Estate and Court File No. 32-158436

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALE

REPORT OF THE TRUSTEE'S PRELIMINARY ADMINISTRATION

January 5, 2012

BACKGROUND

Corporate Group Ownership, Management and Operations

1. 787755 Ontario Limited (**"787"**) is a member of a group of companies (referred to in this report as the **"Debtors"** or the **"Loretta Group"**) over which Ernst & Young Inc. (**"EYI"**) was appointed Interim Receiver, and subsequently Receiver, in November 2010, as described in greater detail below. Although this report pertains only to 787 (the only member of the Loretta Group that has been adjudged bankrupt), in order to give creditors of 787 a more complete picture of the causes of its insolvency, EYI in its capacity as trustee of the estate of 787 (the **"Trustee"**) has provided certain background information in respect of the Loretta Group as a whole.

2. The ownership and senior management structure of the Loretta Group, as the Trustee understands it and was initially described to the Bank of Montreal (**"BMO"**), is set out below, and is also summarized in **Appendix "A"** to this Report:

   (a) Mr. Giuseppe (**"Joe"**) Gatti, a resident of Ontario, was the individual responsible for the overall direction of the Loretta Group. Mr. Gatti was the Chief Operating Officer of 787. Mr. Gatti was listed on the web site of the Loretta Group (www.lorettafoods.com) as the President and CEO of Loretta Foods, one of the names by which the Loretta Group described itself;

(b) The sole shareholder of 787 is Mr. Peter Nelipa. Mr. Nelipa was also the Director of Operations for the flour milling operations carried out by 211, as described below;

(c) The common shares of Tarbrac Holdings Inc. ("**Tarbrac**") are owned by Ms. Taragh Bracken, whom the Trustee understands is the spouse of Mr. Gatti. Ms. Bracken is also the sole director of Tarbrac. EYI was told that 100% of the Class A preference shares of Tarbrac are held by GRS International Ltd., which acted as broker for 787 on certain of the trading transactions described below;

(d) 2110458 Ontario Limited ("**211**"), 2131413 Ontario Limited ("**213**"), and North Dakota Holdings Ltd. ("**NDHL**") are wholly-owned subsidiaries of Tarbrac;

(e) 211 (o/a "Loretta Flour") produced various types of hard wheat flour that was sold to retail, food service and industrial customers;

(f) 213 (o/a "Loretta Spice") sourced spices and food mixes for redistribution, as well as blending and repackaging spices for sale to retail and institutional customers; and

(g) NDHL leased facilities in Monroe, Michigan and Colgate, North Dakota that were used to hold inventory of the Loretta Group that was distributed by the Loretta Group to customers in the United States.

3. The internal financial statements of the Loretta Group provided by Loretta Group management to BMO indicated consolidated assets and year-to-date net income of $64.7 million and $2.8 million, respectively, at September 30, 2010.

787 Management and Operations

4. 787 operated from leased premises located at 6815 Davand Drive in Mississauga, Ontario, (the "**Davand Premises**"). The Davand Premises also served as the head office location for the Loretta Group.

5. 787 was known as the "Food Service and Catering Division" of the Loretta Group. Operating under the registered trade name "**NDT Food Service**", 787 was responsible for the daily production of food items, including sandwiches, grab and go meals, soups, salads, desserts and pastries for sale by or in mobile caterers, vending machines, contract caterers and convenience stores. Orders were taken and filled in person or online and were delivered to the customer or picked-up at the, on site, cash and carry outlet store located at the Davand Premises. The Food Service and Catering Division employed approximately 52 people. Day-to-day operations of the Food Service and Catering Division were directed by a Director of Operations named John Curly who was located at the Davand Premises.

6. 787 was also engaged in trading bulk sugar, flour, spices and other items, operating under the registered trade names "**New Durham Trading**" and/or "**Skyway Wholesale**." The Trustee understands that these activities were directed by Mr. Gatti, and that 787 was no longer conducting these activities at the date of the Interim Receivership (described below).

OTHER INSOLVENCY PROCEEDINGS

Interim Receivership

7. On November 10, 2010, BMO made an application to the Ontario Superior Court of Justice (Commercial List) for an order, and the Court made an order, appointing EYI as interim receiver (in such capacity, the "**Interim Receiver**") pursuant to section 47(1) of the *Bankruptcy & Insolvency Act* ("**BIA**") and pursuant to section 101 of the *Courts of Justice Act* ("**CJA**") of the assets, undertakings and properties (the "**Property**") of 787, 211, 213, and Tarbrac.

8. Grounds for the Interim Receivership application included (i) BMO's concerns regarding the dissipation in value of its security due to the fact that the Debtors, in an effort to avoid repayment of the BMO indebtedness, had demonstrated a willingness to subvert funds to which BMO was entitled, and the Debtors' admitted inability to meet their obligations as they fell due.

9. The Interim Receiver was not authorized or directed to take possession or control of the Property of the Debtors. The Interim Receiver was authorized and directed to protect and preserve the assets of the Debtors, to review the affairs of the Debtors and to report to the Court in connection therewith, and to report and make recommendations in respect of the sale of the businesses and assets of the Debtors.

Receivership

10. On November 26, 2010, EYI was appointed as receiver and receiver and manager (the "**Receiver**") of the Debtors pursuant to section 243 of the BIA and section 101 of the CJA. A copy of the order appointing EYI as the Receiver (the "**Receivership Order**"), as well as all other orders entered during the receivership, are available on the Receiver's website at www.ey.com/ca/loretta. The Receivership Order authorized the Receiver to, among other things, deal with the Property of the Loretta Group.

11. As described in the Fourth Report of the Receiver dated July 14, 2011 and available on the Receiver's web site, the Receiver has realized substantially all of the assets of the Loretta Group, including the Food Services Business of 787 that was sold as a going concern to Rosedale Food Company Inc. on February 18, 2011 pursuant to a court order approving the sale.

12. Net receivership realizations have been substantially less than the Receiver had originally anticipated based on the internal financial statements of the Loretta Group and on oral comments from Loretta management during the interim receivership concerning the level of unsolicited interest in the businesses from third parties and with respect to the appraised values of certain assets. Consequently, there will be no distribution by the Receiver to the secured creditors of the Loretta Group and no funds available for distribution to the bankruptcy estate of 787.

Bankruptcy of NDHL

13. NDHL was adjudged bankrupt by a court order dated February 28, 2011, and Grant Thornton Limited was appointed trustee of the estate of NDHL. The Trustee understands

from discussions with Grant Thornton Limited that there are no net realizations available for distribution in the bankruptcy of NDHL.

Bankruptcy of 787

14. On November 30, 2010, immediately following the granting of the Receivership Order, BMO filed an application for a bankruptcy order ("**Bankruptcy Application**") in respect of the Debtors. The stay of proceedings in the Receivership Order did not prevent any creditor from filing a bankruptcy application in respect of the Debtors, provided however that leave of the Court would be required to take any further action in respect of such application.

15. The Bankruptcy Application was filed early in the receivership proceedings ("**Receivership Proceedings**") in respect of the Debtors in order to set the date of the "Initial Bankruptcy Event" and provide certainty as to the dates for any voidable transactions which may have been entered into by the Debtors. At the time of the initiation of the Receivership Proceedings there were several allegations of improper conduct by the Debtors and BMO wanted to ensure that any transactions entered into by the Debtors in the period prior to the Receivership Proceedings could be reviewed pursuant to the provisions of the BIA.

16. On December 19, 2011, BMO applied for an order to lift the stay of proceedings granted by the Receivership Order for the sole purpose of permitting the Bankruptcy Application for a bankruptcy order ("**Bankruptcy Order**") to be heard in respect of 787. BMO chose not to obtain a bankruptcy order in respect of any of the other Debtors. The Bankruptcy Application was uncontested and the Bankruptcy Order was granted by the Court pursuant to the BIA and EYI was named Trustee in bankruptcy (the "**Trustee**") of all the assets, undertakings and properties (the "**Assets**" or "**Property**") of 787. Attached as **Appendix "B"** is a copy of the Bankruptcy Order.

CIVIL PROCEEDINGS

17. In addition to the insolvency proceedings, BMO has initiated civil proceedings against numerous entities including 787, 211, 213, Tarbrac, certain of the directors and officers

of the Loretta Group, and certain of the entities and individuals with which the Loretta Group conducted business ("**Civil Proceedings**"). It is alleged by BMO in the Civil Proceedings that certain officers and directors of the Debtors, including Mr. Gatti, participated in a sophisticated cheque-kiting scheme, misstated the value and collectability of the Debtors' accounts receivable and generally defrauded BMO of the funds advanced to the Debtors. A copy of BMO's amended statement of claim in the Civil Proceedings is attached as **Appendix "C"**.

ASSETS

18. Set out below is a summary of 787's assets.

(a) Cash on Hand – Receiver

At the date of bankruptcy, there was approximately $195,000 in the Receiver's bank accounts. The entire amount is encumbered.

(b) Accounts Receivable - Receiver

As at the date of the Bankruptcy Application, 787's books and records indicated outstanding accounts receivable totalling approximately $6.8 million, consisting of approximately $600,000 in accounts receivable of the Food Services Business and approximately $6.2 million in accounts receivable of the spice trading business of 787. The Receiver is continuing to pursue collection of the receivables of the Food Services Business. However, due to customers asserting various offset claims the realizable value of the accounts receivables is unknown at this time. The entire amount is encumbered.

As described in detail in the Third Report of the Receiver dated May 9, 2011, the Receiver has attempted to collect the accounts receivable of the spice trading business, has concluded that these accounts receivable are not genuine, and does not intend to expend further professional fees attempting to pursue them.

SECURITY INTEREST

19. The primary secured creditors of 787 are BMO and Signature Bank, a New York-based financial institution ("**Signature**").

20. The Trustee understands that BMO is owed approximately US$17.6 million and C$50,000 excluding costs and excluding interest accruing from November 4, 2010 (the "**BMO Debt**") and has security upon all of the assets of the Debtors (including a pledge of the shares of 787) as security for those obligations. These obligations arise under two agreements. The first is a term sheet pursuant to which BMO provided four credit facilities to 787, 213 and 211. The Trustee understands that Tarbrac has guaranteed the obligations of 787, 213 and 211 to BMO under the term sheet. The second is a discounting facility agreement between 787 and BMO pursuant to which BMO factored certain of 787's accounts receivable. The Trustee understands that 213, 211 and Tarbrac have each guaranteed the obligations of 787 to BMO under that discounting facility agreement. The Trustee understands that each of 213, 211, 787 and Tarbrac have granted security interests and charges upon all of their property in favour of BMO as security for their obligations to BMO. In addition, the Trustee understands that Mr. Nelipa has pledged the shares in 787 to BMO as security for the obligations arising under his guarantee of the obligations of the Debtors to BMO.

21. The Trustee understands that the Receiver previously obtained an opinion from Borden Ladner Gervais LLP ("BLG"), independent counsel to the Receiver, which provides that subject to the usual qualifications, the security provided by 787 to BMO is registered in accordance with the *Personal Property Security Act* (Ontario) and is valid and enforceable in accordance with their terms.

22. The Trustee understands that 787, 211 and 213 are indebted to Signature in the amount of approximately US$12.3 million (the "**Signature Debt**") and that each have granted security to Signature for that obligation. The Trustee also understands that Mr. Gatti and Tarbrac have guaranteed those obligations to Signature.

BOOKS AND RECORDS OF 787

23. The books and records of 787 are intermingled with those of 211 and 213. Therefore, the Receiver has maintained possession of the books and records of 787. However, the Receiver has made the portion of the books and records which relate to 787 available to the Trustee in order that the Trustee is able to administer the bankruptcy of 787.

CONSERVATORY AND PROTECTIVE MEASURES

24. As described above, the Receiver completed the sale of 787's operations prior to the commencement of the bankruptcy and is in the process of pursuing collection of the remaining accounts receivable. Therefore, there were no assets remaining for which conservatory and protective measures were required to be taken by the Trustee.

PROVABLE CLAIMS

25. According to 787's books and records, at the date of the Bankruptcy Application, the estimated provable claims are:

	$
Secured	27,162,056.81
Preferred	-
Unsecured	2,144,428.92
Total	29,306,485.73

26. As at January 4, 2012, the Proofs of Claim received by the Trustee are as follows:

	$
Secured	17,278,160.59
Preferred	-
Unsecured	1,777,041.60
Total	19,055,202.19

LEGAL PROCEEDINGS

27. To date, the Trustee has not initiated any legal proceedings during its administration of the Estate.

VOID OR VOIDABLE TRANSACTIONS AND TRANSACTIONS AT UNDERVALUE

28. The Trustee has not undertaken a review of 787's records in the Receiver's possession to determine if there are void or voidable transactions or transactions at undervalue. However, pursuant to the Receivership Order the Receiver undertook certain preliminary investigative procedures with respect to the location and/or disposition of assets reasonably believed to be, or to have been, property of the Loretta Group, and noted numerous unusual circumstances surrounding assets represented by Loretta Group management to be property of the Loretta Group, as summarized in the Receiver's First Confidential Report dated February 4, 2011 (a copy of which is posted on the Receiver's web site). The Trustee will discuss these matters in more detail with the Inspectors to be appointed at the Meeting of Creditors.

THIRD PARTY GUARANTEE

29. In consideration of the Trustee's acceptance to act in 787's bankruptcy estate, BMO has guaranteed the costs of the Trustee's administration to a maximum of $15,000.

ANTICIPATED REALIZATIONS AND PROJECTED DISTRIBUTION

30. At this time, it is anticipated that neither BMO nor Signature will be repaid in full and that there will not be funds available for distribution to 787's unsecured creditors.

Dated at Toronto, Ontario this 5th day of January, 2012.

Yours very truly,

ERNST & YOUNG INC.
Trustee of the Bankrupt Estate of
787755 Ontario Limited

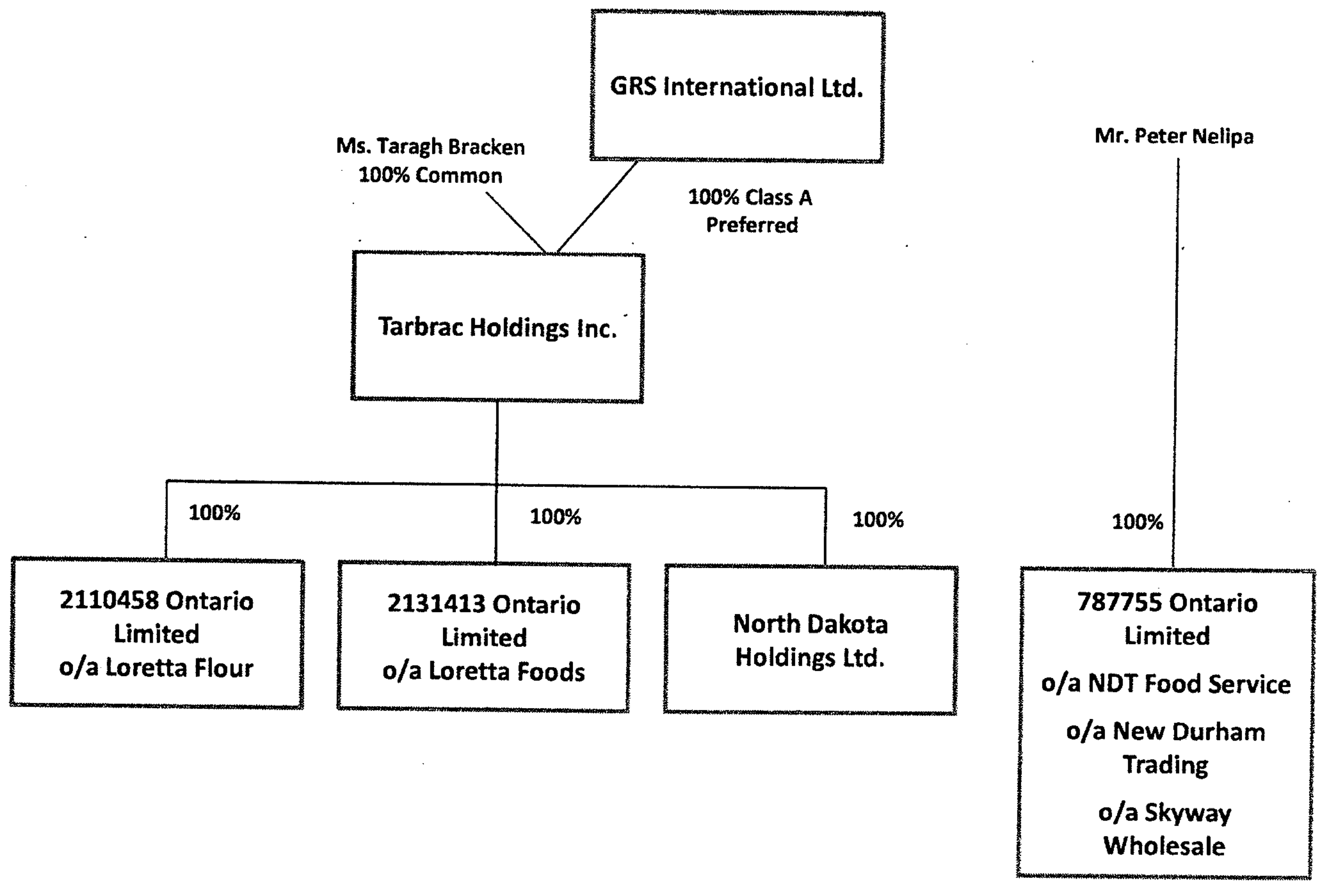
Per:

Rahn Dodick CA, CIRP
Vice-President

Appendix "A"

LORETTA GROUP

CORPORATE STRUCTURE



Appendix "B"

District of Ontario
Division No. 09
Estate No. 31-OR-207788-T

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE MR JUSTICE NEWBOULD	)	MONDAY, THE 19th DAY
	)	
	)	OF DECEMBER, 2011

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NDT FOOD SERVICE AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE of the City of Mississauga, in the Province of Ontario

BANKRUPTCY ORDER
FORM 91

On the application of Bank of Montreal ("**BMO**"), a creditor, filed on the 30th day of November, 2010;

Having heard submissions from counsel to BMO, no one else appearing although attempted to be duly served as evidenced by the affidavit Stella Kostopoulos, sworn November 30, 2010;

And it appearing to the court that the following act of bankruptcy has been committed:

> 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale (the "**Debtor**") has ceased to meet its liabilities generally as they become due, in that it has failed to pay its obligations to BMO;

1. **THE COURT HEREBY ORDERS** that the Debtor be adjudged bankrupt by virtue of a bankruptcy order hereby made on this date.

2. **THE COURT FURTHER ORDERS** that Ernst & Young Inc., of the City of Toronto, in the Province of Ontario, be appointed as trustee of the estate of the Debtor.

3. **THE COURT FURTHER ORDERS** that the trustee give security in cash or by bond without delay, in accordance with subsection 16(1) of the Act.

4. **THE COURT FURTHER ORDERS** that the costs of BMO be paid out of the estate of the Debtor on taxation of the estate.

Newbould J.

TO: 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale

TAKE NOTICE that 787755 Ontario Limited o/a NDT Food Service and o/a New Durham Trading and o/a Skyway Wholesale is required, pursuant to section 159 of the *Bankruptcy and Insolvency Act*, to attend at the office of ______________________________, the Official Receiver, at ______________________________ on ____________________, 2010, at ______ [a.m.][p.m.] o'clock in the ____________noon, there to answer such questions with respect to the conduct of the bankrupt corporation, the causes of its bankruptcy and the disposition of its property as may be put by the Official Receiver, and take notice that if you fail to present yourself for examination, the court may by warrant cause you to be apprehended and brought up for examination and may order you to be imprisoned for a term not exceeding three years.

DATED at Toronto this ____ day of December, 2011.

____
Official Receiver

District of Ontario
Division No. 09
Estate No. 31-OR-207788-T

ONTARIO
SUPERIOR COURT OF JUSTICE

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF 787755 ONTARIO LIMITED O/A NDT FOOD SERVICE AND O/A NEW DURHAM TRADING AND O/A SKYWAY WHOLESALE of the City of Mississauga, in the Province of Ontario

BANKRUPTCY ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Steven L. Graff – LSUC No 31871B
Aaron Collins - LSUC No. 55490T

Tel: 416.863.1500
Fax: 416.863.1515

Lawyers for Bank of Montreal

11462033.1

BANK OF MONTREAL

Applicant

- and -

2110458 ONTARIO LIMITED O/A LORETTA FOODS, 2110458 ONTARIO LIMITED O/A LORETTA FOODS, 787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALE AND TARBRAC HOLDINGS INC.

Respondents

Dec 19/11

Court File No. CV-10-8991-00CL

19 December /11

Order sought is appropriate. 787 does not oppose. Order to go which I have signed.

[signature]

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

MOTION RECORD

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Steven L. Graff – LSUC No 31871B
Aaron T. Collins – LSUC No. 55490T

Lawyers for Bank of Montreal

SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE
FILED / DÉPOSÉ
DEC 0 2 2011
AT / À
LOCAL REGISTRAR - GREFFIER LOCAL
TORONTO

11477863.1

Appendix "C"

AMENDED THIS / MODIFIÉCE CE Oct 14-11 PURSUANT TO / CONFORMÉMENT À
☒ RULE/LA RÈGLE 26.02 ('A')
☐ THE ORDER OF / L'ORDONNANCE DU
DATED/FAIT LE
LOCAL REGISTRAR / SUPERIOR COURT OF JUSTICE — GREFFIER LOCAL / COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-11-9287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Plaintiff

- and -

MAIR FAIBISH, GIUSEPPE GATTI, aka JOE GATTI, TARAGH BRACKEN, aka TEAMHRACH NI BREACAIN, PETER NELIPA, GEORGE BABIOLAKIS, CHIKORETI INVESTMENTS LTD., BEKTROM FOODS, INC., BEKTROM INDUSTRIES, LLC, TERRY MAK, MICHAEL FALCONE, MICHAEL FALCONE PROFESSIONAL CORPORATION, FALCONETURNERMOORE LLP, RENEE FAIBISH, LIBRA MARKETING INC. O/A MICHIGAN MILLS, 2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS, NORTH DAKOTA HOLDINGS LTD., 787755 ONTARIO LIMITED O/A as NDT FOOD SERVICE, also O/A NEW DURHAM TRADING, also O/A SKYWAY WHOLESALE, TARBRAC HOLDINGS INC., SYNERGY BRANDS INC., QUALITY FOOD BRANDS, INC. O/A G&R CORP., PHS GROUP INC. O/A PRIVATE LABEL GROUP, also O/A GROCERS SUPPLY, also O/A HOUSEHOLD SUPPLIES, DEALBYNET.COM INC., NYCE NORTH AMERICA INC., JOHN DOE, JANE DOE, ABC CORPORATION and XYZ CORPORATION

Defendants

<u>AMENDED</u> STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

Attached is Exhibit E

Referred to in the

AFFIDAVIT OF ROBERT KIEFER

Sworn before me

This 25th day of November, 2011

Commissioner for Taking Affidavits, etc.

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.

~~July 4, 2011~~
Dated: October 14, 2011 Issued by:

Patrick McKenzie
Registrar, Superior Court of Justice

Local Registrar

Address of court office: 330 University Avenue
Toronto, ON
M5G 1R7

TO: Mair Faibish
14 Sabrina Ct.,
Dix Hills, New York
United States 11746

AND TO: Giuseppe Gatti
~~83 Fifeshire Road~~
~~North York, Ontario~~
~~Canada M2L 2G9~~
1389 Rougemont Drive
Pickering, Ontario
Canada L1V 1N2

AND TO: Taragh Bracken
~~83 Fifeshire Road~~
~~North York, Ontario~~
~~Canada M2L 2G9~~
1389 Rougemont Drive
Pickering, Ontario
Canada L1V 1N2

AND TO: Peter Nelipa
1107 Athol Street
Whitby, Ontario
L1N 4A6

AND TO: George Babiolakis
15 Ritter Crescent
Unionville, Ontario
L3R 4K4

AND TO: Chikoreti Investments Ltd.
424 4261-A14 Highway 7 East
Suite #424
Markham, Ontario
Canada L4R 9W6

AND TO: Bektrom Foods, Inc.
c/o XL Corporate Services Inc.
88 South E Street
Virginia City, Nevada
United States 89440

AND TO: Bektrom Industries, LLC
502 Main Avenue
Colgate, North Dakota
United States 58046

AND TO: Terry Mak
27 Owl Ridge Drive,
Richmond Hill, Ontario
L4S 1P7

AND TO: Michael Falcone
780 Highland Blade Road
Newmarket, Ontario
L3X 1P3

AND TO: Michael Falcone Professional Corporation
27 John Street West
Bradford, Ontario
P.O. Box 753
L3Z 2B3

AND TO: FalconeTurnerMoore LLP
No. 101
27 John Street West
Bradford, Ontario
P.O. Box 753
L3Z 2B3

AND TO: Renee Faibish
14 Sabrina Ct.,
Dix Hills, New York
United States 11746

AND TO: Libra Marketing Inc.
33 Lakebridge Drive
Kings Park, New York
United States 11754

AND TO: 2110458 Ontario Limited
1700 McEwen Drive
Whitby, Ontario
Canada L1N 0A2

AND TO: 2131413 Ontario Limited
6820 Davand Drive
Mississauga, Ontario
Canada L5T 1J5

AND TO: North Dakota Holdings Ltd.
6815 Davand Drive
Mississauga, Ontario
Canada L5T 1L4

AND TO: 787755 Ontario Limited
6815 Davand Drive
Mississauga, Ontario
Canada L5T 1L4

AND TO: Tarbrac Holdings Inc.
1389 Rougemount Drive
Pickering, Ontario
Canada L1V 1N2

AND TO: Synergy Brands Inc.
310 Michael Drive
Syosset, NY 11791

AND TO: Quality Food Brands Inc.
317 Front Street
Monroe, Michigan
United States 48161

AND TO: PHS Group Inc.
223 Underhill Boulevard
Syosset, New York
United States 11791-3409

AND TO: Dealbynet.com Inc.
310 Michael Drive
Syosset, New York
United States 11791

AND TO: NYCE North America Inc.
223 Underhill Boulevard
Syosset, New York
United States 11791

CLAIM

1. The plaintiff, Bank of Montreal ("BMO"), claims jointly and severally against the defendants, Giuseppe Gatti, aka Joe Gatti, ("Gatti"), Taragh Bracken aka Teamhrach Ni Breacain ("Bracken"), Peter Nelipa ("Nelipa"), 2110458 Ontario Limited ("Loretta Flour"), 2131414 Ontario Limited ("Loretta Foods"), North Dakota Holdings Ltd. ("North Dakota"), 787755 Ontario Limited ("NDT Food Service") and Tarbrac Holdings Inc. ("Tarbrac") (collectively, the "Loretta Defendants"), Mair Faibish ("Faibish"), Synergy Brands Inc. ("Synergy"), Quality Food Brands Inc. ("Quality Food"), PHS Group Inc. ("PHS"), Bektrom Foods, Inc., Bektrom Industries, LLC, Dealbynet.com Inc. ("Dealbynet") and NYCE North America Inc. (collectively, the "Faibish Defendants"), and George Babiolakis and Chikoreti Investments Ltd. (collectively the "Babiolakis Defendants") for:

(a) damages for fraud, misrepresentation, unjust enrichment and conspiracy in the amount of $20,000,000.00 or such other amount as may be proven at trial;

(b) an accounting of all assets, effects and property of these defendants, including any interest in any accounts and of all money had or received by these defendants, or any person on their behalf and all of the dealings and transactions between these defendants and any of the other defendants, and between these defendants and BMO;

(c) an interlocutory and permanent injunction restraining these defendants from disposing of any of their assets, wherever located, including those held by any other person on their behalf;

(d) special damages arising out of the detection, investigation and quantification, and recovery of the fraud, losses, and consequential losses suffered by BMO in an amount to be proven at trial;

(e) a declaration that BMO is entitled to trace the monies fraudulently obtained from BMO in, to and through any financial institution, accounts or deposit facilities in the name of these defendants and in, to or through any assets purchased by these defendants with BMO's money and to recover same;

(f) punitive and exemplary damages in the amount of $1,000,000.00;

(g) prejudgment and post-judgment interest on all amounts awarded to BMO under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(h) costs of this action on a full indemnity basis, plus all applicable taxes; and

(i) such further and other relief as this Honourable Court may deem just.

2. In the alternative to the relief sought at subparagraph 1(a) above, BMO claims jointly and severally against the Loretta Defendants damages for breach of contract in the amount of $20,000,000.00, or such other amount as may be proven at trial.

~~3. BMO claims against the defendant, Taragh Bracken aka Teamhrach Ni Breacain ("Bracken"):~~

~~(a) an accounting of all assets, effects and property of Bracken, including any interest in any accounts and of all money had or received by Bracken, or any person on~~

~~her behalf and all of the dealings and transactions between Bracken and the other defendants;~~

~~(b) an interlocutory and permanent injunction restraining Bracken from disposing of any of her assets, wherever located, including those held by any other person on her behalf;~~

~~(c) a declaration that BMO is entitled to trace the monies fraudulently obtained from BMO in, to and through any financial institution, accounts or deposit facilities in the name of Bracken and in, to or through any assets purchased by Bracken with BMO's money and to recover same;~~

~~(d) a declaration that to the extent that Bracken holds any funds, or assets purchased from funds, which have been misappropriated from BMO, she does so as constructive trustee; and~~

(e) ~~such further and other relief as this Honourable Court may deem just.~~

4. In addition to the relief sought above, BMO claims against each of the defendants, Gatti, Nelipa and Bracken:

(a) judgment and/or damages in the amount of $250,000.00 for breach of contract;

(b) interest on all amounts awarded to BMO from November 5, 2010 to the date of judgment as prescribed under the terms of Guarantees signed by these defendants on October 5, 2009 or, in the alternative, as prescribed under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) costs of this action on a full indemnity basis, plus all applicable taxes; and

(d) such further and other relief as this Honourable Court may deem just.

5. BMO claims against the defendants, Michael Falcone ("Falcone"), Michael Falcone Professional Corporation ("MFPC"), Terry Mak ("Mak"), and FalconeTurnerMoore LLP, jointly and severally:

(a) damages for negligent misrepresentation and negligence in the amount of $20,000,000.00, or such other amount as will be proven at trial;

(b) special damages arising out of the detection, investigation and quantification, and recovery of the fraud, losses, and consequential losses suffered by BMO in an amount to be proven at trial;

(c) prejudgment and post-judgment interest on all amounts awarded to BMO under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(d) costs of this action, plus all applicable taxes; and

(e) such further and other relief as this Honourable Court may deem just.

6. BMO claims against the defendants, Renee Faibish and Libra Marketing Inc. (collectively the "Renee Defendants"), jointly and severally, for:

(a) an accounting of, and of all information available with respect to, the funds received in and disbursed from the bank accounts of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants and any other related investment vehicle since August 25, 2009; and

(b) a declaration that to the extent that the Renee Defendants hold any funds, or assets purchased from funds, which have been misappropriated from BMO, they do so as constructive trustees.

7. BMO further claims a declaration that BMO has and maintains a proprietary interest in the proceeds of funds fraudulently obtained by all the defendants or proceeds derived therefrom, including any assets purchased with the proceeds.

Overview

8. This is a commercial fraud in which the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants participated in a sophisticated cheque-kiting scheme (the "Kiting Scheme"), as detailed below. Cheque-kiting occurs when a party or parties take advantage of the timing lag in the cheque clearing process to inflate their bank account balances, provided the bank does not place a hold on deposits. It involves the illegal practice of writing a cheque drawn upon a bank account with insufficient funds to cover the cheque, with a view that the funds from a previously deposited cheque will reach the account before the bank debits the amount of the outstanding cheque. In this case, the Kiting Scheme caused the plaintiff, BMO, to suffer damages in excess of $20,000,000.00.

The Parties

The Plaintiff

9. BMO is a Canadian chartered bank, organized and operated under the provisions of the *Bank Act*, S.C. 1991, c. 46, as amended, and carries on business in Toronto, Ontario and elsewhere across Canada.

Unknown Defendants

10. John Doe, Jane Doe, ABC Corporation and XYZ Corporation are individuals and corporations respectively who participated in or benefited from the Kiting Scheme defined below, including possibly as constructive trustee defendants, but whose identities are presently unknown to BMO.

The Loretta Defendants

11. The defendant, Gatti, is an individual ordinarily resident in ~~North York~~ Pickering, Ontario.

11(a) The defendant, Bracken, is an individual ordinarily resident in Pickering, Ontario, and is the spouse of Gatti. Bracken is a practicing lawyer in the Province of Ontario, running her practice under the business name The Law Firm of Taragh Bracken. Gatti is a 50% owner of The Law Firm of Taragh Bracken, while Bracken owns the remaining 50%. The Law Firm of Taragh Bracken has its principal office in Whitby, Ontario.

12. The defendant, Nelipa, is an individual ordinarily resident in Mississauga, Ontario.

13. The defendant, Loretta Flour, is an Ontario corporation with a registered office located in Whitby, Ontario. As detailed below, Loretta Flour is currently in receivership. At all material times, ~~Gatti~~ Bracken served as ~~the sole~~ an officer and director of Loretta Flour, and Gatti served as an officer. Loretta Flour operated as the alter ego of both Bracken and Gatti. As such, Bracken and Gatti ~~is~~ are liable for all conduct, as set out below, of Loretta Flour.

14. The defendant, Loretta Foods, is an Ontario corporation with a registered office located in Mississauga, Ontario. As detailed below, Loretta Foods is currently in receivership. At all

material times, ~~Gatti~~ Bracken served as ~~the sole~~ an officer and director of Loretta Foods, and Gatti served as an officer. Loretta Foods operated as the alter ego of both Bracken and Gatti. As such, Gatti and Bracken ~~is~~ are liable for all conduct, as set out below, of Loretta Foods.

15. The defendant, NDT Food Service, is an Ontario corporation with a registered office located in Mississauga, Ontario. As detailed below, NDT Food Service is currently in receivership. At all material times, Gatti served as Chief Operating Officer of NDT Food Service, while Nelipa served as President and sole director. Nelipa was also the sole shareholder of NDT Food Service. At all material times, NDT Food Service operated as the alter ego of Nelipa. As such, Nelipa is liable for all conduct, as set out below, of NDT Food Service.

16. Loretta Flour, Loretta Foods and NDT Food Service are collectively referred to below as the "Loretta Group".

17. The defendant, Tarbrac, is an Ontario corporation with a registered office located in Pickering, Ontario. Tarbrac is the sole shareholder of the defendants, Loretta Floor, Loretta Foods and North Dakota. As detailed below, Tarbrac is currently in receivership. Bracken owns 100% of the common shares of Tarbrac and, at all material times, served as the sole director and officer.

18. The defendant, North Dakota, is an Ontario corporation with its registered office located at Mississauga, Ontario (at the same address as the registered office of NDT Food Service). At all material times, Gatti served as a director of North Dakota. North Dakota operated as the alter ego of Gatti. As such, Gatti is liable for all conduct, as set out below, of North Dakota.

The Faibish Defendants

19. The defendant, Faibish, is an individual ordinarily resident in Long Island, New York.

20. The defendant, Synergy, is a publicly traded company, which traded on the NASDAQ under the symbol SYBRQ and is incorporated under the laws of Delaware in the United States. Synergy's head office is located in Syosset, New York. Faibish is a shareholder and former CEO and Chairman of the Board of Directors of Synergy. At all material times, the core operations of Synergy included:

(a) a baking mix manufacturing operation in Michigan;

(b) a spice business, which was distributed through its Michigan facilities;

(c) a packaged meal business, which was also distributed through the Company's Michigan distribution center and manufactured under a co-packing arrangement in North Dakota.

21. On January 28, 2011, Synergy sought Chapter 7 bankruptcy protection in Central Islip, New York.

22. The defendant, Quality Food, is a Nevada corporation and is a wholly-owned subsidiary of Synergy. Quality Food operates under various business names, including G&R Corp. Quality Food operates the baking mix manufacturing operation of Synergy located at Monroe, Michigan. Synergy's Chapter 7 filing did not apply to Quality Food.

23. The defendant, PHS, is a Pennsylvania corporation and is a wholly-owned subsidiary of Synergy. Synergy's voluntary Chapter 7 filing also applies to the defendant PHS. PHS operates

under various business names, including, but not limited to Private Label Group, Grocers Supply and Household Supplies.

24. The defendant, Bektrom Foods, Inc. is a Nevada corporation involved in the grocery and spice business in the United States and elsewhere. At all material times, Bektrom Foods, Inc. operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of Bektrom Foods, Inc.

25. The defendant, Bektrom Industries, LLC is a North Dakota corporation involved in the grocery and spice business in the United States and elsewhere. At all material times, Bektrom Industries, LLC operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of Bektrom Industries, LLC.

26. The defendant, Dealbynet, is a New York corporation, which has the same principal office as Synergy. At all material times, Dealbynet operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of Dealbynet.

27. The defendant, NYCE North America Inc., is a New Jersey corporation, which has the same principal office as PHS. At all material times, NYCE North America Inc. operated as the alter ego of Faibish. As such, Faibish is liable for all conduct as set out below of NYCE North America Inc.

The Babiolakis Defendants

28. The defendant, George Babiolakis, in an individual ordinarily resident in Unionville, Ontario.

29. The defendant, Chikoreti Investments Inc. is an Ontario corporation with its registered office in Markham, Ontario. At all material times, Chikoreti Investments Inc. operated as the alter ego of Babiolakis. As such, Babiolakis is liable for all conduct as set out below of Chikoreti Investments Inc.

The Falcone Defendants

30. The defendant, FalconeTurnerMoore LLP, was, at all material times, a limited liability partnership formed under the laws of the province of Ontario and carried on business in Bradford and elsewhere in Ontario as a full service accounting firm, providing accounting and auditing services to, among others, the defendants Loretta Flour, Loretta Foods and NDT Food Service.

31. The defendant, Falcone, was, at all material times, a Certified General Accountant and member of the Certified General Accountants of Ontario. In June 2009, Falcone was a partner and employee with FalconeTurnerMoore LLP, in Bradford, Ontario, and acted within the course and scope of that employment. FalconeTurnerMoore LLP is liable for all the conduct of Falcone that took place before December 2009. From December 2009 to November 2010, Falcone served as Chief Financial Officer for the Loretta Group. Falcone provided his Chief Financial Officer services to the Loretta Group through his personal corporation, Falcon Crest Management Inc. or, alternatively, through his sole proprietorship Falcon Crest Management Group.

32. The defendant, MFPC, was, at all material times, an Ontario professional corporation. MFPC carried on business in Toronto and elsewhere as a professional accounting services corporation, providing accounting and auditing services to, among others, the Loretta Group.

The sole director and officer of MFPC was Falcone. MFPC operated as the alter ego of Falcone. As such, Falcone is liable for all conduct, as set out below, of MFPC.

33. The defendant, Mak, is an individual ordinarily resident in Richmond Hill, Ontario. At all material times, Mak served as an employee of Michael Falcone Professional Corporation as well as FalconeTurnerMoore LLP while being the controller of the defendants, Loretta Flour, Loretta Foods and NDT Food Service. At all material times, Mak acted within the course and scope of her employment. FalconeTurnerMoore LLP is liable for all the conduct of Mak described below. <u>The Loretta Group was billed for Mak's services by Falcone's personal corporation, Falcon Crest Management Inc. or, alternatively, by Falcone's sole proprietorship Falcon Crest Management Group. However, this billing arrangement did not alter the employment relationship that existed between Mak and MFPC nor between Mak and FalconeTurnerMoore LLP.</u>

<u>The Constructive Trustee Defendants</u>

~~34. The defendant, Bracken, is an individual ordinarily resident in North York, Ontario, and is the spouse of Gatti.~~

35. The defendant, Libra Marketing Inc., is a New York corporation, which also operates under the business name "Michigan Mills". The chief executive officer of Libra Marketing Inc. is Renee Faibish. <u>At all material times, Libra Marketing Inc. operated as the alter ego of Renee Faibish. As such, Renee Faibish is liable for all conduct, as set out below, of Libra Marketing Inc.</u>

36. The defendant, Renee Faibish, is an individual ordinarily resident in Long Island, New York, and is the spouse of Faibish.

The Receivership Order

37. On November 26, 2010, upon hearing BMO's application, The Honourable Mr. Justice Wilton-Siegel granted an order under section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, appointing Ernst & Young Inc. ("E&Y") as receiver and manager over all assets, undertakings and properties of Loretta Flour, Loretta Foods, NDT Food Service and Tarbrac (the "Receivership Order").

38. The Receivership Order provided that no proceedings could be commenced against the debtors or the debtors' property without leave of the court or E&Y's written consent. By subsequent court order dated February 10, 2011, BMO was expressly granted permission to commence legal proceedings against the Loretta Group and Tarbrac.

Background – The Loan Agreements

39. Commencing in August 2009, BMO and the Loretta Group entered into a series of loan agreements, described below. So far as BMO was aware, the Loretta Group was a legitimate commercial enterprise and these loan agreements reflected ordinary course commercial lending. As set out below, BMO has since come to learn that such understanding was untrue.

The Fraudulent Misrepresentations

40. In August 2009, Gatti approached BMO to arrange financing for the Loretta Group. During initial discussions with BMO, Gatti made, among others, the following representations:

(a) The Loretta Group was organized into three divisions:

(i) Retail and Wholesale – Loretta Foods;

(ii) Food Service and Catering – NDT Food Service; and

(iii) Flour and Sugar – Loretta Flour;

(b) Loretta Flour produced various types of hard wheat flour from wheat sourced from Ontario and Western Canada at its flour mill located in Ajax, Ontario, and specialized in white cake flour; and

(c) The current owners purchased Loretta Foods in 2006/2007 and combined it with their other businesses (Loretta Flour and NDT Food Service) in 2007/2008.

41. In addition, Gatti made the following misrepresentations, among others, all of which were fraudulent (the "Fraudulent ~~Representations~~ Misrepresentations"):

(a) The bulk of Loretta Flour's sales were to a diversified commercial client base in Canada and the United States comprised of large and small bakeries and confectionaries;

(b) The current owners of the Loretta Group had grown the business significantly by expanding their wholesale network in the United States and Canada;

(c) The defendant, North Dakota Holdings, had leased facilities in Michigan and North Dakota that were used by the Loretta Group to store inventory distributed in the United States;

(d) The Loretta Group's revenues had increased from $41,000,000 to $97,000,000 between 2006 and 2008;

(e) The Loretta Group's earnings before interest, taxes, depreciation and amortization were $4,000,000;

(f) The Loretta Group had $8,980,288 in accounts receivable and $8,019,781 in inventory; and

(g) The Loretta Group was banking with Laurentian Bank ("Laurentian") and had "outgrown" them.

41(a). Bracken had knowledge, actual or constructive, of the Fraudulent Misrepresentations.

42. BMO relied on the Fraudulent ~~Representations~~ Misrepresentations. It was reasonable for BMO to have done so. As set out below, BMO has since come to learn that the Fraudulent ~~Representations~~ Misrepresentations were in fact untrue and were made deliberate or with willful blindness as to their truth by the Loretta Defendants.

43. The Fraudulent ~~Representations~~ Misrepresentations were repeated by the Loretta Defendants during the course of the relationship between BMO and the Loretta Defendants with the intention and effect of prolonging the relationship and extracting further funds from BMO.

The Term Sheet

44. On or about August 25, 2009, based upon the Fraudulent ~~Representations~~ Misrepresentations and based upon BMO's review of, and reasonable reliance on, the Loretta Group's audited and combined financial statements (prepared by the Falcone Defendants), BMO issued a term sheet to the Loretta Group, which provided the following facilities (the "Term Sheet"):

(a) a Demand Revolving Operating facility in the amount of $10,000,000.00;

(b) Letters of Credit in the amount of $500,000.00;

(c) Treasury Facility in the amount of $1,500,000.00; and

(d) a Corporate MasterCard Facility in the amount of $50,000.00.

45. Under the Term Sheet, among other things,:

(a) the Loretta Group agreed to pay BMO interest at a rate between the prime lending rate plus 1.00% to 2.00% depending on the Loretta Group's total debt to EBITDA ratio.

(b) the Loretta Group granted BMO a first-ranking security interest in all of the present and future undertaking, property and assets of the Loretta Group;

(c) the defendants Gatti, Nelipa and Bracken each provided personal guarantees in the amount of $250,000.00 in respect of each of the borrowers; and

(d) the Loretta Group agreed to indemnify BMO from and against any and all losses, claims, damages and liability arising from activities under or contemplated by the Term Sheet.

The Loan Agreement

46. On or about October 5, 2009, BMO and the Loretta Group entered into an operating loan agreement (the "Loan Agreement"). As with the Term Sheet, BMO continued to rely upon the Fraudulent ~~Representations~~ Misrepresentations and the Loretta Group's audited and combined financial statements in making the Loan Agreement.

47. The Loan Agreement provided for a "Loan Limit" as defined in the Loan Agreement of \$10,000,000. The Loan Agreements were signed by Gatti in his capacity as officer of Loretta Foods and Loretta Flour, and Nelipa in his capacity as officer of NDT Food Service.

48. Further, under the Loan Agreement, each of the defendants, Tarbrac, Nelipa, Bracken and Gatti, guaranteed all or certain of the obligations of the Loretta Group to BMO.

Transition of lending facilities from Laurentian to BMO

49. The Loretta Group's transition of its credit facilities occurred gradually over a number of months. During this transition, in or around early November 2009, Laurentian placed a five-day hold on several cheques that were deposited in the Loretta Group's accounts. This caused a series of cascading cheque returns within the Loretta Group and created a strained cash situation, which prompted BMO to explore options of reducing its overall exposure under the Term Sheet and Loan Agreement.

50. Ultimately, BMO proposed a new financing structure that included entering into an Invoice Purchase/Discount Facility with NDT Food Service in the amount of USD \$9,000,000.00, under which BMO agreed to purchase various accounts receivable generated by NDT Food Service (the "Discounting Facility Agreement"). This new arrangement allowed NDT Food Service to monetize accounts receivable through BMO's Invoice Purchase/Discounting Program, provided that such accounts receivable were qualified as insured receivables by Export Development Canada ("EDC"). The Discounting Facility Agreement also allowed BMO to reduce its overall exposure by lowering the Loretta Group's operating facility.

The First Amended Term Sheet

51. On or about January 17, 2010, BMO and the Loretta Group entered into an amended term sheet, which replaced the Term Sheet (the "Amended Term Sheet"). As with the Term Sheet and Loan Agreement, BMO continued to rely on the Fraudulent ~~Representations~~ Misrepresentations and the Loretta Group's audited and combined financial statements in providing the Amended Term Sheet. The Amended Term Sheet provided for:

(a) a Demand Revolving Operating facility in the amount of $10,000,000.00;

(b) a treasury facility in the amount of $500,000.00;

(c) a Corporate MasterCard Facility in the amount of $50,000.00;

(d) the Invoice Purchase/Discount Facility in the amount of USD $9,000,000.00; and

(e) interest to be paid by the Loretta Group at a rate between the prime lending rate plus 1.00% to 2.00% depending on the Loretta Group's total debt to EBITDA ratio.

52. Under the First Amended Term Sheet,

(a) the Loretta Group granted BMO a first-ranking security interest in all of the present and future undertaking, property and assets of the Loretta Group;

(b) the defendants Gatti, Nelipa and Bracken each provided personal guarantees in the amount of $250,000.00 in respect of each of the borrowers; and

(c) the Loretta Group agreed to indemnify BMO from and against any and all losses, claims, damages and liability arising from activities under or contemplated by the Amended Term Sheet.

The Second Amended Term Sheet

53. On or about June 30, 2010, BMO and the Loretta Group entered into a second amended term sheet (the "Second Amended Term Sheet"), which replaced the Amended Term Sheet. As with the Term Sheet, Loan Agreement and First Amended Term Sheet, BMO continued to rely on the Fraudulent ~~Representations~~ Misrepresentations in providing the Second Amended Term Sheet. The Second Amended Term Sheet provided for:

(a) a Demand Revolving Operating facility in the amount of $7,500,000.00, which would reduce to $5,000,000 by July 31, 2010 and to $3,500,000 by August 31, 2010;

(b) a discounting facility in respect of receivables insured by EDC in the amount of $13,500,000.00;

(c) a Corporate MasterCard Facility in the amount of $50,000.00; and

(d) interest to be paid by the Loretta Group at the prime lending rate plus 2.00%.

The Letter Agreement

54. On or about August 19, 2010, BMO and the Loretta Group entered into a letter agreement, which was supplemental to the Term Sheet, the Loan Agreement, the Amended Term Sheet and the Second Amended Term Sheet (the "Letter Agreement"). As with the Term Sheet,

the Loan Agreement, the Amended Term Sheet and the Second Amended Term Sheet, BMO continued to rely on the Fraudulent ~~Representations~~ Misrepresentations and the Loretta Group's audited and combined financial statements in entering the Letter Agreement.

55. Under the Letter Agreement, among other things, the Loretta Group agreed to pay to BMO:

(a) $1,500,000.00 by August 31, 2010;

(b) $3,500,000.00, plus payment of all outstanding accrued interest on the Demand Revolving Operating Facility and any outstanding expenses and costs of BMO, by October 31, 2010; and

(c) an administration/extension fee, which depending on the amount of outstanding principal would be between $300.00 - $500.00 to be charged daily starting October 1, 2010.

56. Collectively, the Term Sheet, the Loan Agreement, the Amended Term Sheet, the Second Amended Term Sheet and the Letter Agreement are referred to below as "the Loan Agreements".

Breaches of the Loan Agreements and Guarantees

57. The Loretta Group breached the Loan Agreements by, among other things:

(a) failing to remit monies to BMO to which it was entitled;

(b) opening bank accounts at Canadian Imperial Bank of Commerce and depositing funds into these accounts that were properly payable to BMO; and

(c) failing to pay $3,500,000.00, plus payment of all outstanding accrued interest on the Demand Revolving Operating Facility and any outstanding expenses and costs of BMO by October 31, 2010.

58. On or about November 5, 2010, BMO made a demand for payment to the Loretta Group and to its guarantors (Tarbrac, Nelipa, Bracken and Gatti) for payment under the Loan Agreements and the guarantees. The demands were sent to the addresses that the guarantors provided to BMO. In addition, BMO served a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3. At the time of the demand, the total indebtedness under the Loan Agreements was US $17,483,987.40 and CDN $50,142.55.

59. The Loretta Group has failed to pay the outstanding amount of any of the monies owing under the Loan Agreements and accordingly, have wrongfully withheld payment of a just debt owed to BMO.

60. Each of Tarbrac, Nelipa, Bracken and Gatti, all of whom acted as guarantors under the Loan Agreements have failed to pay any amount towards the outstanding loans of the Loretta Group and accordingly, have wrongfully withheld payment of a just debt owed to BMO.

The Kiting Scheme

61. Unbeknownst to BMO, the Loan Agreements were not made with a legitimate commercial enterprise. Rather, BMO has subsequently discovered that:

(a) the vast majority of the Loretta Group's business operations was not legitimate, but was in fact part of a sophisticated cheque kiting scheme that was intended to, and had the effect of, defrauding BMO out of millions of dollars;

(b) the working capital assets of the Loretta Group were substantially less than those reported on the companies' financial statements and borrowing base certificates provided to BMO by the Loretta Group;

(c) the Loretta Group cannot account for approximately $19,000,000.00 of the inventory referred to in the companies' financial statements;

(d) there was in fact no association between the Loretta Group and the facilities in the United States, which the Loretta Defendants represented held substantial amounts of inventory that the Loretta Group owned;

(e) there was a gross deficiency in the value of the property owned by the Loretta Group (over which BMO had a first priority security interest) to repay the outstanding debts owed to BMO; and

(f) the accounts receivable that were purchased by BMO under the discounting facility were fraudulent in that the purported debtor on the accounts receivable did not receive any goods from the Loretta Group as represented on the invoice and purchase order upon which BMO relied in purchasing the accounts receivable.

62. While the full particulars of the Kiting Scheme are not yet known to BMO, but are within the knowledge of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants, BMO is generally aware that between September 1, 2009 and November 1, 2010, the Loretta

Defendants engaged in the Kiting Scheme whereby they fraudulently cycled funds between banking accounts in the name of the Loretta Group to accounts held by the and the Babiolakis Defendants all with a view to creating the fraudulent illusion that the Loretta Group had revenues far exceeding reality and so that the BMO loan facilities could be drawn down and dissipated, thereby defrauding BMO.

63. Without limitation, the Loretta Defendants, at the direction of Faibish and Gatti, would deposit cheques drawn on one bank account into another bank account to cover the value of the written cheques before they were processed, then withdraw the funds from the latter account before the cheques had cleared. These transfers occurred between accounts held by the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants. Specific examples of the Kiting Scheme include:

(a) On September 28, 2009:

(i) Quality Food transferred $795,000.00 into one of Loretta Foods' BMO accounts (#4624-283);

(ii) Loretta Foods transferred $1,038,908.00 into one of NDT Food Service's Laurentian accounts (#085027-601);

(iii) NDT Food Service transferred $3,990,000.00 from this account to PHS;

(iv) Loretta Foods transferred $1,202,760.00 into a further NDT Food Service's Laurentian account (#089829-601);

(v) NDT Food Service transferred $1,976,000.00 from this account to PHS;

(vi) PHS transferred $874,998.70 to Loretta Foods' BMO account referred to into Loretta Foods' BMO account (#4624-283).

(b) On October 1, 2009:

(i) Quality Food transferred $437,500.00 into one of Loretta Flour's BMO accounts (#4623-205);

(ii) Loretta Flour transferred $1,241,313.00 from this account to one of NDT Food Services' BMO accounts (#089829-601);

(iii) NDT Food Service transferred $1,500,000.00 from this account to PHS; and

(iv) PHS transferred $862,498.70 to Loretta Flour's BMO account (#4623-205).

64. The net result of all these kiting transactions was a large-scale cycling of hundreds of millions of dollars between the Loretta Defendants, the Faibish Defendants, the Babiolakis Defendants and others.

65. Given the timing of the transfers, the lack of any legitimate business purpose for those transfers and the large sums of money involved in the transfers, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants were complicit in, conspired in and acted jointly to facilitate the Kiting Scheme for their benefit and to defraud BMO of funds.

66. The following acts are known to have been taken by the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants in furtherance of the Kiting Scheme:

(a) Faibish directed the directing minds of the Loretta Group to send wire transfers of funds from accounts held by the Loretta Group to accounts held by the Faibish Defendants and the Babiolakis Defendants when he knew or ought to have known that there was no underlying business purpose for these fund transfers; and

(b) Gatti prepared and signed all or substantially all of the cheques written on the accounts of the Loretta Group which were directed to accounts held by the Faibish Defendants and the Babiolakis Defendants when he knew or ought to have known that there was no underlying business purpose for these payments.

67. Further particulars of the Kiting Scheme and the conspiracy to effect the Kiting Scheme are within the knowledge of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants.

68. In the alternative, if the Faibish Defendants and the Babiolakis Defendants were not complicit in the Kiting Scheme, then they knew, ought to have known or were willfully blind to the use of their accounts and the kiting conducted by the Loretta Defendants.

Conspiracy

69. In engaging in the Kiting Scheme, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants have acted jointly and unlawfully with the common purpose and malicious intention of injuring BMO. Alternatively, these defendants have acted jointly, their conduct as set out above was directed at BMO, and these defendants knew or ought to have known that BMO would suffer harm as a result of these defendants' actions.

70. By virtue of the conspiracy of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants, BMO has suffered losses including the loss of the unreturned principal and interest under the Loan Agreements. Further, by conspiring in the manner they have, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants are jointly and severally liable to BMO for the entirety of BMO's collective losses despite that a particular defendant may not have conducted a particular act alleged above.

Fraudulent Misrepresentations

71. As set out above, BMO has since come to learn that certain of the Fraudulent Misrepresentations were untrue, inaccurate and misleading.

72. Full particulars of the falsity of the Fraudulent Misrepresentations are known to the Loretta Defendants, but include, among other things:

(a) The Loretta Group while organized into three divisions, was not operating a legitimate business, but were rather the primary instruments through which the Kiting Scheme was effected;

(b) While Loretta Flour produced various types of hard wheat flour it sold that flour primarily to Quality Food, and it did so at a price that was well below Loretta Flour's cost of production;

(c) While Gatti had purchased Loretta Foods in 2007, he did so after perpetrating a similar or nearly identical cheque-kiting scheme on another financial institution;

(d) The Loretta Group's previous lender had detected that the Loretta Group was involved in illegitimate business operations and requested that they find another lender;

(e) The Loretta Group did not have a wholesale network of clients in North America;

(f) The facilities in Michigan and North Dakota stored inventory that was not owned by the Loretta Group;

(g) Millions of dollars of funds were being wired from Loretta Group accounts to accounts controlled by the Faibish Defendants and the Babiolakis Defendants for no legitimate business purpose other than depleting the BMO lending facilities;

(h) Millions of dollars were being wired from the Loretta Group to third-party companies who appeared to have no business relationship whatsoever with the Loretta Group; and

(i) Millions of dollars were being deposited in Loretta Group bank accounts in the absence of corresponding sales that would be necessary to generate such large sums.

73. Further, the Fraudulent Misrepresentations were made by Gatti with the knowledge of Bracken, actual or constructive, and in circumstances where ~~he~~ Gatti and Bracken knew they were untrue, inaccurate or misleading or in which they were willfully blind as to the truth of such statements.

74. BMO reasonably relied on the Fraudulent Misrepresentations in entering into the Loan Agreements and suffered losses, as set out below, as a result.

BMO's losses caused by the Kiting Scheme and Fraudulent Misrepresentations

75. Had BMO known that Gatti's and the other Loretta Defendants' representations regarding the business of the Loretta Group were untrue and inaccurate, BMO would not have agreed to loan any funds under the Loan Agreements.

76. As a result of BMO's reliance on the representations of Gatti and the other Loretta Defendants and as a result of the Kiting Scheme, BMO has suffered losses including the outstanding principal amounts of the loans and the opportunity to earn a return on those monies.

Fraudulent Conveyances

77. At various times, the full particulars of which are only known to the defendants, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants have transferred assets from themselves to others in order to avoid creditors, including BMO, or alternatively to the payees in preference to other creditors, including BMO (the "Fraudulent Conveyances"). The Fraudulent Conveyances were done at such a time as the relevant defendants knew they were insolvent or knew that, in light of the claims against them, including the potential claim of BMO, they were on the eve of insolvency. All such Fraudulent Conveyances are illegal and contrary to the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 and the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, which statutes BMO expressly relies upon.

78. Without limiting the generality of the above, Fraudulent Conveyances are presently known to include:

(a) payments to Bracken in the amount of $128,400 CAD, which payments have no commercial or legitimate purpose;

(b) the conveyance of the property municipally described as 83 Fifeshire Road, Toronto, Ontario (the "Fifeshire Property"), which Loretta Flour purchased on June 29, 2010, using funds from NDT Food Service's BMO account, and which was registered solely in Bracken's name on July 2, 2010;

(c) the conveyance of the property municipally described as Suite 201, 201 Carlaw Avenue, Toronto, Ontario (the "Carlaw Condominium"), which was registered solely in Bracken's name on June 16, 2010; and

(d) the transfer of a lien registration on a 2008 Ferrari, F430 Coupe F1 (the "Ferrari") from Loretta Flour to 2287521 Ontario Ltd.

79. BMO seeks orders of this Court to set aside the Fraudulent Conveyances and make the assets so transferred available to BMO to satisfy such judgments as BMO may obtain against the defendants.

80. As a result of the Fraudulent Conveyances, BMO names the recipients of such Fraudulent Conveyances, to the extent not otherwise named in this statement of claim, as defendants respecting their participating in the Fraudulent Conveyances.

Unjust Enrichment

81. The defendants have received, at minimum, the following amounts, all of which were deposited in bank accounts held with financial institutions other than BMO:

(a) Faibish - $1,442,611.70 USD;

(b) Bracken – $1,047,117.70 CAD and $564,778.78 USD;

(c) Loretta Foods - $5,370,838.00 USD;

(d) NDT Food Service - $53,159,449.00 USD and $8,410,249.07 CAD;

(e) PHS operating as "Household Supplies" - $10,412,243.00 USD;

(f) Libra Marketing Inc. operating as "Michigan Mills" - $7,732,049.00 USD;

(g) North Dakota - $25,100.00 CAD and $994,100.00 USD;

(h) PHS - $188,321,406.79 USD;

(i) Quality Food - $61,938,478.60 USD; and

(j) Synergy - $475,106.00.

82. BMO's funds advanced under the Loan Agreements were included in some or all of the above payments. These defendants have received the benefit of BMO's funds to the detriment of BMO. There is no juristic basis for these defendants to keep these funds.

Previous Cheque Kiting Scheme

83. Gatti, Bracken, and Nelipa, among others, perpetrated the same or nearly identical fraudulent scheme against another financial institution ("the Bank"). In 2007, the Bank commenced a lawsuit against a number of parties including Loretta Food Group Inc. (a company founded and controlled by Bracken and Nelipa), in which a significant cheque-kiting fraud

(involving the cycling of approximately $60,000,000 of funds from as between various companies, including NDT Food Service) was alleged.

84. Loretta Food Group Inc. was placed in receivership and later deemed bankrupt. Gatti, who was a named defendant in the lawsuit, purchased the Loretta Food Group Inc. and NDT Food Service from the receiver.

85. As necessary, BMO will lead such similar fact evidence at the trial of this Action and in relation to any interlocutory applications in this Action.

BMO's claims against the Falcone Defendants

86. At all material times, Falcone provided accounting and auditing services to the Loretta Group. He provided these services through MFPC and FalconeTurnerMoore LLP.

87. Falcone and MFPC issued audited financial statements for Loretta Flour, Loretta Foods and NDT Food Service for the year ended December 31, 2008 (the "Audited Financial Statements"). Falcone and MFPC gave unqualified audit opinions in accordance with Generally Accepted Auditing Standards ("GAAS") for the year ended December 31, 2008, stating that the Audited Financial Statements presented on a consistent basis, and fairly, in all material respects, the respective financial positions and the results of operations of Loretta Flour, Loretta Foods and NDT Food Service in accordance with Generally Accepted Accounting Principles ("GAAP"). Falcone and MFPC provided assurances that the financial statements were free of material misstatement. Falcone and MFPC knew that BMO was going to and did rely on these Audited Financial Statements. Consequently, Falcone and MFPC owed BMO a duty of care to provide competent auditing services in accordance with GAAS.

88. Falcone's and MFPC's unqualified audit opinions resulted in the issuance of materially misleading financial statements, which overstated revenues, accounts receivable balances, and were contrary to GAAP. The Audited Financial Statements also failed to include an accrual for unpaid payroll tax liability relating to payroll that was paid to the Loretta Group's employees on a cash basis, thereby materially misstating the net income of the Loretta Group. Contrary to Falcone's and MFPC's representations, the Audited Financial Statements were not free of material misstatements.

89. Within one week of issuing the Audited Financial Statements, and knowing that BMO required them in order to make a lending decision, Falcone and FalconeTurnerMoore LLP issued "Notice to Reader" combined financial statements for the Loretta Group for the year ended December 31, 2008 (the "Combined ~~financial statements~~ Financial Statements"). In preparing the Combined Financial Statements, these defendants had full knowledge of the actual financial position of the Loretta Group given that Falcone had prepared and issued the auditor's reports on the Audited Financial Statements one week earlier.

90. Mak provided BMO with the Audited Financial Statements and the Combined Financial Statements in her capacity as employee of FalconeTurnerMoore LLP, and while she was also employed with the Loretta Group.

The Negligence of the Falcone Defendants

91. At all material times, the Falcone Defendants owed duties of care to BMO.

92. Falcone, MFPC and FalconeTurnerMoore LLP represented themselves as professional advisors with experience and expertise in accounting and auditing matters. These defendants were engaged to perform auditing and accounting services for the Loretta Group and possessed

special knowledge with respect to the financial and operational position of each of the companies within the Loretta Group.

93. Falcone and FalconeTurnerMoore LLP also provided notice to reader financial statements on the Combined Financial Statements. The Combined Financial Statements were based on the Audited Financial Statements with the removal of any intercompany transactions between Loretta Flour, Loretta Foods and NDT Food Service. Because the Loretta Group companies were not owned by the same shareholders, Falcone and MFPC reviewed or ought to have reviewed the related party transactions in detail in performing the audits of Loretta Flour, Loretta Foods and NDT Food Service. Therefore, in preparing the Combined Financial Statements, Falcone and FalconeTurnerMoore LLP knew or ought to have known of the related party transactions that needed to be eliminated on the Combined Financial Statements and should have audited all of the financial information underlying the Combined Financial Statements.

94. The Falcone Defendants knew, or ought to have known, that:

(a) BMO's agreement to enter into the Term Sheet and its decision to enter into any subsequent loan facility with the Loretta Group was dependent upon the financial position and strength of the Loretta Group, including its capacity to carry on its business in a financially prudent and profitable manner;

(b) BMO required audited and combined financial statements as a condition to its agreement under the Term Sheet and its agreement to continue to provide facilities under the subsequent Loan Agreements;

(c) BMO received, reviewed and relied upon the Audited Financial Statements and the Combined Financial Statements for the purposes stated above;

(d) BMO would suffer damages in the event that either the Audited Financial Statements or the Combined Financial Statements were prepared in a negligent manner; and

(e) BMO would be exposed to substantial losses if the Loretta Group was unable to repay the amounts owed to BMO under the Loan Agreements and/or otherwise breached their contractual obligations under the Loan Agreements.

95. BMO would not and could not reasonably conduct its own independent audit of the Loretta Group and that BMO would and did reasonably rely on the Audited Financial Statements and Combined Financial Statements in entering into financing arrangements with these companies.

96. In the circumstances, Falcone and FalconeTurnerMoore LLP owed duties of care to BMO in accordance with Canadian accounting and auditing standards, in the preparation of the Audited Financial Statements. Similarly, Falcone and MFPC owed duties of care to BMO in the preparation of the Combined Financial Statements.

97. Pursuant to the duties of care owed by the Falcone Defendants to BMO, the Falcone Defendants were required to exercise the reasonable degree of care, skill and diligence and competence expected of a competent and prudent auditors and accountants including, but not limited to, the duty to:

(a) act with reasonable care, diligence and judgment in reviewing the Audited Financial Statements and Combined Financial Statements;

(b) ensure the Audited Financial Statements and Combined Financial Statements were prepared in accordance with GAAS and Canadian GAAP and they did not contain information that the Falcone Defendants knew or ought to have known was false or misleading;

(c) make reasonable inquiries and investigation to obtain sufficient information and knowledge of the operations and activities of the Loretta Group;

(d) thoroughly and intelligently assess and analyze such information and knowledge, and in particular, whether the information being reported was accurate;

(e) undertake additional or more extensive procedures when the results of inquiries and investigations caused or should have caused the Falcone Defendants to doubt the accuracy of the information;

(f) fairly and accurately disclose all the results of the Falcone Defendants' inquiries, investigations, assessment and analysis, in the Audited Financial Statements and the Combined Financial Statements; and

(g) not knowingly misrepresent or give a false impression of analysis, recommendations, actions or other professional activities.

98. The particulars of the negligence on the part of the Falcone Defendants, which are presently known to BMO, are as follows:

(a) failing to audit the Audited Financial Statements in accordance with GAAS;

(b) failing to possess adequate technical training and proficiency to properly carry out the audit of the Audited Financial Statements;

(c) failing to plan and properly execute the audit of the Audited Financial Statements;

(d) failing to have sufficient knowledge of the Loretta Group's business;

(e) failing to have a sufficient understanding of the internal control environment so as to properly conduct the audit;

(f) failing to adequately supervise and review the work of assistants;

(g) failing to act with reasonable care, diligence, professional skepticism and judgment expected of competent accountants and auditors in similar circumstances;

(h) failing to obtain sufficient appropriate audit evidence to support an unqualified audit opinion of the Audited Financial Statements;

(i) failing to make reasonable inquiries and investigations to obtain the necessary information and knowledge about the financial and operational situation of the Loretta Group;

(j) failing to thoroughly and intelligently assess and analyze the information and knowledge about the financial and operational situation of the Loretta Group;

(k) failing to undertake additional or more extensive procedures when the results of inquiries and investigations caused or ought to have caused the Falcone Defendants to doubt the accuracy of the information and knowledge obtained by it;

(l) failing to fairly and accurately disclose all the results of the Falcone Defendants' inquiries, investigations, assessment and analysis in the Audited Financial Statements and Combined Financial Statements;

(m) overstating the Loretta Group's accounts receivable, revenue, net income and retained earnings in the Audited Financial Statements and Combined Financial Statements;

(n) wrongfully reporting that the Audited Financial Statements and Combined Financial Statements were fairly stated in all material respects;

(o) knowingly representing or giving the false impression the Loretta Group was comprised of companies with a sound and stable financial position;

(p) failing to disclose that, at the time of preparing the Audited Financial Statements and Combined Financial Statements, Falcone was considering joining the Loretta Group as Chief Financial Officer (which he did shortly after BMO advanced funds under the Term Sheet); and

(q) such further breaches as may be proven at the trial of this action.

99. In addition to the above, after joining the Loretta Group as Chief Financial Officer, Falcone become intimately aware of the Kiting Scheme and further knew that the Audited Financial Statements were materially misleading. As such, Falcone had a professional duty to revise the audit report or request that management revise the Audited Financial Statements. Falcone breached this duty by failing to take any of these steps.

100. The Falcone Defendants knew, or ought to have known, that it was reasonably foreseeable that a breach of the Falcone Defendants' duties of care would result in injury to BMO.

The Negligent Misrepresentations of the Falcone Defendants

101. In issuing the Audited Financial Statements with an unqualified opinion, and in issuing the Combined Financial Statements which were based on the Audited Financial Statements, the Falcone Defendants expressly or impliedly represented to BMO that the Loretta Group was comprised of companies with sound and stable financial positions.

102. Amongst other things, the Audited Financial Statements and the Combined Financial Statements contained the following misrepresentations, all of which were untrue, inaccurate or misleading:

(a) Loretta Flour had:

(i) accounts receivable of $2,642,251;

(ii) revenue of $52,780,532;

(iii) net income of $1,308,691; and

(iv) retained earnings of $1,458,161;

(b) Loretta Foods had:

(i) accounts receivable of $2,748,201;

(ii) revenue of $27,821,432;

(iii) net income of $711,206; and

(iv) retained earnings of $968,902;

(c) NDT Food Service had:

(i) accounts receivable of $3,577,235;

(ii) revenue of $80,043,929;

(iii) net income of $588,850; and

(iv) retained earnings of $1,511,344;

(d) The Loretta Group collectively had:

(i) assets of approximately $19,788,493;

(ii) accounts receivable of $8,967,688;

(iii) revenue of $97,281,466;

(iv) net income of $2,608,754;

(v) retained earnings of $3,938,309.00; and

(vi) a debt to net worth ratio of 0.44.

103. Further, the Audited Financial Statements and Combined Financial Statements failed to disclose, among other things, that:

(a) incoming and outgoing payments that were made between the Loretta Group, PHS and Quality Food were significantly greater than the sales and costs of goods sold as listed in Audited Financial Statements and the Combined Financial Statements; and

(b) there were various loan agreements as between the Loretta Group, PHS and Quality Food.

104. The particulars of the negligence on the part of the Falcone Defendants, which are presently known to BMO, are as follows:

(a) failing to audit the Audited Financial Statements in accordance with GAAS;

(b) failing to possess adequate technical training and proficiency to properly carry out the audit of the Audited Financial Statements;

(c) failing to plan and properly execute the audit of the Audited Financial Statements;

(d) failing to have sufficient knowledge of the Loretta Group's business;

(e) failing to have a sufficient understanding of the internal control environment so as to properly conduct the audit;

(f) failing to adequately supervise and review the work of assistants;

(g) failing to act with reasonable care, diligence, professional skepticism and judgment expected of competent accountants and auditors in similar circumstances;

(h) failing to obtain sufficient appropriate audit evidence to support an unqualified audit opinion of the Audited Financial Statements;

(i) failing to make reasonable inquiries and investigations to obtain the necessary information, evidence and knowledge about the financial and operational situation of the Loretta Group;

(j) failing to thoroughly and intelligently assess and analyze the information and knowledge about the financial and operational situation of the Loretta Group;

(k) failing to undertake additional or more extensive procedures when the results of inquiries and investigations caused or ought to have caused the Falcone Defendants to doubt the accuracy of the information and knowledge obtained by it;

(l) failing to fairly and accurately disclose all the results of the Falcone Defendants' inquiries, investigations, assessment and analysis in the Audited Financial Statements and Combined Financial Statements;

(m) wrongfully reporting that the Audited Financial Statements and Combined Financial Statements were fairly stated in all material respects;

(n) knowingly representing or giving the false impression the Loretta Group was comprised of companies with a sound and stable financial position;

(o) failing to disclose that, at the time of preparing the Audited Financial Statements and Combined Financial Statements, Falcone was considering joining the Loretta Group as Chief Financial Officer (which he did shortly after BMO advanced funds under the Term Sheet);

(p) failing to disclose the economic dependence that the Loretta Group had on PHS and Quality Food; and

(q) such further breaches as may be proven at the trial of this action.

105. Before the terms of the Term Sheet were finalized, the Falcone Defendants knew that BMO was relying on Audited Financial Statements and the Combined Financial Statements. The Falcone Defendants audited and compiled the Audited Financial Statements and the Combined Financial Statements with the intention that BMO would rely on the misrepresentations contained therein.

106. On or about August 2009, BMO, in reasonable reliance upon the Audited Financial Statements and the Combined Financial Statements, entered into the Term Sheet with the Loretta Group.

107. BMO would not have advanced the funds under any of the financing agreements to the Loretta Group if the Audited Financial Statements and Combined Financial Statements fairly disclosed the financial position of these companies.

108. As a result of the Falcone Defendants' negligence and negligent misrepresentations described above, BMO has suffered damages and losses in the amount of $20,000,000.00, and these losses are continuing to accrue.

109. Further, as a result of the above negligence and negligent misrepresentations of the Falcone Defendants, BMO has suffered special damages, particulars of which will be provided before trial.

Claim against Bracken

110. Between August 2009 and November 2010, Bracken received $128,400 CAD directly from the Loretta Group and or other defendants. In addition, during the same period, approximately $965,000 was paid by the Loretta Group to credit card accounts that were under Bracken's name and/or control. These monies originated from BMO under the terms of the Loan Agreements. Accordingly, Bracken acquired these funds from BMO improperly ~~holds these funds as constructive trustee for the benefit of BMO~~.

~~111. In addition, Bracken received either portions of the proceeds from the Kiting Scheme, or assets acquired with the proceeds of the Kiting Scheme with knowledge, actual or constructive, of the Kiting Scheme, and holds all such funds or assets as constructive trustee for the benefit of BMO.~~

112. As a result of the above conduct, BMO expressly claims rights to constructive trusts and equitable liens and interests in and against the following properties:

(a) the Fifeshire Property, which comprises the following PINs:

(i) PIN 10098-0838 (LT), Lot 49, Plan 3456 (North York) save and except Part 3 on Reference Plan 64R15198;

(ii) PIN 0098-1341 (LT), Part of Lot 46, Plan 3456 (North York) designated as Part 5 on Reference Plan 66R20573; and

(iii) PIN 10098-1338 (LT), Part of Lot 50, Plan 3456 (North York) designated as Part 2 on Reference Plan 66R20573;

(b) the Carlaw Condominium, which comprises the following PINs:

(i) PIN 13073-0064 (LT) Unit 1, Level 2, Toronto Standard Condominium Plan No. 2073 and its appurtenant interest;

(ii) PIN 13073-0383 (LT) Unit 37, Level B, Toronto Standard Condominium Plan No. 2073 and its appurtenant interest; and

(iii) PIN 13073-0451 (LT) Unit 105, Level B, Toronto Standard Condominium Plan No. 2073 and its appurtenant interest.

113. BMO seeks certificates of pending litigation against these lands and any other lands registered in the name of Bracken, which were purchased using funds BMO loaned to the Loretta Group.

Claim against the Renee Defendants

114. The Renee Defendants received either portions of the proceeds from the Kiting Scheme, or assets acquired with the proceeds of the Kiting Scheme with knowledge, actual or

constructive, of the Kiting Scheme, and hold all such funds or assets as trustees of a constructive trust for the benefit of BMO.

115(a). The Renee Defendants were enriched by the proceeds and assets they received through the Kiting Scheme. This enrichment caused BMO a corresponding deprivation in that the proceeds and assets were obtained through monies fraudulently obtained from BMO. There is no juristic reason for this enrichment of the Renee Defendants.

115. As a result of the above conduct, BMO expressly claims rights to constructive trusts and equitable liens in and against all real property held by the Renee Defendants. BMO seeks a certificate of pending litigation against these lands and any other assets of the Renee Defendants.

BMO is entitled to Tracing, Freezing Assets, Accounting and Disgorgement

116. As a result of the defendants' wrongful conduct as set out above, BMO is entitled to trace all amounts received or disbursed by the defendants as part of or as a result of the Kiting Scheme and to recover same. BMO is also entitled to an accounting of the monies belonging to BMO that have come into the possession of any of the defendants and to an accounting of any benefit received by any of the defendants as a result of the Kiting Scheme.

117. BMO is also entitled to interlocutory and permanent injunctions restraining the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants from disposing of any of their assets wherever located and an accounting of all of these defendants' assets, effects, and property, including any trust account or jointly held assets, any improper disposition thereof, and all money had or received by these defendants or anyone on their behalf.

118. The defendants are liable to make restitution to BMO and to disgorge any benefits they have received from the Kiting Scheme to BMO.

119. BMO has incurred, and will continue to incur, significant out-of-pocket expenses and special damages in their detection, investigation and quantification of the fraud and losses suffered at the hands of Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants in an amount to be proven at the trial of this action.

Action Survives Bankruptcy

120. The liability of the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants arises out of their fraud and conspiracy. BMO relies upon the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, in particular section 178.

BMO is entitled to recover Punitive Damages and Costs

121. BMO is entitled to recover punitive and exemplary damages in the amount of $1,000,000 as a result of the acts of the Loretta Defendants, Faibish Defendants and the Babiolakis Defendants described above. The actions of these defendants were intentional, reckless, highhanded, callous and constituted a wanton disregard for BMO.

122. Further, as a result of the defendants' fraudulent and malicious conduct set out above, the Loretta Defendants, the Faibish Defendants and the Babiolakis Defendants ought to pay costs of this action on a full indemnity basis.

Service

123. BMO relies upon Rule 17.02 of the Ontario *Rules of Civil Procedure*, specifically that this action:

(a) relates to real or personal property that is located in Ontario;

(b) is in respect of a tort committed in Ontario;

(c) is in respect of damages sustained in Ontario arising from a tort, and breach of contract; and

(d) is against persons outside Ontario who are necessary and proper parties to this proceeding.

Place of Trial

124. BMO requests that the trial of this action take place in the City of Toronto.

~~July 4, 2011~~ October 14, 2011

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Plaintiff — Defendants

Court File No. CV-11-9287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

<u>AMENDED</u> STATEMENT OF CLAIM

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