



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

*(Court Seal)*

**ALGA ADINA BONNICK, GORAN STOILOV DONEV  
and SARAH-JANE SHAW**

**Plaintiffs**

**- and -**

**PEOPLE'S TRUST COMPANY**

**Defendant**

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**TO THE DEFENDANT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs 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.

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: December 21, 2023.

Issued by

\_\_\_\_\_  
Local Registrar

Address of  
court office:

Superior Court of Justice  
330 University Avenue, 7th Floor  
Toronto ON M5G 1R7

**TO:** **PEOPLE'S TRUST COMPANY**  
1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

## A. OVERVIEW

1. This action centers on the defendant's conspiracy and role in the non-disclosure of material and statutorily-mandated information to consumers, the imposition of unconscionable contracts on unsuspecting consumers, and the use of unlawfully obtained security interests and other encumbrances on consumers' home titles as leverage to extort undisclosed and unconscionable amounts from those consumers.

2. The defendant's unlawful conduct particularized herein arises in the context of predatory and unlawful market practices directly affecting the leasing of HVAC and HVAC-Related Equipment to tens of thousands of consumers across Canada.

3. The defendant is a co-lessor and financier of the HVAC and HVAC-Related Equipment in the consumer marketplace. The defendant financed, required, approved, and controlled the predatory conduct of its other co-lessors (*i.e.*, co-conspirators) with respect to the Class. Many of the defendant's co-lessors are named as defendants in a related action under the *Class Proceedings Act* because of that conduct. The defendant entered into conspiratorial agreements with those parties through which the defendant, amongst others:

- (a) financed and enabled the predatory operations of those parties against the plaintiffs and the Class;
- (b) in return for its financing, effectively defined, led, and controlled the predatory operations of those parties against the plaintiffs and the Class;
- (c) took on the role of co-lessor to the unlawful Consumer Agreements for the HVAC and HVAC-Related Equipment with the plaintiffs and the Class;

- (d) owned nearly half of one of these parties, Crown Crest Capital Management Corp., which has encumbered the home title of one of the plaintiffs (for years now) and thousands of other consumers with improper and unlawful notices of security interest; and
  - (e) controlled the unlawful profits flowing to the defendant and its co-conspirators from the predatory, but extremely lucrative, market conduct at issue in this litigation.
4. The unlawful conduct of the defendant and its co-conspirators included entering into one-sided Consumer Agreements where neither the defendant nor any other party disclosed to the affected consumers, amongst others:
- (a) the consumer's total liability for the HVAC or HVAC-Related Equipment in question, or other material disclosure mandated under provincial consumer protection legislation and regulations;
  - (b) the defendant and its co-conspirators' standard *modus operandi* of using improper security interests, liens, and encumbrances on consumers' home titles to extract from the consumer unconscionable buyout sums, previously not disclosed, far exceeding the value that the consumer did or would ever receive;
  - (c) the fact that if a consumer finds themselves in the unfortunate position of having to sell or refinance their home, that consumer has no option but to pay whatever unconscionable buyout sum the defendant and its co-conspirators demand in order to free their home title of the defendant's lien registration; and
  - (d) the fact that the defendant and its co-conspirators charge the consumer for services, past and future, that have not been provided and will not ever be provided to the consumer.

5. The defendant’s conspiratorial conduct at issue in this action concerns what Ontario’s Public and Business Service Delivery Minister, Todd McCarthy, recently described as a “crisis”. The defendant and its Simply Group co-conspirators have played a major role in bringing about that crisis on the backs of consumers. This crisis has victimized many Canadians who have had the misfortune of crossing paths with the defendant, its co-conspirators, and similar predatory market participants.

6. The defendant’s conduct has systemically and consistently harmed the Class, being consumers of all levels of vulnerability *vis-à-vis* these predatory actors. However, the primary targets of the defendant’s conduct have been the elderly, the disabled, and those with language barriers—meaning anyone who was easier prey to the defendant and its co-conspirators.

## **B. DEFINED TERMS**

7. In this Statement of Claim, the following terms have the following meanings:

- (a) “**Class**” or “**Class Members**” means all individuals in Canada, with the exception of Quebec, who are or were at any time, directly or indirectly, party to a Consumer Agreement for HVAC or HVAC-Related Equipment involving the defendant or Simply Group, regardless of the identity of the Vendor that originated the Consumer Agreement;
- (a) “**Class Period**” means between July 17, 2013 and the date of certification of this action or any other date that the Court deems appropriate;
- (b) “**Class Proceedings Act**” means the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended;
- (c) “**Consumer Agreements**” means agreements—sometimes referred to as leases or “lease assets” by the defendant and Simply Group—relating to the leasing of HVAC and HVAC-Related Equipment as originated by Vendors, including agreements that have been assigned to any of the defendant and/or Simply Group

through one or more intermediaries;

- (d) “**Consumer Protection Act**” means Ontario’s *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A, and its Regulations, O. Reg. 8/18 and O. Reg. 17/05, all as amended;
- (e) “**Equivalent Consumer Protection Legislation**” means *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S. 2013, c. C-30.2; *The Business Practices Act*, C.C.S.M. c. B120; *The Consumer Protection Act*, C.C.S.M. c. C200; *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1; *Business Practices Act*, R.S.P.E.I. 1988, c. B-7; *Consumer Protection Act*, R.S.P.E.I. 1988, C-19, all as amended;
- (f) “**HVAC and HVAC-Related Equipment**” or “**Equipment**” means furnaces, air conditioners, air purifiers, water heaters, heat recovery ventilators, water softeners, water purifiers, water treatment systems, water filters, boilers, air cleaners, humidifiers, chimney liners, duct cleaning services, filters, thermostats and other similar equipment or services offered under the Consumer Agreements, or bundles of such goods and services;
- (g) “**NOSI**” means a notice of security interest, sometimes referred to as a “lien”, which is registered on Class Members’ home titles;
- (h) “**PTC**” means the defendant, People’s Trust Company;
- (i) “**Simply Group**” means 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., Simply Green Home Services Corp., 2775996 Ontario Inc., Greypoint Capital Inc., and any other persons and entities related to these parties; references to Simply Group in this claim refer to some or all of these persons collectively and interchangeably, unless specifically specified;

- (j) “**Simply Group Action**” means the proceeding under the *Class Proceedings Act* styled as *Bonnick et al. v. Lawrence Krimker et al.*, with the court file number CV-21-00665193-00CP; and
- (k) “**Vendors**” means the persons who originated the Consumer Agreements, *i.e.*, Simply Group, the agents of the defendant and Simply Group, and other door-to-door companies originating some of the Consumer Agreements from the Class Members before those Consumer Agreements were transferred to the defendant and Simply Group.

### C. RELIEF SOUGHT

8. The plaintiffs, on their own behalf and on behalf of the Class, seek:

- (a) an order certifying this proceeding as a class proceeding and appointing the plaintiffs as the representative plaintiffs for the Class;
- (b) a declaration that PTC conspired, agreed and arranged with Simply Group to engage in the impugned conduct;
- (c) a declaration that the defendant engaged in unfair practices in conjunction with Simply Group, and that the defendant’s conduct breached the *Consumer Protection Act*, and Equivalent Consumer Protection Legislation;
- (d) a declaration that it is not in the interests of justice to require notice be given, and waiving any notice requirement pursuant to s. 18(15) of the *Consumer Protection Act*, s. 7.2(3) of the *Consumer Protection Act*, RSA 2000, c C-26.3, or any other such notice requirement under Equivalent Consumer Protection Legislation, or alternatively declaring service of this Statement of Claim as sufficient notice;
- (e) a declaration under section 172(1)(a) of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 that the defendant breached that statute;
- (f) rescission, cancellation and/or a declaration that the Consumer Agreements with Class Members are invalid and unenforceable under the *Consumer Protection Act*,

and Equivalent Consumer Protection Legislation;

- (g) a declaration that the Consumer Agreements are invalid for unconscionability, and unenforceable against the Class;
- (h) disgorgement of the defendant's profits;
- (i) general damages calculated on an aggregate basis or otherwise, for all payments made by the Class Members under the Consumer Agreements;
- (j) special damages for out-of-pocket and inconvenience expenses incurred;
- (k) punitive and exemplary damages in the amount of \$10,000,000;
- (l) a declaration that PTC was unjustly enriched at the expense of the plaintiffs and the Class Members and restitution for such amounts;
- (m) relief from any amounts that PTC or Simply Group are or were owed or owing by the plaintiffs and the Class Members under the Consumer Agreements;
- (n) a reference to decide any issues not decided at the trial of the common issues;
- (o) an interlocutory injunction barring PTC from engaging further in the conduct particularized herein;
- (p) an order permanently enjoining PTC from engaging in the conduct particularized herein;
- (q) in the alternative to (p), an order appointing a receiver over some or all of the property, assets and undertaking of the defendant as the court finds to be just or convenient pursuant to section 101 of the *Courts of Justice Act*, RSO 1990, c C.43;
- (r) costs of administration and notice, plus applicable taxes, pursuant to s. 26(9) of the *Class Proceedings Act*;
- (s) costs of this action;
- (t) prejudgment interest compounded and post-judgment interest in accordance with



ss. 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C.43; and

- (u) such further and other relief as the parties may advise and this Honourable Court deems just.

## **D. THE PARTIES**

### **The Plaintiffs**

9. The plaintiff, Alga Adina Bonnick, is an individual living in Toronto. As further particularized below, she is one of many consumers who entered into Consumer Agreements for HVAC and HVAC-Related Equipment with persons such as the entities related to and controlled by PTC and Simply Group, or ownership in whose Consumer Agreement was, fully or in part, transferred to PTC. Further, PTC owns nearly half of the Simply Group company that has unlawfully encumbered Ms. Bonnick's home title for many years.

10. The plaintiff, Goran Stoilov Donev, is an individual living in Etobicoke, Ontario. As further particularized below, he is one of many consumers who directly entered into Consumer Agreements for HVAC and HVAC-Related Equipment with Simply Group, and ownership in whose Consumer Agreement was subsequently transferred to PTC without his knowledge.

11. The plaintiff, Sarah-Jane Shaw, is an individual living in Hamilton, Ontario. As further particularized below, she is another one of the many consumers who entered into Consumer Agreements for HVAC and HVAC-Related Equipment with Simply Group directly, or otherwise with a Vendor who then, directly or through intermediaries, transferred that Consumer Agreement to PTC and Simply Group.

## **PTC and Simply Group**

12. PTC is a trust company existing under the laws of Canada.
13. PTC is the principal source of financing and is vertically integrated with its Simply Group co-conspirators.
14. PTC's material involvement in the impugned conduct particularized herein was first made public, and discovered by the plaintiffs and Class Members, through PTC's application under the *Companies' Creditors Arrangement Act* (the "CCAA") as it relates to Simply Group (Court File No.: CV-23-00709183-00CL).
15. At all material times, PTC participated in, facilitated and directly controlled the impugned conduct. Through various agreements with Simply Group, PTC directly took on the lucrative role of a predatory HVAC leasing financing company and acquired a proprietary interest in the resulting Consumer Agreements. PTC directly controlled and acted in conjunction with Simply Group as the directing mind in carrying out the impugned conduct against Class Members.
16. PTC and Simply Group engaged 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 Members' agreements, and registering security interests against the title to the Class Members' homes to extract previously undisclosed and unconscionable sums of money from the Class.
17. Both PTC and Simply Group's creator, Lawrence Krimker, used the Simply Group companies and other entities as a puppet, a sham, a mere façade acting as their agents in carrying out the impugned conduct against the Class Members with impunity.

18. The entities within Simply Group are affiliated HVAC equipment and financial services corporations incorporated under Ontario's *Business Corporations Act*, trusts, and other opaque entities, all sharing the same registered office located at 800-2225 Sheppard Avenue East, North York, Ontario, Canada, M2J 5C2. They all operate from the same physical location, share the same employees, share customer information amongst one another, use the same phone numbers, display similar website content and are all owned, directed, and controlled by PTC and Mr. Krimker.

19. During the Class Period, PTC has been, and continues to be, engaged in financing and controlling all aspects of Simply Group's anti-consumer business described herein.

20. The impugned conduct has been carried out against Class Members individually and at times on a mass basis, including by financing the *en masse* imposition of the Consumer Agreements on consumers purchasing new developments such as in condominium buildings, and by registering notices of security interest and demanding previously undisclosed amounts from such Class Members.

21. Ontario's Ministry of Government and Consumer Services has laid charges against Mr. Krimker and some other Simply Group members for violating the *Consumer Protection Act* relating to the subject matter of this action.

22. The governments of both British Columbia and Alberta have also rendered decisions against Mr. Krimker and some other Simply Group members in relation to the subject matter of this action.

23. At all material times, PTC controlled, facilitated and knew or ought to have known of the impugned conduct particularized herein.

## E. NATURE OF THE ACTION

### **PTC's Role in Simply Group's Leasing of HVAC and HVAC-Related Equipment and Use of NOSIs**

24. During the Class Period, PTC entered into various agreements with Simply Group, which provided PTC with significant rights, ownership, control and/or oversight over the assets and day-to-day business operations of Simply Group regarding the Consumer Agreements affecting the Class.

25. Through these conspiratorial agreements, PTC financed, owned and controlled:

- (a) the origination of the unlawful Consumer Agreements by and through Simply Group against the Class Members;
- (b) the acquisition of the unlawful Consumer Agreements by and through Simply Group against the Class Members; and
- (c) the enforcement of the unlawful Consumer Agreements by and through Simply Group against the Class Members.

26. The origination of the Consumer Agreements happened when Simply Group's Vendors directly induced Class Members to sign the Consumer Agreements. The plaintiff, Goran Donev, is one example of such Class Members, as further particularized below.

27. The origination of the Consumer Agreements also happened through PTC and Simply Group's pre-existing contracts called at times, "program agreements" or "Financing Arrangement" or "Master Assignment and Program Agreement", whereby Simply Group, in conjunction with and under the direction and control of PTC, entered into such agreements with other Vendors who

would obtain financing from PTC (channelled through Simply Group) to target Class Members and induce them to sign the unlawful Consumer Agreements. Such Consumer Agreements would then immediately be transferred by the Vendor to Simply Group and PTC. The plaintiff, Alga Bonnick, is one example of such Class Members, as further particularized below. The plaintiff, Sarah-Jane Shaw, is one example where PTC and Simply Group used both methods of origination to target a consumer in two different transactions.

28. The acquisition of Consumer Agreements happened when PTC and Simply Group acquired thousands of Consumer Agreements previously originated by unrelated Vendors with the same material non-disclosure and unlawful encumbrances on consumers' home titles.

29. Regardless of the manner of origination and acquisition, PTC and Simply Group enforced these Consumer Agreements against the Class consistently in the impugned manner, subjecting all Class Members to the same unlawful conduct and unconscionable terms previously undisclosed to the Class.

30. In order to effect the above conduct and extract unconscionable sums from the Class Members, PTC facilitated and directed the registration of encumbrances on Class Members' home titles in various consistent ways that are currently known to the plaintiffs:

- (a) Where Simply Group and PTC originated the Consumer Agreement: PTC's agreements with Simply Group required Simply Group's registration of NOSIs and other "liens" on Class Members' home titles and their enforcement against the Class Members by extracting unconscionable sums from the Class Members, especially those in urgent need of selling or re-financing their home; or
- (b) Where Simply Group and PTC acquired the Consumer Agreement: PTC's agreements with Simply Group required Simply Group's registration of NOSIs and liens on the Class Members' home title if none had been registered, or the enforcement of such NOSIs and

liens if one had already registered on title under a prior party's name.

31. The Ontario government recently described the NOSI problem in the following words, which summarize PTC and Simply Group's *modus operandi*:

In many cases, consumers are not aware that a NOSI has been registered on title to their home until they are in the midst of a home sale or mortgage refinancing, with tight timelines adding to the high pressure to resolve the situation expeditiously. Whether selling or refinancing a home, the discharge of a NOSI is usually required for the transaction to proceed, unless, in the case of a sale, the purchaser agrees to assume the contract (e.g., lease for the fixture). In those cases, the sale would move forward and the NOSI would stay on title.

Where the consumer is required to discharge the NOSI in order to complete the sale or refinancing of the property, certain suppliers use the discharge of the NOSI as leverage and unfairly pressure the consumer to negotiate a buyout of the contract in its entirety, including services, and not just for the value of the equipment. This can result in exorbitant payouts.

32. At no point during this process would PTC, Simply Group, their predecessors, or the Vendors disclose to Class Members the total amount payable by the consumer under the Consumer Agreement—the total amount being what would be extracted from consumers in order to discharge security interests owned or controlled by PTC, plus any monthly fees and all other fees and payments already made by the consumer toward the HVAC and HVAC-Related Equipment.

33. Nor did PTC, Simply Group, their predecessors, or the Vendors disclose to the Class Members the fact that they would be employing a NOSI to leverage unconscionable buyouts.

34. Similarly, in instances where PTC obtained assignments of Consumer Agreements from intermediary companies outside its various agreements with Simply Group, the Class Members' total liability, as pleaded above, was still not disclosed to the Class Members in compliance with the *Consumer Protection Act*.

35. The disclosure happened only at the point of exit when the Class Members needed to free themselves and their homes of PTC and its co-conspirators. Class Members only became aware of the existence of the encumbrances registered, owned, or controlled by PTC and Simply Group on their homes, and the amounts 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 homes.

36. In exchange for removing the encumbrances from title, Simply Group as agents of PTC, extract sums from consumers that grossly exceed the market 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 to discharge the encumbrance registered on title to their home and cannot proceed with the sale or remortgage of their home, until said charge is removed by Simply Group, which as particularized above, requires the input and consent of PTC.

### **PTC and Simply Group's Recently Disclosed Agreements**

37. PTC and Simply Group entered into numerous written agreements targeting the Class, and the subject Consumer Agreements, at the Class Members' expense. To the extent of the plaintiffs' current knowledge, PTC's agreements with Simply Group included, amongst others:

- (a) A Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as borrower, and Crown Crest Capital Management Corp., as guarantor, and PTC dated December 1, 2016 and its amendments;
- (b) A Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its

- capacity as trustee of Crown Crest Capital Trust, as borrower, and Crown Crest Capital Management Corp., as guarantor, and PTC dated April 27, 2018 and its amendments;
- (c) A Warehouse Line of Credit Agreement between Crown Crest Financial Corp., as borrower, Simply Green Home Services Inc., as guarantor, and PTC dated January 19, 2018 and its amendments;
- (d) A Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as borrower, Crown Crest Capital Management Corp., as guarantor, and PTC dated May 29, 2019 and its amendments;
- (e) A Warehouse Line of Credit Agreement between Simply Green Home Services Inc., as borrower, 2775996 Ontario Inc., as guarantor, and PTC dated May 29, 2019 and its amendments;
- (f) A Convertible Debenture issued to PTC by Simply Green Home Services Inc. dated January 19, 2018, and its amendments;
- (g) A Concurrent Lease Agreement between Crown Crest Financial Corp., as the lessor, Simply Green Home Services Inc., as the guarantor, and PTC dated January 19, 2018 and its amendments, including a Fourth Amended and Restated Concurrent Lease Agreement dated June 30, 2021;
- (h) A Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as lessor, and PTC dated May 29, 2019 and its amendments;
- (i) A Concurrent Lease Agreement between Simply Green Home Services Inc., as lessor,



- and PTC dated November 1, 2021 and its amendments;
- (j) A Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as Lessor, Simply Green Home Services Inc., as guarantor, and PTC dated November 30, 2018 and its amendments, including a Second Amended and Restated Concurrent Lease Agreement dated April 15, 2019;
  - (k) A Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as Lessor, Simply Green Home Services Inc., as guarantor, and PTC dated February 13, 2018 and its amendments, including the Third Amended and Restated Concurrent Lease Agreement dated April 15, 2019;
  - (l) A General Security Agreement by Crown Crest Financial Corp. in favour of PTC, dated January 19, 2018;
  - (m) A General Security Agreements by Simply Green Home Services Inc. in favour of PTC, dated January 19, 2018 and April 21, 2021;
  - (n) A General Security Agreement by Crown Crest Management Corp. in favour of PTC, dated December 1, 2016;
  - (o) A General Security Agreement by Crown Crest Funding Corp. in its personal capacity and in its capacity as trustee of Crown Crest Capital Trust in favour of PTC, dated December 1, 2016;
  - (p) A Guarantee granted by 2775996 Ontario Inc. to PTC dated April 21, 2021;
  - (q) Guarantees granted by Crown Crest Capital Management Corp. to PTC dated December 1, 2016 and May 29, 2019;

- (r) A Guarantee granted by Crown Crest Capital Financial Corp. to PTC dated January 19, 2018;
- (s) A Sub-Servicing Agreement as between Simply Green Home Services Corp., Simply Green Home Services Inc., 2775996 Ontario Inc., Greypoint Capital Inc., and PTC dated October 13, 2020; and
- (t) Any other agreements between PTC and Simply Group that are currently unknown to the plaintiffs.

### **PTC's Direct Involvement in the Conspiracy Alongside Simply Group**

38. PTC has now disclosed that it directly owns 47.58% of one of the key Simply Group entities most involved in the impugned conduct against the Class: Crown Crest Capital Management Corp., the same company that has encumbered the home titles of the plaintiff, Ms. Bonnick, and thousands of other Class Members.

39. Further, PTC's written agreements with Simply Group listed above evidence a key role and material control of the impugned conduct. PTC provided financing to Simply Group for Consumer Agreements, the HVAC and HVAC-Related Equipment (sometimes referred to as "lease assets" by PTC and Simply Group), and any services to which they relate, under the following conditions:

- (a) Any Vendor or "originator" of a Consumer Agreement was required to be approved by PTC in writing.
- (b) The HVAC and HVAC-related Equipment that could be the subject of Consumer Agreements had to be on a list of approved equipment specified by PTC.

- (c) PTC reviewed and approved the collection and administration policies and operating procedures manual of Simply Group.
- (d) Consumer Agreements could only be eligible lease assets under PTC's agreements with Simply Group where the terms of such Consumer Agreements materially followed a form of Consumer Agreement previously approved by PTC.
- (e) PTC required that the lease assets could be assigned in whole or in part without the consent of the affected Class Members.
- (f) PTC required a form of Consumer Agreement, which commonly and uniformly included a provision in fine print that the Vendor may assign the Consumer Agreements to any person at its sole discretion at any time, without notice to the Class member or their consent.
- (g) PTC required a form of Consumer Agreement, which commonly and uniformly included a provision in fine print giving the Vendor the right to register a lien or security interest on title to Class Members' home titles, effectively barring Class Members from selling, mortgaging or otherwise dealing with their property without first obtaining the Vendor (or the assignee's) consent to discharge the lien.
- (h) PTC required Simply Group to effect "lien registration" on Class Members' home titles for the perfection and protection of PTC's interests.
- (i) PTC required that all amounts collected by Simply Group from consumers under the Consumer Agreements be remitted to a specific collections account which was subject to a blocked account agreement, the form and substance of which were required to be approved and accepted by PTC. In addition, PTC had the right to demand and enforce

- control over this collections account.
- (j) PTC was to be granted a security interest in all of the Consumer Agreements (i.e., lease assets) of Simply Group, and any cash flow and proceeds therefrom, regardless of the eligibility of such lease assets under the PTC-Simply Group agreements.
  - (k) PTC was given a right of first refusal upon the sale, assignment or conveyance of the Consumer Agreements.
  - (l) PTC required disclosure of a monthly statement with an aging and listing of all accounts receivable from Class Members under each Consumer Agreement, including a breakdown of all future, current and past amounts due.
  - (m) Simply Group was not allowed to sell, lease, transfer or dispose of its assets, or allow the merger, consolidation or transfer of ownership of the relevant company without the express written consent of PTC.
  - (n) PTC imposed an obligation on Simply Group to notify PTC in the case that any Consumer Agreement became “a non-performing asset” where a payment under a Consumer Agreement becomes more than 90 days past due.
  - (o) Lawrence Krimker was one of three authorized persons designated to request financing advances from PTC on behalf of Simply Group.

40. Under the convertible debenture and its amendments, PTC provided a purported principal loan to Simply Green Home Services Inc. in the amount of \$10,000,000. In addition to repayment under the convertible debenture, these funds were advanced with the following conditions:

- (a) The funds advanced were to be used to repay certain indebtedness and for operating

- the impugned business *vis-à-vis* the Class.
- (b) Until payment in full of the indebtedness, Simply Green Home Services Inc. was required to keep accurate books, records and accounts, which PTC had full access to.
  - (c) Simply Green Home Services Inc. was not allowed to sell, lease, transfer or dispose of its assets, or allow itself to be subject to any merger, consolidation or transfer of ownership without the express written consent of PTC.
  - (d) Until payment in full of the indebtedness, a representative of PTC was to be permitted to attend all meetings of the board of directors of Simply Green Home Services Inc. as an observer, including receipt of a copy of all materials provided to board members.
  - (e) PTC was provided the right, at its option, to convert the principal amount of the outstanding debenture as at June 30, 2019, into common shares at a conversion price equal to a 20% discount to the offering price per common share. Upon conversion of the debenture, PTC was given the right to nominate one representative to serve as a member of the board of directors of Simply Group, until PTC ceased to be, directly or indirectly, a shareholder.
  - (f) Failure to exercise the conversion option and expiry of the right of conversion automatically converted the debenture into a term loan.
41. Pursuant to the Concurrent Lease Agreements listed above, PTC provided Simply Group with amounts of pre-paid rent in exchange for a lease of each company's interest in the Consumer Agreements.
42. The effect of the concurrent leases was to essentially give the totality of the beneficial

ownership and control of the Consumer Agreements to PTC under the following conditions:

- (a) PTC's approval in writing was required with respect to the HVAC or HVAC-Related Equipment that was the subject of the Consumer Agreements.
- (b) Simply Group's collection and administration policies and procedures relating to the Consumer Agreements, as represented in the operating procedures manual, were required to be reviewed and approved by PTC.
- (c) PTC required that the Consumer Agreements could be assigned in whole or in part without the consent of the Class Members who entered into the Consumer Agreements.
- (d) The terms of the Consumer Agreements were required to be similar in all material respects to a form of contract approved by PTC.
- (e) PTC was to be the sole legal and beneficial owner of all of the relevant Simply Group entities' rights, title and interest in, to and under the Consumer Agreements subject to the concurrent leases between PTC and Simply Group, and any collections and proceeds therefrom, with a full right to transfer, sell and encumber such entitlements.
- (f) PTC required Simply Group to seek a "lien registration" on the Consumer Agreements, which was defined as effecting all filings or recordings with respect to the lessor's interest therein and the related rights necessary by law or reasonably prudent and desirable for the perfection and protection of PTC's interests.
- (g) PTC had the right to designate a replacement servicer with respect to the technical servicing of the HVAC or HVAC-Related Equipment under the Consumer Agreements.

- (h) In its capacity as a concurrent lessee, PTC agreed to require each Class member to comply with and perform each term, condition and representation under the Consumer Agreements.
- (i) The ownership of any HVAC or HVAC-Related Equipment of Simply Group was subject to the rights of PTC under the Concurrent Lease Agreements, and as a consequence, PTC has the exclusive right to possess, use, and lease any such Equipment.
- (j) PTC retained the right to be entitled to all payments made by Class Members under the Consumer Agreements beginning on the closing date.
- (k) PTC was granted a security interest in all of Simply Group's rights, title and interests in the Consumer Agreements and related HVAC or HVAC-Related Equipment, and any collections, cash flow and/or proceeds therefrom.
- (l) PTC maintained the right to contact Class Members for the following purposes:
  - i. to notify Class Members about the concurrent leases, *i.e.*, the Consumer Agreements;
  - ii. for any purpose it wishes including auditing, verification, and the determination of account balances;
  - iii. to direct Class Members to make all payments under their Consumer Agreements directly to PTC or any other third party as designated by PTC;
  - iv. to request Class Members to change their instructions for any direct payment methods otherwise payable to Simply Group or Vendors;

- v. to take any action in the name of Simply Group that is necessary or reasonably desirable to enforce and collect on the Consumer Agreements;  
and
  - vi. to sell by power of sale, any of the HVAC or HVAC-Related Equipment that is the subject of the Consumer Agreements.
- (m) In the case of Consumer Agreements with amounts payable that become more than 60 days past due, PTC directed Simply Group to file a “Lien Registration (to the extent not already filed)”, failing which Simply Group would become liable to indemnify PTC for losses up to and including any buyout price for the Consumer Agreement.
- (n) Simply Group was required to effect any filing or recording necessary by law or reasonably prudent or desirable for the protection of PTC’s interests as soon as possible, including any “lien” registrations, in turn incentivizing Simply Group to register NOSIs or other encumbrances on the home titles of Class Members.
- (o) Any sale of approved HVAC or HVAC-Related Equipment that was subject to the concurrent lease to the consumer that signed the Consumer Agreement was subject first to the consent of PTC.
- (p) Where such a consumer decided to or had to buy out their leased HVAC or HVAC-Related Equipment under their Consumer Agreement, Simply Group would then become liable to PTC to pay a refund of any prepaid rent advanced by PTC. This incentivized Simply Group to demand unconscionable buyout sums from consumers in order to offset their liabilities to PTC under the concurrent leases.
- (q) PTC appointed Simply Group as its exclusive agents for the purposes of servicing the



- HVAC or HVAC-Related Equipment under the Consumer Agreements under the concurrent lease Consumer Agreements. As part of this appointment, PTC granted Simply Group the ability to subcontract such services provided that PTC approved any such subcontractor.
- (r) Over the term of the concurrent lease agreements between PTC and Simply Group, collections from Class Members under the Consumer Agreements were received into collection accounts and remitted to PTC on a monthly basis. These collection accounts are subject to blocked account agreements, the form and substance of which must be approved and accepted by PTC.
- (s) Any changes to the credit and collection policies used by Simply Group when collecting sums under the Consumer Agreements must be first approved by PTC in writing.
- (t) In the event of a default by Simply Group as the servicing agent of PTC under the concurrent leases, the legal right, title and interest to approved HVAC or HVAC-Related Equipment under the Consumer Agreements would be automatically transferred to PTC.
43. In addition, PTC has obtained a number of guarantees from Simply Group for the liabilities and indebtedness of Simply Group under the various loan agreements and concurrent leases, thereby demonstrating the shell nature by which these companies are operated.
44. PTC also entered into a Sub-Servicing Agreement with Simply Group to appoint Simply Green Home Services Inc. as the “sub-servicer” from the previous appointment of Simply Green Home Services Corp. as the “servicer” in order to perform and fulfill the obligations in relation to

the administration and servicing of the Consumer Agreements as set out in the agreements listed above.

45. At all material times, under the PTC and Simply Group agreements, the operations and business of Simply Group were subject to the direction, instruction and approval of PTC.

46. Given the nature of PTC's control and involvement in the operations of Simply Group and their related Vendors, PTC knew and facilitated the assignment of Consumer Agreements to itself and/or Simply Group in return for financing of start-up expenses.

47. PTC also controlled and ultimately approved Simply Group's systemic practice of using the powers allotted to them in Consumer Agreements, to register NOSIs and other encumbrances in order to extract exorbitant and disproportionate amounts against the Class Members' home titles.

## **F. THE PLAINTIFFS' EXPERIENCE**

### **Alga Adina Bonnick**

48. Ms. Bonnick is over 70 years old. After a life of hard work, she was able to buy her home in 2006—a small bungalow in Scarborough, Ontario.

49. On or about July 22, 2017, a person purporting to be an employee of Enercare knocked at Ms. Bonnick's door claiming that he was sent to inspect her furnace. In reality, he was not an employee of Enercare, but a sales representative for MGA Home Services ("MGA"), a Vendor and affiliated corporate entity in a pre-existing Master Assignment and Program Agreement dated June 14, 2017, with Simply Group and PTC.

50. This agent told Ms. Bonnick that he would install a water softener, carbon filter, and air

cleaner at her home free of charge. At his request, Ms. Bonnick signed a document, which the agent refused to give her a copy of. Despite repeated requests, Ms. Bonnick never received a copy of any signed agreement in violation of the *Consumer Protection Act* and Equivalent Consumer Protection Legislation.

51. During the installation the following day, a real Enercare representative was coincidentally at Ms. Bonnick's home on a service call and informed her that the person installing the air cleaner was not an Enercare employee. Ms. Bonnick phoned MGA to cancel the agreement and to request the removal of the equipment from her home, but was told she would still owe \$1,300.

52. A few days later, an MGA representative attended at Ms. Bonnick's home and demanded she pay \$1,500.00. When asked about the difference in price, she was told "interest" was added. The representative then offered instead for Ms. Bonnick to pay \$20 per month for two years, after which she would have no more obligations and he would add a water softener as well.

53. Ms. Bonnick agreed but again did not receive a copy of any agreement. Several days later, a technician attended Ms. Bonnick's home and installed a water softener.

54. In or around November 2017, Ms. Bonnick discovered that a Simply Group entity called Crown Crest was billing her \$88.14 monthly for two water softeners and an air cleaner through Enbridge, despite never receiving two water softeners. Ms. Bonnick had to dispute these charges on her Enbridge bill, which Enbridge ultimately removed.

55. Over the next several months, Ms. Bonnick made several requests to MGA and Simply Group to cancel any and all agreements she may have allegedly had. However, Simply Group has continued to demand payment and threaten with collections and enforcement.

56. On April 3, 2018, Crown Crest Capital Management Corp., the same Simply Group

company half-owned by PTC, registered a security interest on title to Ms. Bonnick's home in the amount of \$14,448.00.

57. At no point did anyone disclose to Ms. Bonnick the total amount payable by her under the Consumer Agreement. As with other Class Members, PTC facilitated and controlled Simply Group's common practice of registering unconscionable amounts on title to Ms. Bonnick's home, while keeping her in the dark about the total amount payable by her. This amount was unilaterally decided and registered on title to her home. Nor did anyone disclose to Ms. Bonnick that the defendant and Simply Group would place a lien for \$14,448.00 on her home.

58. 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. Despite requests for Simply Group to take a look or service it, nobody came and she had to pay someone to uninstall the equipment and move it to her backyard.

59. It was only in the course of litigation in the Simply Group Action in 2023 that Ms. Bonnick, for the first time, received a copy of the purported Consumer Agreement with MGA from Simply Group.

### **Goran Stoilov Donev**

60. Mr. Donev is a resident of Etobicoke, Ontario. He lives with his family in a modest bungalow in Etobicoke, which he bought in 2012.

61. In or around May 2015, a Simply Group Vendor came to his home and told him of a great offer on a new air conditioner.

62. Mr. Donev responded that he did not need to change his air conditioner, which was fully

functional. However, the Vendor insisted that changing the air conditioner would help him save significant sums off his hydro bill. The Simply Group Vendor gave Mr. Donev advertising brochures that stated:

## **SIMPLE TERMS**

### **INTELLIGENT BENEFITS**

#### **Renting Can Save You Money**

Consumer less Natural Gas and Electricity by upgrading to a High Efficiency HVAC System and see a drastic reduction in your heating and cooling costs. No installation or diagnostic charges, competitive monthly rental rates, no-cost repairs, and free replacement in the event that the equipment cannot be repaired.

...

### **UPGRADE TO HIGH EFFICIENCY**

Upgrade your low or mid-efficiency Furnace and Air Conditioner with brand new Simply Green, ENERGY STAR units and you can reduce your heating and cooling costs by up to 50%. Spend less money on utilities, and help the environment by choosing to heat and cool with Simply Green.

### **WHY CHOOSE SIMPLY GREEN?**

#### **Save Money on Your Annual Energy Bill**

...

### **SAVE MONEY ON ENERGY**

...

#### **Potential Savings of Over 50% on Monthly Heating and Cooling Expenses**

*Efficiency Ratings* describe the percentage of fuel actually converted to heat. By upgrading from a 60% mid-efficiency unit to a 95% high-efficiency unit, you are effectively using 35% less natural gas. **SEER Ratings** for A/C's are efficiency ratios based seasonal electrical output. The higher the SEER rating, the less electricity used.

**Conserve Energy and Spend Less on Heating and Cooling Costs. Upgrade with Simply Green.**

63. On the insistence of the Vendor, Mr. Donev agreed to change his air conditioner and signed the Consumer Agreement that the salesperson gave to him. The Consumer Agreement did not disclose the total amount of money that Mr. Donev would be liable for, nor did it include any kind of payment schedule or other material information required to enable him to know what sort of arrangement he was entering into.

64. Simply Group subsequently installed the air conditioner in Mr. Donev's home, and removed and disposed of his existing and functioning air conditioner.

65. In May 2015, Simply Group started charging Mr. Donev around \$80 monthly on his Enbridge bill, which later increased to \$100 per month. He has consistently paid these amounts for the past seven years and estimates he has paid approximately \$8,000 for the air conditioner.

66. At no point did the Vendor or any person from Simply Group disclose to Mr. Donev what monthly amounts he was and continues to be required to pay.

67. Further, Mr. Donev did not receive any of the represented efficiency cost savings on his monthly utility bills. Subsequently, Mr. Donev discovered that Simply Green Home Services Inc. had almost immediately registered a NOSI in the amount of \$7,269 on his title on July 30, 2015, without his information or knowledge. However, the actual total amount of monthly payments appears to approximate at least \$20,000 (for Equipment worth \$2,000 or \$3,000 when bought new) even though Mr. Donev to this day has not been provided transparency by the defendant or Simply Group. The market value for the air conditioner provided to Mr. Donev is only a fraction of the amounts he has paid to date and any buyout amount and other fees he would have to pay if he were to try to free himself of the onerous terms of the agreement.

68. At the time of signing the Consumer Agreement, Mr. Donev was not told that a NOSI

would be registered on his home title or for how much nor what his total liability would be. At no point did anyone disclose to Mr. Donev the total amount payable by him under the agreement. At no point did any of the defendant or its agents disclose to Mr. Donev that a NOSI would be used to secure any payout amount that PTC and Simply Group unilaterally determined.

69. More recently, Mr. Donev has started to be contacted by Simply Group by phone and by email. Notwithstanding that Mr. Donev has not signed any contract or agreement with them, Crown Crest Capital continues to demand direct payment from him rather than billing through his Enbridge account. Mr. Donev obviously does not trust these parties to give them access to his bank account.

70. PTC knew, facilitated, and controlled the business practices of Simply Group in relation to Mr. Donev, similar to the other plaintiffs and Class Members.

### **Sarah-Jane Shaw**

71. Ms. Shaw is a resident of Hamilton, Ontario. She lives at her home, which she bought with hard-earned money in 2013.

72. In or about May 2015, a salesman from a Vendor company called Ontario Consumer Home Services knocked at her door to tell her he had a great offer for a high-efficiency furnace and air conditioner. Ms. Shaw agreed to sign an agreement which she understood was for a 12-month term at \$79.99 per month plus tax for each unit, with payments to be billed directly to her credit card.

73. The equipment was installed shortly thereafter and the monthly amounts were directly billed to her credit card beginning in 2015 and onward.

74. On or about March 14, 2018, Ms. Shaw received a letter from Crown Crest Financial Corp.,

one of the Simply Group companies, to notify her that they had purchased the Equipment and that she would notice a change in the name on any upcoming bills. The letter said that “[n]o action is required on your part” and that the “rate will remain the same.” This was not the case.

75. Unbeknownst to Ms. Shaw, Simply Group neglected to charge her credit card for any amounts for several months and then proceeded to send her account to collections. Simply Group did not contact her at all about any arrears or defaults prior.

76. Ms. Shaw did not find out that her accounts were in collections until around July 2018, at which point she immediately attempted to contact Simply Group to pay the amounts that they said were in arrears.

77. Despite her attempts to contact them and request they stop calling her, Simply Group continued to harass Ms. Shaw over the phone and by mail.

78. At one point, she was at work in a confined space when she received one of the harassing Simply Group phone calls. She tried to explain that she was at work and unable to speak with them, but then the Simply Group agent improperly called her employer to have her foreman deliver a message to Ms. Shaw to contact them.

79. Meanwhile, despite Ms. Shaw’s requests for Simply Group to inspect the furnace, which had been making a strange noise, a technician was never sent.

80. Throughout this time, Ms. Shaw thought she was dealing with a company called Crown Crest. In or around December 2022, while Ms. Shaw was continuing to deal with the situation, she received a phone call regarding her air conditioner and furnace from a representative who claimed to work for a company that was helping people free themselves of their contracts with Crown Crest.



81. Ms. Shaw jumped at this opportunity after the harassment she had been receiving, and a sales representative came to her house the following day. This representative went through a document with her and explained that their program would be a two-year term that provided rebates and would lower her monthly bills. He also told her that they would replace the equipment from Crown Crest and remove the notice of security interest that was registered on her home by Crown Crest. This was Ms. Shaw's first time hearing about a NOSI being registered on her home title.

82. Ms. Shaw did not sign any agreement with this representative but did sign in a box on his cell phone, which he told her was intended to give him authority to have her credit checked.

83. Following the removal of the old equipment and installation of the new equipment, Ms. Shaw received a letter from now a new company called "Simply Group Financial Corp.", which is another company owned and operated by Mr. Krimker, and affiliated with Simply Group. This letter informed her that she had purportedly signed a loan contract with a 20-year commitment whereby she would pay over \$30,000 total for the replacement furnace and air conditioner, which she could have bought for a fraction of that price.

84. Following this, Ms. Shaw decided to check her home title. To her shock, she learned that both Crown Crest Financial Corp. and Simply Group Financial Corp. had registered NOSIs on her home title, now totalling \$28,967.00.

85. Ms. Shaw has made countless efforts to resolve these issues with the Simply Group companies to no avail. In her interactions with these companies, it is not clear which Simply Group entity Ms. Shaw is dealing with at any one time.

86. As with Ms. Bonnick and Mr. Donev, PTC knew, financed, facilitated, and controlled the

business practices of Simply Group and their agents, as it related to the form and substance of Ms. Shaw's Consumer Agreements, as well as the conduct she was subjected to thereafter.

## **G. CAUSES OF ACTION**

### **PTC and Simply Group Conspired Against the Class**

#### *Unlawful Means Conspiracy*

87. PTC is jointly and severally liable for conspiracy with its Simply Group co-conspirators and any other co-conspirators unknown to the plaintiffs at this time. Together, they engaged in unlawful conduct directed at the Class, a significant portion of which included consumers in vulnerable positions who were preyed upon because of their vulnerability.

88. As part of the conspiracy, PTC and Simply Group:

- (a) Dictated, authorized, or otherwise approved the terms of the Consumer Agreements which were in violation of the *Consumer Protection Act* and Equivalent Consumer Protection Legislation, as particularized below, and unconscionable;
- (b) Implemented a scheme of widespread and systemic non-disclosure of material information to Class Members; and
- (c) Directed, encouraged, or otherwise authorized the improper registration of NOSIs, "liens" and other encumbrances on the home titles of Class Members in order to compel them to pay unconscionable sums.

89. PTC along with Mr. Krimker are Simply Group's directing minds and exercise complete control over the impugned conduct.

90. As particularized above, by its own written agreements, PTC played a material role that it exercised in the business of Simply Group as it related to the Consumer Agreements and the business of leasing HVAC and HVAC-Related Equipment to the Class. Through its various agreements and arrangements with Simply Group, PTC conspired to implement the wrongful and unlawful conduct and harm against the Class.

91. PTC has been instrumental in the development of the Simply Group scheme of using Consumer Agreements improperly entered into with the plaintiffs and other Class Members to extort unconscionable sums from them under these Consumer Agreements, and the registration of unlawful encumbrances in arbitrary amounts against the home titles of those consumers to leverage those payouts.

92. Further, PTC conspired with Simply Group to engage in unfair practices, particularized below, by directly requiring and engaging in the impugned unlawful practices, while continuing to finance, facilitate, encourage, direct, authorize, and condone the use of illegal Consumer Agreements for PTC's own benefit.

93. PTC's conduct was unlawful contrary, amongst others, to the *Consumer Protection Act* and Equivalent Consumer Protection Legislation as particularized below.

94. PTC knew or ought to have known that the unlawful conduct would result in injury to the Class. The intended lucrative injury to the Class in fact motivated PTC's conspiratorial conduct in conjunction with Simply Group against the Class.

95. The Class suffered harm and losses as a result of this conspiracy.

*Predominant Purpose Conspiracy*

96. PTC is jointly liable with its Simply Group co-conspirators and any other entities unknown to the plaintiffs at this time for predominant purpose conspiracy. Together, PTC and Simply Group acted for the unlawful purpose of manipulating the market for financial gain by:

- (a) Exploiting vulnerable consumers by facilitating, coordinating and authorizing the predatory sales tactics of the door-to-door Vendors;
- (b) Failing to take steps to ensure that the obligations of the successors and assigns under the Consumer Agreements to service the Equipment subject to the agreements are fulfilled as required;
- (c) Systemically failing to disclose material information to Class Members;
- (d) Dictating, authorizing and requiring the unlawful and unconscionable terms of the Consumer Agreements, including the uniform inclusion in fine print of a term that allowed the Consumer Agreements to be assigned to other persons without the notice or consent to Class Members, as well as the inclusion in fine print of a term that allowed and indeed required the relevant Vendors and all of their successors and assigns the right to register unlawful NOSIs, “liens” and other encumbrances on the homes of Class Members without their notice or approval; and
- (e) Directing, incentivizing and authorizing the unlawful registration of NOSIs, “liens” and other encumbrances on the home titles of Class Members for the purpose of extracting unconscionable sums from consumers.

97. PTC knew or ought to have known that the impugned conduct would result in injury to the Class. The intended injury to the Class in fact motivated PTC’s conspiratorial conduct in conjunction with Simply Group against the Class.

98. The Class suffered harm and losses as a result of this conspiracy.

**PTC Breached *Consumer Protection Act, 2002*, its Regulations, and Equivalent Consumer Protection Legislation**

99. PTC and Simply Group together, and Simply Group acting as agents of PTC, breached the *Consumer Protection Act* and Equivalent Consumer Protection Legislation.

Ontario

100. The Vendors are each a “supplier” for the purposes of the *Consumer Protection Act*.

101. PTC is a supplier and/or successor party to the Consumer Agreements concluded by the Vendors and Simply Group who acted as their agents under the various agreements, particularly the concurrent leases. PTC has admittedly positioned itself as a “co-lessor” together with Simply Group regarding the Consumer Agreements with the plaintiffs and the Class.

102. PTC has financed the entire scheme of Simply Group against the Class. It has the full right of control over, among other things, the accounts into which customer payments are received, the Vendors which are approved to engage with consumers door-to-door and originate Consumer Agreements, the form and substance of such Consumer Agreements, and the types of consumers which Consumer Agreements are allowed to be entered into.

103. PTC was thus instrumental and jointly engaged with the Vendors in the unlawful business of leasing HVAC or HVAC-Related Equipment to the Class in the impugned manner particularized herein. Accordingly, PTC is a “supplier” under the *Consumer Protection Act*.

104. Alternatively, PTC is an assignee liable under s. 18(13) of the *Consumer Protection Act*.

105. The Class Members’ Consumer Agreements are “consumer agreements” for the purposes

of the *Consumer Protection Act*.

106. The plaintiffs and tens of thousands of other Class Members are “consumers” located in Ontario for the purposes of the *Consumer Protection Act*.

***The Consumer Agreements breached direct agreement provisions***

107. The Consumer Agreements are direct agreements as defined under the *Consumer Protection Act*. 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.

108. *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.

109. The total amount payable by consumers under the Consumer Agreements is comprised of the monthly amounts paid and demanded from consumers for an often unspecified term, the amounts of any registered encumbrances against the titles to the homes of the plaintiffs and other Class Members, as well as any amounts and fees demanded from Class Members where the encumbrances registered against consumers’ titles are owned by or otherwise controlled by PTC and its co-conspirators.

110. PTC and its co-conspirators, as well as their predecessors where applicable, failed to disclose this information and other material information required under the governing regulations to the plaintiffs and other Class Members. The Vendors did not disclose the payable amounts when

the Class Members were signing the Consumer Agreements because these amounts were unilaterally determined by Simply Group together with PTC, after the fact.

111. PTC had the authority to approve the form of contract and appoint Vendors who could originate such Consumer Agreements, and yet, through their agents, failed to disclose to the Class Members all of the material information necessary for consumers to make an informed decision.

112. This information was material, required under the *Consumer Protection Act*, and it was not known until after a NOSI was registered against title unbeknownst to the consumer or otherwise when payment was demanded pursuant to a NOSI registered on title.

***The Consumer Agreements breached leasing requirements***

113. The Consumer Agreements were leases as defined under the *Consumer Protection Act*. PTC was not only a co-lessor together with Simply Group, but it also had control and ownership over the leased HVAC and HVAC-Related Equipment as well as the Consumer Agreements pursuant to the concurrent lease agreements detailed above.

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

115. *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.

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

117. The amounts for which PTC and its Simply Group co-conspirators registered encumbrances on the titles to the homes of the plaintiffs and other Class Members, as well as amounts demanded from consumers plus any monthly and all other amounts already paid by the consumer toward the HVAC and HVAC-Related Equipment and all other imposed fees, constituted the total lease cost under the Consumer Agreements.

118. The Consumer Agreements, which PTC controlled and which Vendors signed with the plaintiffs and other Class Members, did not disclose nor could they have disclosed this material information to the Class Members because of PTC and Simply Group's joint normal practice of unilaterally determining these amounts after the fact.

119. This information was material, required under the regulations, and it was not known until PTC directed or otherwise permitted Simply Group to demand payment from Class Members for amounts not previously disclosed, or otherwise for encumbrances improperly registered against title to consumers' homes.

***The Consumer Agreements constituted an unfair practice***

120. 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.

121. 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 unconscionable unfair practices contrary to section 15 of the *Consumer Protection Act*.

122. Here, the Consumer Agreements' failure to disclose the material information particularized above to Class Members constituted an unfair practice contrary to section 14. PTC directed and



controlled Simply Group's practice of registering encumbrances with grossly inflated amounts against title and/or demanding such unconscionable sums from consumers in order to discharge registrations owned or controlled by them. This in conjunction with the grossly adverse unilateral terms of the Consumer Agreements, which were required to be approved by PTC, renders them unconscionable contrary to section 15.

123. Ms. Bonnick's situation illustrates the grossly one-sided and improvident terms imposed by PTC and its agents against unknowing, vulnerable consumers: even disregarding the misrepresentations of the door-to-door Vendor in this instance, for an air cleaner and a water softener (each valued at a few hundred dollars) Simply Group 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.

124. The profits from these practices flowed directly to PTC, which ultimately controlled and owned the Consumer Agreements and related equipment of Class Members such as Ms. Bonnick,

125. Ms. Bonnick did not receive a copy of the purported Consumer Agreement contrary to the *Consumer Protection Act* until 2023, long after the Simply Group Action was commenced.

126. The impugned conduct breached sections 14 and 15. PTC actively guided, participated in, knew, or ought to have known, the illegality of its conspiratorial conduct together with Simply Group under the *Consumer Protection Act*.

127. PTC directed and allowed Simply Group to systemically take advantage of the inability of the plaintiffs 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 Consumer Agreements.

128. PTC is liable as a supplier for these unfair practices.

129. Alternatively, pursuant to section 18(12) of the *Consumer Protection Act*, PTC is jointly and severally liable for these unfair practices particularized above together with Simply Group and the Vendors who signed Consumer Agreements with Class Members.

130. Alternatively, PTC obtained ownership and control over the Consumer Agreements pursuant to the various agreements it had with Simply Group as particularized above and is thus liable as an assignee of the Consumer Agreements pursuant to section 18(13) of the *Consumer Protection Act*.

131. It is not in the interests of justice to require that notice be given to the defendant pursuant to section 18(13) of the *Consumer Protection Act* and the plaintiffs therefore ask for an order from the Court disregarding such a notice requirement. Indeed, PTC's role in the impugned scheme was kept hidden from the Class until very recently when it came to light in PTC's CCAA proceeding.

*British Columbia*

132. The HVAC and HVAC-Related Equipment which are the subject of the Consumer Agreements are "goods" and the related services are "services" within the meaning of section 1(1) of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

133. The plaintiffs and/or some Class Members are "consumers" and the Consumer Agreements assigned to, or owned by, the defendant are "consumer transactions" for the purposes of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

134. PTC is a successor party and assignee of the Consumer Agreements and the related Equipment therein as particularized above. As a result, PTC is a "supplier" for the purposes of the

*Business Practices and Consumer Protection Act*, SBC 2004, c 2, which defines a supplier as any “person” who participates in a consumer transaction by supplying goods or services to a consumer or soliciting or offering goods and services as it relates to a consumer transaction, including the successor to, and assignee of, any rights or obligations of that person.

135. As particularized above, PTC engaged in and otherwise facilitated deceptive acts or practices by failing to disclose certain material information to Class Members on a systemic basis, including the total amount payable by Class Members under the Consumer Agreements in breach of sections 4(1)-(3) and 5(1).

136. As a successor and assignee of the Equipment and the rights in respect of the Consumer Agreements, PTC directly profited from the deceptive acts or practices as alleged. Further, PTC had direct control over and was required to approve of the persons making such representations to Class Members as well as exercising control over the form and substance of the Consumer Agreements at issue.

137. Further and in the alternative, the Consumer Agreements are “direct sales contracts” for the purposes of the BC legislation and thus are governed by sections 19 and 20 of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2. Under these requirements, consumers must receive all material information, including costs payable (including taxes), and the total price under the contract, including the total cost of any credit under the Consumer Agreement. Consumers are also entitled to receive a copy of any agreement. This material information was not provided to the Class Members under the Consumer Agreements, the form and substance of which was subject to the approval of PTC. At times, Class Members also did not receive copies of their signed Consumer Agreements contrary to the requirements.

138. Further and in the alternative, PTC and its agents have violated the cancellation provisions articulated in the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 by:

- (a) Failing to issue refunds within 15 days to consumers who cancelled their direct sales contracts (i.e. their Consumer Agreements) in breach of section 27; and
- (b) Failing to cancel future preauthorized payments or charges after Class Members cancelled their Consumer Agreements in breach of section 56.

139. The Director of Consumer Protection BC has issued a decision and compliance order against some of Simply Group and/or their related entities in relation to violations of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 for the misconduct pleaded herein and in Simply Group Action.

140. As a result of the foregoing, PTC is jointly and severally liable, in conjunction with Simply Group under sections 171 and 172 of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

#### Alberta

141. The HVAC and HVAC-Related Equipment and services which are the subject of the Consumer Agreements are “goods” and “services” within the meaning of section 1 of the *Consumer Protection Act*, RSA 2000, c C-26.3.

142. The plaintiffs and the other Class Members are “consumers” and the Consumer Agreements assigned to, or owned by the defendant are “consumer transactions” for the purposes of the *Consumer Protection Act*, RSA 2000, c C-26.3

143. PTC is a successor party and assignee of the Consumer Agreements and the related

Equipment therein, including the right or entitlement to receive money from consumers as a result of the Consumer Agreements as particularized above. As a result, PTC is a “supplier” for the purposes of the *Consumer Protection Act*, RSA 2000, c C-26.3, which defines a supplier as any “person” who, among other things, receives or is entitled to receive money as a result of a consumer transaction.

144. The *Consumer Protection Act*, RSA 2000, c C-26.3 creates a statutory cause of action against suppliers who engage in an unfair practice in relation to a consumer transaction, including anything that might reasonably deceive or mislead a consumer. PTC has engaged in or facilitated such unfair consumer practices by failing to disclose certain material information to Class Members on a systemic basis, including the total amount payable by Class Members under the Consumer Agreements and engaging in the conduct as particularized above in breach of sections 6(2), 6(3)(c)-(d), 6(4)(a), and 6(4)(t.1).

145. The defendant, PTC is jointly and severally liable with Simply Group and their affiliates under section 7.3(1) of the *Consumer Protection Act*, RSA 2000, c C-26.3 for unfair practices particularized herein.

146. Class Members in Alberta are entitled to relief from damage or loss incurred against PTC in accordance with sections 13(1), 13(2), and 142.1 of the *Consumer Protection Act*, RSA 2000, c C-26.3

147. For the same reasons particularized herein, Alberta Class Members deserve exemplary or punitive damages under sections 13(2)(c) and 142.1(2)(b) of the *Consumer Protection Act*, RSA 2000, c C-26.3.

148. The Director of Fair Trading of Alberta has issued an order against some of Simply Group

and/or their related entities in relation to violations of the *Consumer Protection Act*, RSA 2000, c C-26.3. for the misconduct pleaded herein and in Simply Group Action.

149. It is not in the interests of justice to require that notice be given pursuant to section 7.2(3) of the *Consumer Protection Act*, RSA 2000, c C-26.3 and the plaintiffs therefore ask for an order from the Court disregarding such a notice requirement.

Saskatchewan

150. The HVAC and HVAC-Related Equipment and services which are the subject of the Consumer Agreements are “goods” and “services” within the meaning of section 2 of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

151. The plaintiffs and the other Class Members are “consumers” for the purposes of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

152. PTC has the full right of control over, among other things, the accounts into which customer payments are received, the Vendors which are approved to engage with consumers door-to-door and originate Consumer Agreements, the form and substance of such Consumer Agreements, and the types of consumers which Consumer Agreements are allowed to be entered into. The defendant is thus instrumental and jointly engaged in the business of renting HVAC or HVAC-Related Equipment to the Class. Accordingly, PTC is a “supplier” within the meaning of section 2 of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

153. *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 creates a statutory cause of action against suppliers who engage in an unfair practice in relation to a consumer transaction made in Saskatchewan, including anything that might reasonably deceive or mislead a consumer. PTC has engaged in or facilitated such unfair consumer practices by failing to disclose

certain material information to Class Members on a systemic basis, including the total amount payable by Class Members under the Consumer Agreements and engaging in the conduct as particularized above in breach of sections 6(a), 7(l), 7(q)-(r) and 8(1).

154. Saskatchewan Class Members are entitled to an order of restitution of any money given or furnished by the consumer, or damages for any loss suffered because of the contraventions of the statute under sections 93(1)(a)-(b) of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

155. For the same reasons particularized herein, Class Members in Saskatchewan deserve exemplary or punitive damages under section 93(1)(b) of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

#### Manitoba

156. The HVAC and HVAC-Related Equipment and services which are the subject of the Consumer Agreements are “goods” within the meaning of section 1 of *The Business Practices Act*, CCSM c B120.

157. The plaintiffs and the other Class Members are “consumers”, the defendant is a “supplier” and the Consumer Agreements assigned to, or owned by the defendant are “consumer transactions” for the purposes of *The Business Practices Act*, CCSM c B120.

158. *The Business Practices Act*, CCSM c B120 creates a statutory cause of action against suppliers, who engage in unfair business practices in relation to a consumer transaction. PTC has engaged in or facilitated such unfair consumer practices by failing to disclose certain material information to Class Members on a systemic basis, including the total amount payable by Class Members under the Consumer Agreements in breach of sections 2(1) and 5.

159. Further and in the alternative, PTC has engaged in or facilitated unfair consumer practices by directing, authorizing or otherwise condoning the systemic practice of taking advantage of vulnerable consumers in breach of section 3(2)(a) or otherwise by imposing terms and conditions under the Consumer Agreements on Class Members which are so adverse to the consumers as to be inequitable in breach of section 3(2)(b) of *The Business Practices Act*, CCSM c B120.

160. Consequently, Manitoba Class Members are entitled to damages for any loss suffered or an order that the supplier repay all or part of any amount paid under section 23(2) of *The Business Practices Act*, CCSM c B120.

161. PTC knew or ought to have known of the unlawful conduct engaged in by its Simply Group agents and other affiliates, yet continued to authorize, direct and encourage such misconduct. They have not exercised any due diligence despite the multiple charges and findings made against several of Simply Group in Ontario, British Columbia and Alberta. As a result of the foregoing, as well as the reasons particularized herein, Class Members in Manitoba deserve exemplary or punitive damages under section 23(4) of the *Business Practices Act*, CCSM c B120.

Prince Edward Island

162. The HVAC and HVAC-Related Equipment and services which are the subject of the Consumer Agreements are “goods” within the meaning of section 1 of the *Business Practices Act*, RSPEI 1988, c B-7. The plaintiffs and the other Class Members are “consumers” for the purposes of the *Business Practices Act*, RSPEI 1988, c B-7.

163. The *Business Practices Act*, RSPEI 1988, c B-7 creates a statutory cause of action against suppliers who engage in unfair practices, including by making unconscionable consumer representations. PTC has engaged in or facilitated such unfair consumer practices by failing to



disclose certain material information to Class Members on a systemic basis, including the total amount payable by Class Members under the Consumer Agreements in breach of sections 2(b) and 3(1).

164. By its involvement and direction as particularized above, PTC is jointly and severally liable under section 4(3) of the *Business Practices Act*, RSPEI 1988, c B-7.

165. In the alternative, PTC is liable as an assignee under section 4(4) of the *Business Practices Act*, RSPEI 1988, c B-7.

166. Pursuant to section 4(1) of the *Business Practices Act*, RSPEI 1988, c B-7, Prince Edward Island Class Members are entitled to damages, rescission of the Consumer Agreements, and/or to recover the amount paid that exceeds the fair market value of the Equipment which is the subject of the Consumer Agreements.

167. For the same reasons particularized herein, Prince Edward Island Class Members deserve exemplary or punitive damages under subsection (2) of the *Business Practices Act*, RSPEI 1988, c B-7.

*Newfoundland and Labrador*

168. The HVAC and HVAC-Related Equipment which are the subject of the Consumer Agreements are “goods” and the related services are “services” within the meaning of section 2 of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

169. The plaintiffs and the other Class Members are “consumers”, the defendant is a “supplier” and the Consumer Agreements assigned to, or owned by the defendant are “consumer transactions” for the purposes of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

170. The *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1. creates a statutory cause of action against suppliers, who engage in unfair consumer practices in relation to a consumer transaction. The defendant has engaged in or facilitated such unfair consumer practices by failing to disclose certain material information to Class Members on a systemic basis, including the total amount payable by Class Members under the Consumer Agreements in breach of sections 7(1) and 9(1) of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

171. As a result, Newfoundland & Labrador Class Members are entitled to damages for loss suffered, rescission of the Consumer Agreements and the repayment of the amount paid to PTC and Simply Group pursuant to section 10(2) of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

172. For the same reasons particularized herein, Newfoundland & Labrador Class Members deserve exemplary or punitive damages under section 10(2)(b) of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

### **PTC Committed Slander of Title**

173. PTC and Simply Group's conduct constituted slander of title.

174. PTC directed, required, authorized and facilitated the registration or otherwise caused the registration of false statements against the plaintiffs' and other Class Members' home titles.

175. These registrations on title and PTC's involvement in, and benefitting from, the abuse of registrations owned and assigned to them by other persons were intended to induce others not to deal with the Class Members unless the amounts registered were paid and the registration discharged.

176. Malice motivated this conduct and PTC had an improper motive to injure Class Members without just cause or excuse contrary to the *Consumer Protection Act* and Equivalent Consumer Protection Legislation.

177. As a result of this misconduct, the plaintiffs 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 defendant and its agents, receiving a lowered price for their homes because of the amounts charged against their titles, paying higher interest rates when refinancing or obtaining loans secured against their title, and damaged credit.

### **The Consumer Agreements Are Unconscionable and Invalid**

178. In light of the material non-disclosure particularized above, the terms imposed on all Class Members, and the systemic one-sided and predatory circumstances in which the Consumer Agreements were formed, all the Consumer Agreements are unconscionable and therefore invalid.

179. The Consumer Agreements were one-sided contracts of adhesion created under unfair circumstances that imposed improvident terms on the Class.

180. The terms that PTC, having full control and authority over the Consumer Agreements, imposed on the plaintiffs and Class Members were grossly unfair and improvident.

181. Class Members were denied material disclosure under consistently unfair circumstances resulting in the improvident bargains particularized above.

182. There was an overwhelming imbalance in bargaining power caused by the Class Members' vulnerability and the information asymmetry between the parties, which was perpetuated by PTC and Simply Group's systemic non-disclosure of material information as detailed above.

183. PTC and Simply Group knew all Class Members' vulnerability, and lack of information and effective redress against PTC and Simply Group's predatory conduct. PTC deliberately sought to take advantage of those vulnerabilities to maximize its financial gain in conjunction with its Simply Group co-conspirators.

### **PTC's Unjust Enrichment**

184. PTC has been unjustly enriched to the extent that it has charged or caused to be charged through its agents and retained any amounts from the Class under the Consumer Agreements.

185. The Class Members suffered a deprivation corresponding to PTC's enrichment.

186. The Consumer Agreements being invalid, unenforceable, unconscionable, and unlawful: there is no juristic reason for the defendant's enrichment and the Class Members' corresponding deprivation.

### **H. REMEDIES**

187. The Consumer Agreements were not made in accordance with the *Consumer Protection Act* and Equivalent Consumer Protection Legislation and are not binding on the plaintiffs and the other Class Members.

188. The Consumer Agreements resulted from unfair practices for which Class Members are entitled to remedies under the *Consumer Protection Act* and Equivalent Consumer Protection Legislation.

189. Class Members are entitled to rescission and/or cancellation of the Consumer Agreements.

190. The Consumer Agreements are also invalid because they are unconscionable, under statute and the common law.

191. Accordingly, the Class Members are entitled to restitution of all monies paid.

192. As a result of the conduct pleaded above, the plaintiffs and the other Class Members have suffered loss and damage in an amount to be determined at trial for which PTC is jointly and severally liable.

193. Ms. Bonnick and the other Class Members seek their damages for, amongst other harms, all amounts paid with respect to the HVAC and HVA-Related Equipment, the amounts by which the Class Members' payments under the Consumer Agreements exceeded the value that the goods or services have to the Class Members, the registration of undisclosed amounts on title, all amounts paid to remove improperly registered encumbrances from title, damage to their credit, damage to their properties, the unlawful removal and destruction of Class Members' existing valuable and functioning Equipment, and all of their out of pocket and inconvenience damages.

194. It is in the interests of justice to waive any notice requirements under the *Consumer Protection Act* and Equivalent Consumer Protection Legislation, particularly as the defendant and its affiliates concealed the actual state of affairs from the Class Members.

195. Further, the plaintiffs and the other Class Members seek disgorgement of all of the profits generated by PTC as a result of the wrongful conduct particularized herein. Disgorgement is appropriate for the following reasons, among others:

- (a) PTC obtained those unlawful gains through its intentional conspiracy with Simply Group against the Class;
- (b) PTC obtained those unlawful gains through its intentional imposition and enforcement of unconscionable and invalid Consumer Agreements on the Class;
- (c) PTC made unlawful gains as a result of slander of title and breaches of the

*Consumer Protection Act* and Equivalent Consumer Protection Legislation;

- (d) PTC made unlawful gains in such a manner that PTC cannot in good conscience retain it;
- (e) the integrity of the marketplace would be undermined if the defendant were to keep its unlawful gains resulting from the impugned conduct;
- (f) absent the wrongful conduct, Class Members would not have entered into the Consumer Agreements, and PTC would never have received the unlawful gains arising from the Consumer Agreements; and
- (g) disgorgement of profits retained by the defendant would serve a compensatory purpose.

### **Interlocutory and Permanent Injunction / Appointment of Receiver**

196. The impugned conduct is ongoing.

197. The impugned conduct is causing irreparable harm to Canadian consumers. The defendant should be enjoined together with Simply Group from engaging in the impugned conduct until the resolution of this action on its merits.

198. Further, PTC together with Simply Group should be permanently enjoined from engaging in the conduct particularized herein.

199. 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, which has reached a “crisis” level as acknowledged by the responsible Minister in the Government of Ontario.

200. Absent an injunction, nothing stops PTC from continuing to pursue arrangements and agreements with other companies to repeat the same conduct at issue in this action and Simply

## Group Action.

201. In the alternative, it is just and convenient, for the reasons pleaded herein, to appoint a receiver under the *Courts of Justice Act* over all of the property, assets and undertakings of the defendant, either in their entirety or, as deemed appropriate by the court, over only such of the property, assets and undertakings of the defendant that are used in committing the impugned conduct and or any property, assets or undertaking, which arise as a result of the impugned conduct and or over any proceeds received or benefit derived by the defendant from the impugned conduct.

202. Appointing a receiver as set out herein will immediately divest the defendant of the power or authority to continue the impugned conduct by exclusively transferring that authority to the receiver, who will then bring the impugned conduct to an end in a transparent fashion under the direction and supervision of the court.

203. Such receiver shall have such powers as the court determines just to ensure the termination of the impugned conduct, the tracing and recovery of the proceeds arising therefore, and the powers, ability and discretion to, where possible, unwind or undo the damage done by the defendant and its co-conspirators as detailed herein.

## **Punitive Damages**

204. Due to the egregious nature of the defendant's conduct, including, without limiting the generality of the foregoing, conspiring to cause, direct, and authorize the extortion of unconscionable sums from Class Members pursuant to unlawful Consumer Agreements to obtain illegal profits at the expense of consumers, the Class Members are entitled to recover aggravated, punitive, and exemplary damages.

205. Despite charges laid and decisions ordered as against certain of Simply Group by the

consumer protection ministries of Alberta, British Columbia and Ontario, PTC continued to direct and authorize the misconduct particularized herein to enrich itself on the back of elderly, disabled and other similarly vulnerable Canadians.

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

207. The defendant has callously taken advantage of consumers' vulnerabilities to trap consumers in a scheme that threatened to deprive them of their homes.

208. Further, the Class Members are entitled to punitive damages under the *Consumer Protection Act* and Equivalent Consumer Protection Legislation and at common law to relieve the defendant of its wrongful profits made while flouting the law.

## **I. FRAUDULENT CONCEALMENT**

209. PTC and its agents willfully concealed the unlawfulness of the Consumer Agreements from the Class Members. Further, PTC willfully concealed its involvement in the matters that are the subject of Simply Group Action until its application under the CCAA.

210. The plaintiffs 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 PTC's knowledge, concealment and denial of facts, which prevented the Class from discovering their cause of action.

211. The plaintiffs and the Class Members could not reasonably have known that the loss or damage which had occurred was caused or contributed to by acts of the defendant, or that a court proceeding would be an appropriate means to seek to remedy the injury until this PTC's application under the CCAA or otherwise until this action was filed.



212. The plaintiffs and the Class Members plead and rely on the *Limitations Act, 2002*, SO 2002, c 24, Sched B, s. 5, the *Real Property Limitations Act*, R.S.O. 1990, c. L.15, 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.

213. The plaintiffs 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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-and-

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**Defendant**

**Court File No.**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

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