

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

ALGA ADINA BONNICK

Plaintiff

- and -

LAWRENCE KRIMKER, CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST CAPITAL TRUST, CROWN CREST CAPITAL II TRUST, CROWN CREST BILLING CORP., CROWN CREST CAPITAL CORP., CROWN CREST FUNDING CORP., SANDPIPER ENERGY SOLUTIONS, SANDPIPER ENERGY SOLUTIONS HOME COMFORT, SIMPLY GREEN HOME SERVICES (ONTARIO) INC., SIMPLY GREEN HOME SERVICES INC., and SIMPLY GREEN HOME SERVICES CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: July 7, 2021, amended as of June, __ 2022

Issued by

E-Filed
Local Registrar

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A. RELIEF SOUGHT

1. The plaintiff, on her own behalf and on behalf of all class members, seeks:
 - (a) a declaration that the defendants' conduct particularized herein breached the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A, and its Regulations, O Reg 17/05 and O Reg 8/18;
 - (b) a declaration that it is not in the interests of justice to require that notice be given pursuant to s. 18(15) or any other section of the *Consumer Protection Act*, and waiving any such notice requirement;
 - (c) rescission, cancellation and/or a declaration that the subject consumer agreements with class members are unenforceable;
 - (d) general damages calculated on an aggregate basis or otherwise, for all payments the class members made to the defendants;
 - (e) special damages for out-of-pocket and inconvenience expenses incurred;
 - (f) punitive and exemplary damages in the amount of \$5,000,000;
 - (g) a declaration that the defendants were unjustly enriched at the expense of the plaintiff and the class members;
 - (h) relief from amounts that the defendants claim are or were owed or owing to the defendants by the plaintiff and the class members;
 - (i) an order under s. 160 of the *Land Titles Act* that all notices of security interest and other encumbrances that any of the defendants have registered, own or control, on title to the class members' real property be vacated and removed from title;
 - (j) disgorgement of the defendants' profits;
 - (k) a reference to decide any issues not decided at the trial of the common issues;
 - (l) an interlocutory injunction barring the defendants from engaging in the conduct

particularized herein;

- (m) an order permanently enjoining the defendants from engaging in the conduct particularized herein;
- (n) costs of administration and notice, plus applicable taxes, pursuant to s. 26(9) of the *Class Proceedings Act*;
- (o) costs of this action;
- (p) prejudgment interest compounded and post-judgement interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C.43; and
- (q) such further and other relief as the parties may advise and this Honourable Court deems just.

B. THE PARTIES

The plaintiff

2. The plaintiff, Alga Adina Bonnick, is an individual living in Toronto. She is one of many Ontario residents who entered into consumer agreements for HVAC and HVAC-related Equipment (as that term is defined in paragraph 26 below) with persons such as the defendants.

The defendants

3. The defendant Lawrence Krimker is an individual residing in Toronto, Ontario. During the materials times, Mr. Krimker has been the legal and/or beneficial owner, officer, and director of all the corporate defendants.

4. As particularized further below, Mr. Krimker has used the named corporate defendants, as well as other companies whose identity is not currently within the knowledge of the plaintiff, to

engage in the impugned conduct, including, but not limited to, by entering into impugned consumer agreements with the class members, billing the class members fees pursuant to such agreements, assigning the class member's agreements amongst the corporate defendants and other similar companies, and registering security interests against the title to the class members' homes to extract previously undisclosed sums of money from the class.

5. Mr. Krimker uses his companies as a puppet, a sham, a mere façade acting as his agents in carrying out the impugned conduct against the class members with impunity.

6. The plaintiff does not currently know the identity of all the companies used by Mr. Krimker to engage in the unlawful conduct particularized herein. Mr. Krimker has actively concealed that information. The plaintiff reserves the right to add such companies to this action whenever their identity becomes discoverable.

7. The defendants Crown Crest Capital Management Corp., Crown Crest Capital Corp., Crown Crest Capital Trust, Crown Crest Capital II Trust, Crown Crest Financial Corp., Crown Crest Billing Corp., and Crown Crest Funding Corp. (collectively and interchangeably "**Crown Crest**"), Sandpiper Energy Solutions, Sandpiper Energy Solutions Home Comfort, Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp. (collectively, the "**corporate defendants**") are affiliated HVAC equipment and financial services corporations incorporated under Ontario's *Business Corporations Act*, all sharing the same registered office located at 800-2225 Sheppard Avenue East, North York, Ontario, Canada, M2J 5C2.

8. The corporate defendants operate from the same physical location, maintain the same employees, share customer information amongst one another, use the same phone numbers, display

similar website content and are all owned and controlled by Mr. Krimker.

9. During the Class Period, the corporate defendants have been, and continue to be, engaged in the business of: (a) entering into HVAC and HVAC-related Equipment agreements with Ontario Consumers directly, and assigning those agreements to the other corporate defendants; or (2) financing third party suppliers who entered into HVAC and HVAC-related Equipment agreements with individual Ontario consumers, including Ms. Bonnick and other class members, and then registering and/or enforcing notices of security on title to the consumers' homes.

10. The corporate defendants carry out this conduct against consumers, such as the plaintiff, individually and at times on a mass basis, including by financing the installation of HVAC and HVAC-related Equipment in newly built condominium buildings and registering notices of security for previously undisclosed amounts on titles of hundreds of condominium units owned by the members of the class.

11. Ontario's Ministry of Government and Consumer Services has laid charges against Mr. Krimker and Crown Crest Financial Corp. for violating the *Consumer Protection Act* relating to the subject matter of this action.

12. At all relevant times, the named defendants acted in concert with each other in the conduct particularized herein. Reference to "the defendants" in this Statement of Claim includes reference to Mr. Krimker using his corporations to advance the unlawful activities particularized herein.

C. NATURE OF THE ACTION

13. This is an action about the non-disclosure of material, statutorily mandated, information to consumers, and the unlawful use of encumbrances on consumers' home titles as ransom to extract

unconscionable undisclosed amounts from consumers. The undisclosed material fact at issue is the consumers' total liability in consumer agreements relating to HVAC and HVAC-related Equipment. The action concerns the breaches of the *Consumer Protection Act* and slander of title by Mr. Krimker through his companies, including, but not limited to, the corporate defendants, to illegally benefit himself at Ontario consumers' expense.

14. The *Consumer Protection Act* strictly regulates "direct agreements" and "leases" to protect consumers against predatory sales practices. Parts IV and VIII of the *Consumer Protection Act* and its regulations strictly regulate the form and content of such agreements and give consumers rights and protections against breaches of those requirements.

15. A "direct agreement" means a consumer agreement that is negotiated or concluded in person at a place other than at the supplier's place of business. A "lease" means a consumer agreement for the lease of goods.

16. The relevant suppliers in this instance include companies such as those that seek to induce consumers—typically at consumers' homes—to enter into direct agreements and/or leases for HVAC and HVAC-related Equipment. The predatory practices of such companies were such that as of March 1, 2018, Ontario banned unsolicited, door-to-door sales of many HVAC and HVAC-related Equipment to protect consumers from the aggressive sales tactics exerted by these suppliers contracting with consumers, and the misleading agreements that these suppliers employed.

17. During the Class Period, the defendants obtained ownership or control of consumer contracts relating HVAC and HVAC-related Equipment in two ways.

18. First, the defendants created and maintained a common and uniform contractual program

for financing suppliers who rented HVAC and HVAC-related Equipment to consumers (**“Financing Arrangement”**).

19. The Financing Arrangement operated as follows. Suppliers, often engaging in door-to-door sales, entered into program agreements with one or more of the corporate defendants, their predecessors, or their affiliates. Under these program agreements, the corporate defendants would finance the suppliers’ sale of HVAC and HVAC-related Equipment, as defined below, to consumers under the following conditions:

- (a) the corporate defendants dictated or approved the terms of the agreements that the suppliers signed with class members as defined in paragraph 26 below (These agreements, together with consumer agreements of a similar nature formed outside the Financing Arrangement but which have been assigned to any one of the corporate defendants through an intermediary or by another corporate defendant and where the corporate defendants registered an interest in their favour against class members’ home title or otherwise owns or controls such an interest on title, are collectively referred to here as **“Consumer Agreements”**).
- (b) The suppliers could only change the Consumer Agreements with the corporate defendants’ approval.
- (c) The Consumer Agreements commonly and uniformly included a provision in fine print giving the supplier the right to register a security interest against the class member and on title to their home, barring class members from selling, mortgaging or otherwise dealing with their property without first obtaining the supplier’s consent or the discharge of the security interest from title.
- (d) The Consumer Agreements also commonly and uniformly included a provision in fine print that the supplier may assign the Consumer Agreements to any person at the supplier’s sole discretion at any time, without the class member’s consent or notice to them.

- (e) the corporate defendants would directly vet each class member that any of the suppliers targeted before the supplier signed a Consumer Agreement with the class member.
- (f) If the defendants were satisfied of the class member's credit and particularly of the ownership of their home, the defendants would accept that consumer class member, whereupon the supplier would have the class member sign the Consumer Agreement.
- (g) The supplier would then assign the Consumer Agreement to one or more of the corporate defendants.
- (h) In return, the corporate defendants provided financing to the supplier for the purchase and installation of the equipment, and other start-up expenses.
- (i) Using the powers allotted to them in the Consumer Agreement, the corporate defendants would then register a security interest in an exorbitant and disproportionate amount against the title to the class member's home.

20. The second way in which the defendants have obtained ownership or control of Consumer Agreements of a similar nature but formed outside the Financing Arrangement is when such Consumer Agreements are sold or assigned to the defendants through an intermediary.

21. The defendants enforce security interests on class members' home titles in at least three ways that are currently known to the plaintiff:

- (i) one or more of the defendants directly registers security interests on title under its own name and seeks to enforce it against the class member as particularized herein;
- (ii) one or more of the defendants obtain ownership rights to a security interest already registered by a previous company under that company's name, and then one or more of the corporate defendants registers its own security interest in its own name (or in the name of other companies whose identity is known to Mr. Krimker but not within the knowledge of the plaintiff) and seeks to enforce it as particularized herein; and/or
- (iii) one or more of the defendants obtain ownership rights to a security interest already

registered by a previous person under that person's name, and the defendants seek to enforce it as particularized herein without changing the security interest to the name of one of the corporate defendants or another company belonging to or controlled by Mr. Krimker.

22. At no point during this process would the defendants, their predecessors, or other supplier disclose to the consumer the total amount payable by that consumer under the Consumer Agreement—the total amount being the amount that the defendants would later register against the consumer's home title and eventually extract from the consumer or the amount that the defendants would extract from consumers in order to discharge security interests owned or controlled by the defendants, plus any monthly and all other payments already made by the consumer toward the HVAC and HVAC-related Equipment.

23. Similarly, in instances where one of the defendants obtained assignments of Consumer Contracts from intermediary companies outside the defendants' Financing Arrangement, the class members' total liability, as pleaded in paragraph 22 above, were not disclosed to the class members in compliance with the *Consumer Protection Act*, as particularized below.

24. Class members only become aware of the existence of the encumbrance registered, owned, or controlled by the defendants on their homes and the amount that the defendants had registered or demanded, once they obtain a title abstract to their property, which typically only occurs when the class members are in the process of selling or remortgaging their home.

25. In exchange for removing the charge from title, the defendants extract from consumers amounts grossly exceeding the price at which similar HVAC and HVAC-related Equipment are readily available to like consumers. Consumers have no choice or opportunity to challenge the charge; they must pay the price dictated to them by the defendants to discharge the security interest

registered on title to their home and cannot proceed with the sale or remortgage of their home, until said charge is removed by the defendants.

The Class

26. The plaintiff seeks to represent the following class, of which she is a member:

All individuals in Ontario who:

(a) are or were at any time party to a consumer agreement for HVAC or HVAC-related Equipment* with any person who directly or indirectly assigned that consumer agreement to one of the defendants between July 17, 2013 and the date of certification of this action or any other date that the Court deems appropriate (“**Class Period**”); and

(b) against whose property the defendants registered, or caused to be registered, a security interest or other encumbrance on title, or the defendants otherwise owned or controlled such an encumbrance on title.

*“**HVAC or HVAC-related Equipment**” means furnaces, air conditioners, air purifiers, water heaters, water softeners, water purifiers, water treatment systems, water filters, boilers, air cleaners, humidifiers, chimney liners, duct cleaning services, filters, thermostats and other equipment or services offered under the rental contracts, or bundles of these goods and services.

The plaintiff’s experience

27. Ms. Bonnick is 70 years old. After a life of hard work, she was able to buy her home—a small bungalow in Scarborough—in 2006. She works as a cleaner despite her advanced age, and chronic health issues.

28. On or about July 22, 2017, a person identifying himself as Noor Ullah attended at Ms. Bonnick’s home.

29. Mr. Ullah told Ms. Bonnick that he worked for “Enercare” and that he was sent to her home to inspect her Enercare furnace. In reality, Mr. Ullah was not an employee of Enercare, but a sales

representative for MGA Home Services (“**MGA**”), a door-to-door supplier and an affiliated corporate entity of the corporate defendants.

30. Mr. Ullah also told Ms. Bonnick that he was at her home to install a water softener, carbon filter, and air cleaner and that she would not be charged for these items.

31. At Mr. Ullah’s request, Ms. Bonnick signed a document that was purported to be an agreement. However, Mr. Ullah refused to give her a copy of the document.

32. The following day, an unidentified person attended to install equipment. During the installation, a real Enercare representative was coincidentally at Ms. Bonnick’s home fixing her air conditioner.

33. The Enercare representative asked Ms. Bonnick who was installing the air cleaner. Ms. Bonnick told him that it was another person from Enercare.

34. The Enercare representative told her that the person installing the air cleaner was not an Enercare employee. This was the first time that Ms. Bonnick realized she was not dealing with Enercare.

35. Ms. Bonnick immediately requested that the other person stop working. At this point, the air cleaner was already installed. This was the only product that was installed at this time.

36. Shortly after, Ms. Bonnick contacted Shaheem Khalid at MGA by phone to cancel the purported agreement and to request the removal of the equipment from her home.

37. Mr. Khalid confirmed the cancellation. However, he told her that she would still owe \$1,300.00.

38. Ms. Bonnick told him that she could not afford \$1,300.00. He suggested that she ask a friend for the money, and he told her there was a law that required her to pay.

39. A few days later, Mr. Khalid attended at Ms. Bonnick's home. This time he demanded that she pay \$1,500.00. She asked why the price went up. He told her that interest had been added to the original amount he quoted on the phone.

40. Mr. Khalid suggested that instead of paying the \$1,500 fee to cancel, Ms. Bonnick could pay \$20.00 per month for two years. She was told she could keep the air filter that was installed, and he would install a water softener. She was told that she would have no further obligations to MGA, at the end of the two years.

41. Mr. Khalid provided Ms. Bonnick with a hand-written note that mentioned the \$20.00 monthly fee and two-year term. He never gave Ms. Bonnick a copy of any agreement.

42. Several days later, a technician attended Ms. Bonnick's home and installed a water softener.

43. In or around November 2017, Ms. Bonnick discovered that Crown Crest was billing her \$88.14 monthly for two water softeners and an air cleaner.

44. Ms. Bonnick had never received two water softeners.

45. Ms. Bonnick disputed the Crown Crest charge on her bill with Enercare. Enercare removed the charges from her Enercare bill.

46. Over the next several months, Ms. Bonnick made several requests to Crown Crest to cancel any and all agreements she may have allegedly had. However, Crown Crest has continued to

demand payment and threaten with collections and enforcement.

47. Despite making repeated requests to MGA and Crown Crest, Ms. Bonnick has never received a copy of her signed original agreement(s) in violation of the *Consumer Protection Act* and its regulations.

48. On April 3, 2018, Crown Crest registered a security interest on title of Ms. Bonnick's home in the amount of \$14,448.00.

49. The agreement(s) that the supplier, MGA, had Ms. Bonnick sign, and subsequently assigned to Crown Crest was a Consumer Agreement.

50. The total amount payable by Ms. Bonnick under the Consumer Agreement was the amount of \$14,448.00 that Crown Crest subsequently registered on Ms. Bonnick's title plus all the other amounts she had paid toward the equipment.

51. At no point did any of the persons particularized above disclose to Ms. Bonnick the total amount payable by her under the Consumer Agreement. The defendants unilaterally decided the total amount, and registered on title to her home.

52. It is the defendants' common practice to register an unconscionable amount on title to the class members' properties and to keep class members in the dark about the total amount payable by them under the Consumer Agreements.

53. The equipment installed in Ms. Bonnick's house was of minimal value and turned out to be defective, causing damage and covering her home in mold. She had to pay someone to uninstall the equipment and move it to her backyard.

54. One of MGA's directors most recently pleaded guilty in the Ontario Court of Justice to charges of deception, untrue statements, and false and misleading practices contrary to the *Consumer Protection Act, 2002*.

D. CAUSE OF ACTION

Breach of the *Consumer Protection Act, 2002*, and its Regulations

55. The defendants failed to comply with the *Consumer Protection Act*.

56. The suppliers are located in Ontario and are each a "supplier" for the purposes of the *Consumer Protection Act*.

57. The defendants are suppliers and/or successor parties to the Consumer Agreements concluded by the suppliers who acted as their agents under the Financing Arrangement. The defendants administer the accounts into which customer payments are received and register and/or maintain a notice of security interest or other encumbrance over class members' homes. The defendants are jointly engaged with the suppliers in the business of renting HVAC or HVAC-related Equipment to the class.

58. Accordingly, the defendants are "suppliers" under the *Consumer Protection Act*.

59. Alternatively, the defendants are assignees, and are liable under s. 18(13) of the *Consumer Protection Act*.

60. The class members' Consumer Agreements assigned to, or owned by, the defendants are "consumer agreements" for the purposes of the *Consumer Protection Act*.

61. Ms. Bonnick and the other class members are "consumers" for the purposes of the

Consumer Protection Act.

The Consumer Agreements breached direct agreement provisions

62. The Consumer Agreements were direct agreements as defined under the *Consumer Protection Act*.

63. Part IV of the *Consumer Protection Act* governs direct agreements. Section 42(1) of the *Consumer Protection Act* mandates that all direct agreements be made in accordance with requirements specified in regulations.

64. *Requirements for Direct Agreements Subject to Section 43.1 of Act*, O Reg 8/18, required throughout the Class Period that the supplier furnish the consumer with an agreement setting out certain material information, including, but not limited to, the total amount payable by the consumer under the agreement, and all security given by the consumer in respect of money payable under the agreement.

65. The amounts for which the defendants registered security interests against the titles to the homes of Ms. Bonnick and other class members, as well as amounts demanded by the defendants where the security interest was registered by another person but was assigned to any of the defendants, plus any monthly and all other amounts already paid or allegedly owed by the class member toward the HVAC and HVAC-related Equipment, constituted the total amount payable by the consumer under the Consumer Agreement.

66. The defendants and other suppliers that assigned the subject Consumer Agreements to the defendants failed to disclose this information and other material information required under the governing regulations to Ms. Bonnick and other class members. The suppliers did not disclose the

payable amounts to Ms. Bonnick and other class members when they were signing the Consumer Agreements because the defendants unilaterally determine the total amount of the security interest they register or own or control on title to consumers' homes after the fact.

67. This information was material, required under the regulations, and it was not known until the defendants registered a security interest against title unbeknownst to the consumer or demanded payment for a security interest assigned to them previously registered or owned by another person.

The Consumer Agreements breached leasing requirements

68. The Consumer Agreements failed to comply with the leasing requirements contained in Part VIII of the *Consumer Protection Act*. Specifically, s. 89(2) of the *Consumer Protection Act* requires a lessor to deliver a disclosure statement for the lease to the consumer, disclosing prescribed information.

69. *General Regulation*, O Reg 17/05, prescribed during the Class Period the information that must be disclosed to a consumer for a lease that is subject to Part VIII of the *Consumer Protection Act*. Section 74(2) requires the supplier to furnish the consumer with a disclosure statement setting out certain material information, including, but not limited to, the total lease cost as well as the implicit finance charge for the lease.

70. The above leasing provisions applied to the Consumer Agreements.

71. The amounts for which the defendants registered security interests and other encumbrances on the titles to the homes of Ms. Bonnick and other class members, as well as amounts demanded by any of the defendants where the security interest was registered by another person but was

assigned to any of the defendants, plus any monthly and all other amounts already paid by the consumer toward the HVAC and HVAC-related Equipment, constituted the total lease cost under the Consumer Agreements.

72. The Consumer Agreements that suppliers signed with Ms. Bonnick and other class members did not disclose, nor could they have disclosed, this information or the implicit finance charge, amongst others, to Ms. Bonnick and other class members.

73. This information was material, required under the regulations, and it was not known until the defendants registered a security interest against title or demanded payment for a security interest assigned to them previously registered or owned by another person.

The Consumer Agreements constituted an unfair practice

74. Section 14 of the *Consumer Protection Act* prohibits unfair practices. Failure to state a material fact if such failure deceives or tends to deceive a consumer constitutes an unfair practice.

75. Further, a consumer agreement where the price grossly exceeds the price at which similar goods or services are readily available to like consumers or where the terms of the consumer transaction are so adverse to the consumer as to be inequitable constitutes unfair practices contrary to s. 15 of the *Consumer Protection Act*.

76. Here, the Consumer Agreements' failure to disclose the material information particularized above to Ms. Bonnick and other class members constituted an unfair practice contrary to s. 14. The grossly inflated amounts that the defendants commonly registered against title or demanded in order to discharge registrations owned or controlled by them and the grossly adverse unilateral terms of the Consumer Agreements render them unconscionable contrary to s. 15.

77. Ms. Bonnick's situation illustrates the grossly one-sided and improvident terms imposed by the defendants against unknowing, vulnerable consumers: even disregarding the misrepresentations of the door-to-door supplier in this instance, for an air cleaner and a water softener (each valued at a few hundred dollars) the defendants have charged Ms. Bonnick's home title in the exorbitant amount of \$14,448, without any prior disclosure, breakdown of the cost, implicit finance charge, or opportunity for Ms. Bonnick to dispute this charge. The defendants have still not even provided a copy of the purported Consumer Agreement to Ms. Bonnick contrary to the *Consumer Protection Act*.

78. The impugned conduct breached ss. 14 and 15. The defendants knew, or ought to have known, the illegality under the *Consumer Protection Act*.

79. The defendants took advantage of the inability of Ms. Bonnick and other class members to reasonably protect their own interests because of the gross information asymmetry between the contracting parties and class members' ignorance or inability to realize the character and nature of the Financing Arrangement and Consumer Agreements.

80. The defendants are liable as suppliers for these unfair practices.

81. Alternatively, pursuant to s. 18(12) of the *Consumer Protection Act*, the defendants are jointly and severally liable for these unfair practices particularized above together with the persons who signed Consumer Agreements with Ms. Bonnick and other class members.

82. Alternatively, pursuant to s. 18(13) of the *Consumer Protection Act*, the defendants are liable as assignees of the Consumer Agreements.

Slander of title

83. The defendants' conduct constituted slander of title.

84. The defendants registered, or caused to be registered, false statements contrary to the *Consumer Protection Act*, *Personal Property Security Act*, and *Land Titles Act* against Ms. Bonnick and other class members' home title.

85. The defendants' registration on title and their abuse of registrations assigned to them by other persons was intended to induce others not to deal with Ms. Bonnick and other class members unless the amounts registered were paid and the registration discharged.

86. Malice motivated the defendants' conduct: the defendants had an improper motive to injure Ms. Bonnick and other class members without just cause or excuse contrary to the *Consumer Protection Act*.

87. As a result of the defendants' conduct, Ms. Bonnick and other class members suffered monetary loss, including but not limited to, their inability to dispose of their property without first paying the illegal charges imposed by the defendants, receiving a lowered price for their homes because of the amounts charged by the defendants, paying higher interest rates when refinancing or obtaining a loan secured against their home title, and damaged credit.

The corporate veil should be pierced

88. The legal principle that corporations are separate legal entities should be disregarded to hold Mr. Krimker personally liable for the wrongful conduct of the corporate defendants.

89. Mr. Krimker is the directing mind of all the corporate defendants. He is their founder,

owner, CEO, president, and director. He exercises complete control over the corporate defendants and their actions.

90. Mr. Krimker has had five charges laid against him pursuant to s. 116(3) of the *Consumer Protection Act*, which holds an officer or director directly liable for a company's offence under the *Act* where that individual fails to take reasonable care to prevent the company from committing an offence.

91. This provision recognizes the significant role that directors and officers exercise in a corporation in the consumer context and their ability to make, authorize, condone, and encourage wrongful and improper conduct, such as the impugned conduct in this case.

92. Mr. Krimker's position as founder and CEO of the corporate defendants and their affiliated companies has allowed him to incorporate multiple corporations, including the corporate defendants, through which he acts to attempt to evade liability while reaping the benefits at consumers' expense.

93. As the founder, legal and beneficial owner, CEO, president, and director of the corporate defendants, Mr. Krimker has been instrumental in the development of the scheme of obtaining Consumer Agreements improperly entered into with Ms. Bonnick and other class members to register security interests and other encumbrances in arbitrary amounts against the home titles of those consumers.

94. Mr. Krimker created the corporate defendants to facilitate the practice of using Consumer Agreements to register security interests against the properties of consumers. The sole or primary purpose for incorporating the corporate defendants was an improper activity contrary to the

Consumer Protection Act. Many such companies go out of business, sometimes by bankruptcy and many are taken over by other companies, making it both difficult and futile for consumers to obtain any remedial relief for breaches of the consumer protection legislation against corporate defendants.

95. Mr. Krimker used the corporate defendants as a puppet, a sham and mere façade acting as his agent in carrying out the wrongful conduct particularized herein.

96. Further, Mr. Krimker engaged in unfair practices personally, knowing of the companies' improper practices, yet continuing to authorize, and condone the use of illegal Consumer Agreements.

97. As the directing mind of the corporate defendants, Mr. Krimker engaged in unfair practices in his capacity as a director and officer and is thus jointly and severally liable with the corporate defendants pursuant to s. 18(12) of the *Consumer Protection Act*.

E. REMEDIES

98. As a result of the conduct pleaded above, Ms. Bonnick and the other class members have suffered loss and damage in an amount to be determined at trial.

99. The Consumer Agreements were not made in accordance with the *Consumer Protection Act* and are not binding on Ms. Bonnick and the other class members.

100. The Consumer Agreements resulted from unfair practices for which Ms. Bonnick and other class members are entitled to remedies under s. 18 and at law.

101. Ms. Bonnick and other class members are entitled to rescission of the Consumer

Agreements.

102. Further, Ms. Bonnick and the other class members seek their damages for, amongst other things, the amounts by which the class members' payment under the Consumer Agreements exceed the value that the goods or services have to the class members, the registration of undisclosed amounts on title, all amounts paid to remove the security interests from title, damage to their credit, and all of their out of pocket and inconvenience damages.

103. It is in the interests of justice to waive any notice requirements under the *Consumer Protection Act*, particularly as the defendants and their affiliated suppliers concealed the actual state of affairs from the class members.

104. In the alternative to damages, Ms. Bonnick and the other class members claim the remedy of disgorgement of the profits generated by the defendants as a result of the wrongful conduct particularized herein.

105. Disgorgement is appropriate for the following reasons, among others:

- (a) the defendants made profits as a result of slander of title and breaches of the *Consumer Protection Act*;
- (b) the defendants made profits in such a manner that the defendants cannot in good conscience retain it;
- (c) the integrity of the marketplace would be undermined if the defendants were to profit from the wrongful conduct;
- (d) absent the wrongful conduct, class members would not have entered into the Consumer Agreements, and the defendants would never have received profits arising from the Consumer Agreements; and

- (e) disgorgement of profits retained by the defendants would serve a compensatory purpose.

Interlocutory and permanent injunction

106. The impugned conduct is ongoing.

107. The impugned conduct is causing irreparable harm to Ontario consumers. The defendants should be enjoined from engaging in the impugned conduct until the resolution of this action on its merits.

108. Further, the defendants should be permanently enjoined from engaging in the conduct particularized herein.

109. Mr. Krimker's conduct is sufficiently likely to occur or recur in the future that it is not only appropriate, but necessary, for the Court to exercise its equitable jurisdiction to grant an injunction. In the context of the consumer market at issue, no other alternative will provide reasonably sufficient protection against the threat of the continued occurrence of the impugned wrong. Absent an injunction, nothing stops Mr. Krimker from continuing to incorporate companies to repeat the same conduct at issue in this action.

Unjust enrichment

110. The defendants have been unjustly enriched to the extent that they have charged and retained unlawful fees, interest and other amounts under the Consumer Agreements.

111. The class members suffered a deprivation corresponding to the defendants' enrichment.

112. The Consumer Agreements being unenforceable, there is no juristic reason for the

defendants' enrichment and the class members' corresponding deprivation.

113. Accordingly, the class members are entitled to restitution.

Punitive damages

114. Due to the egregious nature of the defendants' conduct, including, without limiting the generality of the foregoing, registering exorbitant undisclosed amounts on consumers' homes in order to obtain illegal profits at the expense of consumers, Ms. Bonnick and the other class members are entitled to recover aggravated, punitive, and exemplary damages.

115. The wrongful conduct particularized here was willful, deliberate, high-handed, outrageous, callous and in contemptuous disregard of consumer rights and interests.

116. The defendants have callously taken advantage of consumers' vulnerabilities to trap consumers in a scheme that threatened to deprive them of their homes.

117. Further, Ms. Bonnick and the other class members are entitled to punitive damages under the *Consumer Protection Act* and at common law to relieve the defendants of their wrongful profits made while flouting the law.

F. FRAUDULENT CONCEALMENT

118. The defendants willfully concealed the unlawfulness of the Consumer Agreements from Ms. Bonnick and the class members. Ms. Bonnick and the class members plead and rely on the doctrine of fraudulent concealment to assert that any applicable statute of limitation has been tolled by the defendants' knowledge, concealment and denial of facts which prevented the class from discovering their cause of action.

119. Mr. Krimker continues to actively conceal the identity of the companies, other than the presently known and named corporate defendants, that he has used to encumber class members' home titles to demand exorbitant payout fees as ransom.

120. In addition, Ms. Bonnick and the class members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until this action was filed.

121. Ms. Bonnick and the class members plead and rely on and the *Limitations Act, 2002*, SO 2002, c 24, Sched B, s. 5 and on the doctrines of postponement and discoverability to postpone the running of the limitation period until the date on which this action is commenced.

122. Ms. Bonnick and the other class members also plead and rely on the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, SO 2020, c 17, O Reg 73/20 to suspend the running of the limitation period from March 16, 2020, to September 13, 2020.

(Date of issue)

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Court File No. CV-21-00665193-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF
CLAIM**

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