the *Securities Act* by a letter from the Commission dated June 13, 2001 ("the Letter"). Suleman and 150 thereafter knew that any further solicitation, obtaining and/or receipt of monies for the purchase of shares of STS, both by them as well as by anyone else, was illegal, unlawful and statutorily prohibited. Suleman also knew he had violated Sections 1, 25 and 53 of the *Securities Act* by his past solicitation and receipt of such monies.

27. Following his receipt of the Letter, Suleman assured the Commission he would cease and desist from further soliciting, obtaining and receipt of monies for the intended purpose of purchasing shares in STS. Suleman did so (i) to avoid prosecution by the Commission and (ii) to mislead the Commission into believing him when he had no intention of complying with that assurance.

28. In fact, Suleman thereafter knowingly and deliberately (i) continued to violate Sections 1, 25 and 53 of the *Securities Act* by soliciting, obtaining and/or receiving monies from the Plaintiff and the Plaintiff Class for the intended purpose of purchasing shares in STS and (ii) did so until Damji's fraud was discovered in April, 2002. The monies so obtained and/or received by Suleman were deposited by Suleman into the bank account or bank accounts of 150 with the result that 150 similarly violated Sections 1, 25 and 53 of the *Securities Act*.

29. More particularly, without notifying but while withholding from the Plaintiff and the Plaintiff Class (i) that their payments for the purpose of purchasing shares in STS were contrary to Sections

1, 25 and 53 of the *Securities Act* and legally prohibited and (ii) that Suleman had undertaken to the Commission to cease being involved with any such payments, Suleman and 150 entered into a verbal agreement with each other for the purpose of wrongfully and unlawfully acting and conspiring, individually and with each other, to engage in and see to a series of wrongful and unlawful acts to the detriment and prejudice of the Plaintiff and the Plaintiff Class including, *inter alia*, those set out below and, at that, while knowing that the Plaintiff and the Plaintiff Class would suffer harm and financial loss therefrom:

- (a) Suleman deliberately and wrongfully set up and used 150 for the wrongful and lawful purpose of soliciting, obtaining and/or receiving monies from the Plaintiff and the Plaintiff Class for the intended purpose of purchasing shares in STS contrary to and in violation of Sections 1, 25 and 53 of the *Securities Act*;
- (b) Suleman deliberately and wrongfully set up and used 150 for the wrongful and lawful purpose of soliciting, obtaining and/or receiving monies from the Plaintiff and the Plaintiff Class for the intended purpose of purchasing shares in STS (i) to avoid detection of that conduct by the Commission and, in turn, (ii) to ensure that his said wrongful and unlawful conduct would not be stopped by the Commission;
- (c) Suleman deliberately and wrongfully set up and used 150 for the wrongful and lawful purpose of soliciting, obtaining and/or receiving monies from the Plaintiff and the Plaintiff Class for the intended purpose of purchasing shares in STS to avoid prosecution by the Commission for deliberate and knowing violation, contravention and non-compliance with Sections 1, 25 and 53 of the *Securities Act*;

- (d) Suleman wrongfully and unlawfully solicited, obtained and received monies from the Plaintiff and the Plaintiff Class for the intended purpose of purchasing shares in STS without disclosing to the Plaintiff and the Plaintiff Class that Suleman's said activity was in violation, contravention and non-compliance with Sections 1, 25 and 53 of the *Act*. Suleman wrongfully did so to ensure that the Plaintiff and the Plaintiff Class would give him the monies which they did to their detriment and financial harm, knowing, *inter alia*, they would not do so if informed that Suleman's said activity was contrary to Sections 1, 25 and 53 of the *Securities Act*;
- (e) Suleman and 150 wrongfully acted in concert and conspired with each other to engage in the wrongful and unlawful activity set out in sub-paragraphs (a)-(d) above. In that regard, Suleman and 150 at all times knew that they were wrongfully and unlawfully obtaining, collecting, receiving, disbursing and using the monies which were given to them by the Plaintiff and the Plaintiff Class contrary to Sections 1, 25 and 53 of the *Securities Act* and to the detriment, prejudice and harm of the Plaintiff and the Plaintiff Class;
- (f) With respect to the aforesaid wrongful and unlawful conduct of Suleman and 150 and to effect the said wrongful and unlawful conduct, Suleman personally obtained cheques and bank drafts from the Plaintiff Class for the purpose of purchasing shares in STS and also wrongfully and unlawfully directed that the cheques and bank drafts be made payable to Damji, as opposed to 150, to, once again, avoid detection and prosecution by the Commission and being shut down by the Commission;

- (g) Thereafter, Suleman wrongfully and unlawfully instructed and/or caused a number of third parties to obtain cheques and bank drafts payable to Damji from the Plaintiff and the Plaintiff Class for the purpose of purchasing shares in STS and, secondly, to deliver the cheques and bank drafts to him. Again, Suleman did so to wrongfully and unlawfully effect the aforesaid violation and contravention of Sections 1, 25 and 53 of the *Securities Act* without detection by the Commission or by the Plaintiff and the Plaintiff Class;
- (h) Subsequently, Suleman deposited or caused the deposit of all of the aforesaid cheques and bank drafts payable to Damji into the bank account or accounts of 150. Suleman and 150 did so to obtain possession of the aforesaid monies of the Plaintiff and the Plaintiff Class in furtherance of their aforesaid wrongful and unlawful goal of obtaining the monies which they did from the Plaintiff and the Plaintiff Class in violation and contravention of Sections 1, 25 and 53 of the *Securities Act* to the known detriment and harm of the Plaintiff and the Plaintiff Class;
- (i) Suleman and 150 thereby wrongfully and unlawfully got their hands on all of the monies that they wrongfully and unlawfully solicited, obtained and/or received from the Plaintiff and the Plaintiff Class for the intended purpose of purchasing shares in STS, (i) in knowing and deliberate violation and contravention of Sections 1, 25 and 53 of the *Securities Act* and (ii) to wrongfully and unlawfully obtain the same monies notwithstanding and contrary to the aforesaid Sections of the *Securities Act* without

detection by the Commission (iii) to the known detriment and harm of the Plaintiff and the Plaintiff Class.

30. Suleman and 150 acted wrongfully, illegally and unlawfully throughout with respect to their receipt of the aforesaid monies of the Plaintiff and the Plaintiff Class, as set out in paragraph 29 above. They had no lawful right to act as they did and they knew it. They wrongfully agreed and conspired to commit the wrongful, illegal or unlawful acts already set out in paragraph 29 above (i) without detection and prosecution by the Commission (ii) to wrongfully, unlawfully and illegally get their hands on as much money as possible from the Plaintiff and the Plaintiff Class when they knew they had no right to do so and when they further knew that doing so was to the prejudice and harm of the Plaintiff and the Plaintiff Class. More particularly, Suleman and 150 not only wrongfully stripped the Plaintiff and the Plaintiff Class of their right to make an informed decision with respect to the aforesaid wrongful, unlawful and illegal activity of Suleman and 150 but were statutorily barred from wrongfully acting as they did, pursuant to Sections 1, 25 and 53 of the *Securities Act*.

31. Suleman and 150 further wrongfully acted and conspired to so act as they did as set out in paragraphs 29 and 30 above, both covertly and underhandedly. To effect their aforesaid covert and underhanded activity in a wrongful manner, Suleman and 150 wrongfully, illegally and unlawfully (i) used third parties to deal with and collect the subject monies from the Plaintiff and the Plaintiff Class, (ii) directed that all cheques and bank drafts be made payable to Damji instead of to 150 or

another Suleman company, (iii) received cash payments instead of cheques and bank drafts and (iv) ensured there was no documentation linking Suleman and 150 to the subject payments. There was not even a stamp on the back of the subject cheques and bank drafts indicating they were deposited to the credit of 150. All of this was deliberately, wrongfully and unlawfully arranged by Suleman with a view to furthering the conspiracy between Suleman and 150 to unlawfully and wrongfully obtain the monies which they did from the Plaintiff and the Plaintiff Class (i) in violation of Sections 1, 25 and 53 of the *Securities Act*, (ii) without detection by the Commission or by the Plaintiff and the Plaintiff Class, (iii) when they had no right to do so and (iv) when payment of the monies to Suleman and 150 was statutorily prohibited.

32. To sum up with respect to the aforesaid wrongful, illegal and unlawful conduct and conspiracy claim, Suleman and 150 illegally, unlawfully, wrongfully and knowingly conspired with each other to directly or indirectly solicit and obtain and/or receive and use the monies which they did from the Plaintiff and the Plaintiff Class (i) when they knew they were barred from doing so by Sections 1, 25 and 53 of the *Securities Act*, (ii) in violation of the aforesaid Sections of the *Securities Act* while (iii) avoiding detection by the Commission as well as by the Plaintiff and the Plaintiff Class to enable them to continue wrongfully receiving and obtaining monies from the Plaintiff and the Plaintiff Class in violation of the aforesaid Sections of the *Securities Act* and (iv) without disclosing to the Plaintiff and the Plaintiff Class that what they were doing was wrongful, illegal and unlawful.

33. Furthermore, Suleman and 150 so wrongfully, illegally and unlawfully acted and conspired with each other as set out in paragraphs 29-32 above when they knew, *inter alia*, (i) doing so was statutorily prohibited pursuant to Sections 1, 25 and 53 of the *Securities Act*, (ii) they had no right to do so and (iii) the Commission would stop their said wrongful conduct upon becoming aware of same.

34. But for their aforesaid wrongful conduct and conspiracy to violate Sections 1, 25 and 53 of the *Securities Act* without detection and prosecution to the detriment of the Plaintiff and the Plaintiff Class as set out in paragraphs 29-33 above, the Plaintiff and the Plaintiff Class would have (i) paid nothing for the purpose of purchasing shares in STS and (ii) suffered no loss on account of the aforesaid monies obtained and/or received by Suleman and thereafter deposited into the bank account or accounts of 150. The Plaintiff and the Plaintiff Class suffered the losses which they did by reason of the aforesaid wrongful conduct and conspiracy on the part of Suleman and 150.

35. The Plaintiff and the Plaintiff Class (i) were therefore wrongfully deprived of and lost all of the monies so deposited into the bank account or accounts of 150 to the knowledge of Suleman and 150 and (ii) are therefore entitled to and seeking recovery of all of those monies from Suleman and 150.

36. By reason of their aforesaid dealings with the Plaintiff, the Plaintiff Class and Damji, the Defendants traded in securities as defined by s. 1 (1) of the *Securities Act*, R.S.O. 1990 c. S. 5 ("the

Act”). Pursuant to S. 53 (1) of the *Act*, the Defendants were legally precluded from trading in and distributing securities as defined by the *Act* unless a preliminary prospectus and a prospectus had been filed and receipts issued for them by the Director. The Defendants violated and contravened s. 53 (1) of the *Act* by reason of their aforesaid dealings with the Plaintiff and the Plaintiff Class with respect to the alleged shares in STS Inc.

37. Suleman was the director, officer, controlling mind and manager of 150. Suleman knowingly operated and ran the affairs of 150 (i) in a manner that was unlawful, oppressive, unfairly prejudicial and unfairly disregarding of the interests of the Plaintiff and the Plaintiff Class, (ii) to the prejudice and loss of the Plaintiff and the Plaintiff Class and (iii) to the extent of all their monies which Suleman and 150 got their hands on.

38. 150 was knowingly, deliberately, specifically and exclusively set up and directed by Suleman for the wrongful, unlawful and illegal purpose of obtaining the monies from the Plaintiff and the Plaintiff Class in violation and breach of Sections 1, 25 and 53 of the *Securities Act* (i) without detection and prosecution by the Commission and (ii) without detection by the Plaintiff and the Plaintiff Class.

39. The Plaintiff and the Plaintiff case are (i) complainants as defined by s.245 of the *Ontario Business Corporations Act* (“the *OBCA*”), (ii) creditors of 150 as defined by s.242(2) of the *OBCA* and (iii) aggrieved persons as defined by s.248(3) of the *OBCA*.

40. 150 and, more importantly, Suleman as director and controlling mind of 150 illegally and unlawfully conspired and acted to have 150 obtain, receive and disburse the aforesaid monies of the Plaintiff and of the Plaintiff Class in violation of Sections 1, 25 and 53 of the *Securities Act* to the detriment of the Plaintiff and the Plaintiff Class as set out above.

41. As a direct result, the affairs and business of 150 were wrongfully directed by Suleman and wrongfully carried on by 150 in an unlawful, oppressive, unfairly prejudicial and unfairly disregardful manner with respect to the interest of the Plaintiff and of the Plaintiff Class and caused the Plaintiff and the Plaintiff Class to be wrongfully deprived of and to lose all of their aforesaid monies as already more particularly set out above.

42. The Plaintiff and the Plaintiff Class are therefore entitled to the return of all of their monies which were received by Suleman and deposited into the bank account or accounts of 150 and/or to compensation equal to the amounts of those monies pursuant to s.248(3) of the *OBCA*.

43. The Plaintiff and the Plaintiff Class are therefore entitled to and are seeking recovery of all of their monies which were obtained and/or received by Suleman and 150 for the acquisition of shares in STS, as damages for conspiracy to injure and compensation or other oppression remedy relief pursuant to the provisions of the *Ontario Business Corporations Act*, as amended, including s. 248(3) and, at that, from both Suleman and 150.

44. The Plaintiff pleads that the Plaintiff and the Plaintiff Class are or should be entitled to punitive damages from Suleman and 150 by reason of the aforesaid illegal, unlawful and wrongful conduct on the part of Suleman and 150 including, *inter alia*, their aforesaid violations of Sections 1, 25 and 53 of the *Securities Act*.

NEGLIGENCE AND BREACH OF FIDUCIARY DUTY

45. In obtaining and/or receiving the aforesaid monies of the Plaintiff and of the Plaintiff Class as already set out above, Suleman and 150 (i) knew the monies being paid by the Plaintiff and by the Plaintiff Class were being paid by them to acquire shares in STS and (ii) further knew that the said payments as well as their receipt of same were contrary to, in violation of and prohibited by Sections 1, 25 and 53 of the *Securities Act*, as already more particularly set out above.

46. Accordingly, upon obtaining or receiving the said monies of the Plaintiff and of the Plaintiff Class, Suleman and 150 owed the Plaintiff and the Plaintiff Class a duty of care not to disburse and/or use the said monies other than to remit same to the Plaintiff and the Plaintiff Class and to notify the Plaintiff and the Plaintiff Class of, *inter alia*, the following:

- (a) that the said payments and the receipt of same by Suleman and 150 for the purpose of purchasing shares in STS were contrary to, in violation of and prohibited by Sections 1, 25 and 53 of the *Securities Act*, for want of a proper prospectus and want of registration on the part of the collectors and recipients of the said monies;

- (b) that Suleman had previously promised the Commission not to solicit, obtain or receive any monies for the purpose of purchasing shares in STS and, at that, to avoid prosecution for doing so in the past;
- (c) that no monies should be paid by the Plaintiff and the Plaintiff Class for the purpose of purchasing shares in STS (i) without prior review of an adequate prospectus and (ii) without prior proper registration of the collectors and recipients of those monies;
- (d) that Suleman and 150 could not receive any of the monies paid by the Plaintiff and the Plaintiff Class for the purpose of purchasing shares in STS, as doing so was contrary to and in violation of Sections 1, 25 and 53 of the *Securities Act*;
- (e) that Suleman and 150 could not disburse and/or use any of the monies paid by the Plaintiff and the Plaintiff Class to purchase shares in STS, as doing so would be contrary to and in violation of Sections 1, 25 and 53 of the *Securities Act*;
- (f) that Suleman and 150 were duty bound to return the monies paid by the Plaintiff and the Plaintiff Class that had been received by Suleman and 150 for the purpose of purchasing shares in STS.

47. By reason of their knowledge that doing so would be contrary to and in violation of Sections 1, 25 and 53 of the *Securities Act*, Suleman and 150 owed the Plaintiff and the Plaintiff Class a duty of care not to disburse or use the monies that had been paid by the Plaintiff and the Plaintiff Class and thereafter received by Suleman and 150, for the purpose of purchasing shares in STS.

48. Suleman and 150 nevertheless breached their aforesaid duties of care to the Plaintiff and to the Plaintiff Class by negligently and wrongfully failing to discharge the duties as set out in paragraphs 54 and 55 above, to the detriment and loss of the Plaintiff and the Plaintiff Class to the extent of all of the monies paid by them for the purpose of purchasing shares in STS.

49. The Plaintiff pleads that the Plaintiff and the Plaintiff Class would not have suffered the aforesaid losses which they did but for the aforesaid negligence and breach of duty of care on the part of Suleman and 150. The Plaintiff and the Plaintiff Class therefore seek recovery of all of their aforesaid losses by reason of the said negligence and breach of duty of care on the part of Suleman and 150.

50. In the prevailing circumstances including the facts already more particularly set out above, Suleman and 150 also owed the Plaintiff and the Plaintiff Class a fiduciary duty with respect to their receipt of the monies they obtained and/or received from the Plaintiff and the Plaintiff Class. Suleman and 150 (i) expressly or implicitly undertook to properly and legally deal with the aforementioned monies of the Plaintiff and the Plaintiff Class upon their receipt of same and (ii) were in a special relationship with the Plaintiff and the Plaintiff Class by reason of their receipt of the aforesaid monies of the Plaintiff and the Plaintiff Class and, at that, to the knowledge of Suleman and 150. For their part, the Plaintiff and the Plaintiff Class were totally and completely dependent upon and vulnerable to Suleman and 150 with respect to the monies of the Plaintiff and the Plaintiff Class.

51. The Plaintiff pleads that Suleman and 150 wrongfully and negligently breached their aforesaid fiduciary duty to the Plaintiff and to the Plaintiff Class (i) by wrongfully disbursing the monies of the Plaintiff and the Plaintiff Class in violation of Sections 1, 25 and 53 of the *Securities Act*, (ii) by without first notifying the Plaintiff and the Plaintiff Class of all of the material facts within their knowledge, (iii) by without notifying the Plaintiff and the Plaintiff Class that the supposed purchases of the non-existent STS shares for which the Plaintiff and the Plaintiff Class had given their monies were statutorily prohibited and unlawful, (iv) by refusing to disburse the monies of the Plaintiff and the Plaintiff Class for the purpose of purchasing shares in STS, (v) by failing to insist upon remitting the monies of the Plaintiff and the Plaintiff Class to the Plaintiff and the Plaintiff Class and (vi) while disbursing the monies of the Plaintiff and of the Plaintiff in various ways that were inconsistent with any proposed purchase of shares in STS including, *inter alia*, the disbursement of more than \$3,000,000.00 to a gambling organization in Costa Rica, the disbursement of cash and the disbursement of monies to third parties.

52. As a result of the aforesaid breach of fiduciary duty on the part of Suleman and 150, the Plaintiff and the Plaintiff Class were wrongfully deprived of and lost all of their monies which were obtained and/or received by Suleman and 150, to the detriment and prejudice of the Plaintiff and the Plaintiff Class.

53. The Plaintiff and the Plaintiff Class are therefore entitled to and seeking recovery of all of their monies which were delivered to, obtained and/or received by Suleman and 150, including the

aforementioned \$5,458,350.00, from Suleman and 150 by reason of the aforesaid breach of fiduciary duty on the part of Suleman and 150.

BREACH OF TRUST ON THE PART OF SULEMAN AND 150

54. The Plaintiff repeats and relies upon the allegations already more particularly set out above and, therefore pleads that the monies of the Plaintiff and the Plaintiff Class which were illegally, unlawfully and wrongfully obtained and/or received by Suleman and 150 as set out above were or should be impressed with an express, or alternatively, constructive trust in the hands of and against Suleman and 150.

55. As Suleman and 150 illegally, unlawfully or wrongfully solicited, obtained, received, disbursed and/or used all of the aforesaid monies of the Plaintiff and the Plaintiff Class as already more particularly set out above, the Plaintiff and the Plaintiff Class are therefore entitled to and seeking recovery of all of their aforesaid monies which were obtained and/or received by Suleman and 150 by reason of the aforesaid breach of trust on the part of Suleman and 150 to the detriment and loss of the Plaintiff and of the Plaintiff Class to the extent of their said monies including the aforesaid \$5,458,350.00. The Plaintiff pleads that the Plaintiff and the Plaintiff Class are or should be entitled to a constructive trust remedy against Suleman and 150 to the extent of all of the aforesaid monies which were lost by the Plaintiff and the Plaintiff Class.

**KNOWING ASSISTANCE OF DAMJI'S FRAUD AND BREACH OF TRUST
BY SULEMAN AND 150 AND THEIR KNOWING RECEIPT AND DISBURSAL
OF DEFRAUDED FUNDS OR TRUST FUNDS**

56. The Plaintiff pleads that, by the time Suleman and 150 began obtaining and/or receiving the aforesaid monies of the Plaintiff and of the Plaintiff Class for the purpose of acquiring shares in STS, Suleman and 150 knew or should have known that Damji was engaged in a fraud and breach of trust by reason of, *inter alia*, the following:

- (a) They were never given and never saw any proof of the existence of STS;
- (b) They were never given and never saw any shares in STS. They had no reason to believe in the legitimacy of STS or in the legitimate existence of STS shares;
- (c) They knew or should have known that Damji was laundering monies received from some of his victims payable to him in trust through a cheque cashing business;
- (d) They knew that Damji was not using the monies he was receiving from his fraud victims for the represented purpose for which those monies were being given to him in trust, namely, the supposed purchase and acquisition of shares in STS;
- (e) They began requesting payments of monies for the supposed acquisition of shares in STS in cash and through third parties when they knew or should have known that the purposes for doing so were (i) to avoid a regulatory detection and (ii) to facilitate the money laundering or disposition of the said cash by Damji as well as by themselves;

- (f) None of “monies received by the Defendants” was used to acquire shares in STS for the Plaintiff and the Plaintiff Class but all of same was nevertheless wrongfully disbursed and/or dissipated and/or used by the said Defendants;
- (g) To date, they have not fully accounted for the monies received by them from the Plaintiff and the Plaintiff Class, who thought they were purchasing shares in STS, that was deposited into the bank account or accounts of 150. More particularly, they have not yet produced any bank statements of 150, any cancelled cheques or any bank drafts drawn on the bank account or accounts of 150 or the books and records of 150;
- (h) Ultimately, Suleman and 150 knew or blindly, wilfully and/or recklessly shut their eyes to the obvious, namely, Damji’s fraud and/or breach of trust with respect to the aforesaid monies that were directly or indirectly solicited by and/or obtained and/or received by the said Defendants from the Plaintiff and the Plaintiff Class who thought they were purchasing shares in STS through the services of the said Defendants and their representatives;
- (i) The Plaintiff pleads that all of the monies from the Plaintiff and the Plaintiff Class which came into the hands of Suleman and 150 and which were deposited into and later disbursed from the bank account or accounts of 150 were either directly obtained and received by Suleman and 150 or indirectly obtained but still received by Suleman and 150 through various representatives on their behalves. In other words, Suleman and 150 arranged and are responsible for all payments and receipts by and from the Plaintiff and the Plaintiff Class;

- (j) Suleman and 150 were under an obligation to make appropriate inquiries. Had they done so, Damji's fraud and breach of trust would have been uncovered and would have to have been disclosed to the Plaintiff and the Plaintiff Class. Suleman and 150 wrongfully failed to make those inquiries causing the Plaintiff and the Plaintiff Class to sustain their aforesaid losses.

57. The Plaintiff and the Plaintiff Class are therefore entitled to and seeking recovery of all of their aforementioned monies which were obtained and/or received by the Defendants for the supposed purchase of shares in STS due to (i) the knowing assistance of the Defendants of Damji's fraud and breach of trust and (ii) the knowing receipt, disbursal and use of the said defrauded monies and/or trust funds.

PUNITIVE DAMAGES

58. The Plaintiff pleads that, by reason of the aforementioned unlawful, illegal, reckless, abusive and callous conduct on the part of Suleman and 150, the Plaintiff and the Plaintiff Class are or should be entitled to punitive damages from Suleman and 150. The Plaintiff and the Plaintiff Class are therefore seeking recovery of punitive damages from Suleman and 150 in this action.

The Plaintiff proposes that this action be tried in Toronto.

DATE: April , 2008

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Court File No. CV-08-00353823-00CP

(Proceedings Under the Class Proceedings Act, 1992)

AMIR MIRSHAHI

- and -

MUSA SULEMAN et al

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**THIRD FRESH AS AMENDED
STATEMENT OF CLAIM**

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