

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

MAR 09 2018

S=183 599

No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PAUL PEARCE

PLAINTIFF

and

4 PILLARS CONSULTING GROUP INC., 7196181 CANADA LTD., CELESTIAL  
CONSULTING GROUP CORP., CHAUDHRY CONSULTING INC., CHAUDHRY  
HOLDINGS INC., SERGIUS CONSULTING GROUP INC., VERSO FINANCIAL INC.,  
TROY TISSERAND, REGINALD ROCHA, PAUL MURPHY, DALE CHEN, NAVAIZ  
CHAUDHRY, BARBARA WYANT AKA BARBARA SERGIUS, BLAIR GREENWOOD,  
CHARLIE PEET, PETER TEMPLE, GURINDER DHALIWAL, ROBERT OSBORNE, BOB  
HAUCK, BENJY HOUSER, SUE GRUBAC, JENNIFER VIRANI, PRADEEP  
PADMANABHAN, AND CHRIS GREW

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

### NOTICE OF CIVIL CLAIM

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

#### **The Parties**

1. The Defendant 4 Pillars Consulting Group Inc. is a company incorporated under the laws of British Columbia, with an address for service at #960-1111 Melville Street, Vancouver BC V6E 3V6 (“4 Pillars Inc.”).
2. The Defendant 7196181 Canada Ltd. is a company incorporated under the laws of Canada, with an address for service at #960-1111 Melville Street, Vancouver BC V6E 3V6 (“7196181”).
3. 4 Pillars Inc. and 7196181 operate as a joint enterprise (together, the “Franchisors”). Each of these Defendants were an agent of the other for the purposes of developing, marketing, distributing, selling and managing 4 Pillars products and services.
4. The Franchisors are in the business of operating a franchise system that offers debt consulting services to consumers in British Columbia and across Canada, through stores operated by its Franchisees under the name “4 Pillars”. The business operated by the Franchisors and their Franchisees shall be referred to herein as the “4 Pillars business” and the Franchisors and the Franchisees operating the 4 Pillar business shall be collectively referred to as “4 Pillars”.

5. The Defendant Celestial Consulting Group Corp. is a franchisee operating the 4 Pillars business in British Columbia. It is incorporated under the laws of British Columbia with an address for service at 3-3788 Laurel Street, Burnaby BC V5G 1M7. The Defendant Dale Chen is an officer and director of the Defendant Celestial Consulting Group Corp., and works from #130-10691 Shellbridge Way, Richmond, BC V6X 2W8.

6. The Defendant Chaudhry Consulting Inc. is a franchisee operating the 4 Pillars business in British Columbia. It was incorporated under the laws of British Columbia with an address for service at 10065 247B Street, Maple Ridge, BC V2W 0H1. It was dissolved on September 12, 2017 for failure to file. The Defendant Nawaiz Chaudhry was an officer and director of the Defendant Chaudhry Consulting Inc., and works from 1285 West Broadway, Suite 600, Vancouver, BC V6H 3X8 and Suite 203 – 14439 104<sup>th</sup> Avenue, Surrey, BC V3R 1M1. The Plaintiff relies on the *Business Corporations Act*, SBC 2002, c. 57, s. 346, to bring this action against Chaudhry Consulting Inc.

7. The Defendant Chaudhry Holdings Inc. is a successor in interest to Chaudhry Consulting Inc. It is incorporated under the laws of British Columbia with an address for service at 230-19150 Lougheed Hwy, Pitt Meadows, BC V3Y 2H6. The Defendant Nawaiz Chaudhry is an officer and director of the Defendant Chaudhry Holdings Inc.

8. The Defendant Sergius Consulting Group Inc. is a franchisee operating the 4 Pillars business in British Columbia. It is incorporated under the laws of British Columbia with an address for service at 16422 Bell Road, Surrey BC V3S 1J9. The Defendant Barbara Wyant aka Barbara Sergius is an officer and director of the Defendant Sergius Consulting Group Inc., and works from #101 - 33119 South Fraser Way Abbotsford, BC V2S 2B1 and 150 8621 201 Street, Langley BC V2Y 0G9.

9. The Defendant Verso Financial Inc. is a franchisee operating the 4 Pillars business in British Columbia. It is incorporated under the laws of British Columbia with an address for service at 26 Bastion Square, Third Floor – Burnes House, Victoria BC V8W 1H9. The Defendant Blair Greenwood is an officer and director of the Defendant Verso Financial Inc., and works from 360B Harbour Road, Victoria, BC V9A 3S1.

10. The Defendant Charlie Peet is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from 1873 Spall Road, Kelowna, BC V1Y 4R2. In the alternative, Charlie Peet operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Charlie Peet and the Franchisors, and he is an officer and director of that entity.

11. The Defendant Peter Temple is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from 207 - 3989 Henning Drive, Burnaby, BC V5C 6P8. In the alternative, Peter Temple operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Peter Temple and the Franchisors, and he is an officer and director of that entity.

12. The Defendant Gurinder Dhaliwal is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from #130-10691 Shellbridge Way, Richmond, BC V6X 2W8. In the alternative, Gurinder Dhaliwal operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Gurinder Dhaliwal and the Franchisors, and he is an officer and director of that entity.

13. The Defendant Robert Osborne is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from 740 Chickadee Lane, Castlegar, BC V1N 1E1. In the alternative, Robert Osborne operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Robert Osborne and the Franchisors, and he is an officer and director of that entity.

14. The Defendant Bob Hauck is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from 201A - 1157 12th Street, Kamloops, BC V2B 7L2. In the alternative, Bob Hauck operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Bob Hauck and the Franchisors, and he is an officer and director of that entity.

15. The Defendant Benjy Houser is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from 2311 Watkiss Way, Unit #103, Victoria, BC V9B 6J6. In the alternative, Benjy Houser operates through an incorporated business, the identity of which

is presently unknown to the Plaintiff but is well known to Benjy Houser and the Franchisors, and he is an officer and director of that entity.

16. The Defendant Sue Grubac is a franchisee of the 4 Pillars business in British Columbia. She operates as a sole proprietorship from #1 - 1610 Northfield Road, Nanaimo, BC V9S 3A8. In the alternative, Sue Grubac operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Sue Grubac and the Franchisors, and she is an officer and director of that entity.

17. The Defendant Jennifer Virani is a franchisee of the 4 Pillars business in British Columbia. She operates as a sole proprietorship from Suite 218, 901 West 3rd Street, North Vancouver, BC V7P 3P9. In the alternative, Jennifer Virani operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Jennifer Virani and the Franchisors, and she is an officer and director of that entity.

18. The Defendant Pradeep Padmanabhan is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from Suite 212, 1811 Victoria Street, Prince George, BC V2L 2L6. In the alternative, Pradeep Padmanabhan operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Pradeep Padmanabhan and the Franchisors, and he is an officer and director of that entity.

19. The Defendant Chris Grew is a franchisee of the 4 Pillars business in British Columbia. He operates as a sole proprietorship from 1027 Pandora Ave, Victoria, BC V8V 3P6. In the alternative, Chris Grew operates through an incorporated business, the identity of which is presently unknown to the Plaintiff but is well known to Chris Grew and the Franchisors, and he is an officer and director of that entity.

20. The Defendant Troy Tisserand is a director of each of 4 Pillars Inc. and 7196181. He has an address at 21857 95A Avenue, Edmonton AB T5T 3Y6.

21. The Defendant Paul Murphy is a director of each of 4 Pillars Inc. and 7196181. He has an address at 3459 152B Street, Surrey BC V3S 0M5.

22. The Defendant Reginald Rocha is a director of each of 4 Pillars Inc. and 7196181. He has an address at 26115 124<sup>th</sup> Avenue, Maple Ridge BC V2W 1C4.

23. The representative Plaintiff, Paul Pearce, is a resident of Burnaby, British Columbia.

24. The Plaintiff brings this claim on behalf of himself and on behalf of all residents of British Columbia who paid fees to 4 Pillars for debt restructuring services (the “Class”).

### **The Regulation of Debt Restructuring Services**

25. Debt restructuring services are services which assist debtors to compromise their overall debt through an arrangement with their creditors. Debt restructuring services are governed and regulated in British Columbia by Part III, Division II of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “*BIA*”), dealing with “consumer proposals”, and, since April 1, 2016, by Part 7, Division 2 of the *Business Practices and Consumer Protection Act*, SBC 2004, c.2 (the “*BPCPA*”) dealing with “collection agents and debt repayment agents”.

26. Under the *BIA*, a “consumer debtor”, defined as debtor who is insolvent and whose aggregate debts (excluding debts secured by the individual’s principal residence) do not exceed \$250,000, may commence proceedings to make a consumer proposal under the *BIA* by obtaining the assistance of an administrator under the *BIA* to prepare the consumer proposal. An administrator under the *BIA* is either a trustee licensed under the *BIA* or a person appointed or designated by the Superintendent of Bankruptcy to administer consumer proposals. No persons other than licensed trustees have been designated in British Columbia to administer consumer proposals.

27. The licensed trustee who agrees to assist the consumer debtor is required by the *BIA* to:

- a. investigate, or cause costs to be investigated, the consumer debtor’s property and financial affairs so as to be able to assess with reasonable accuracy the consumer debtor’s financial situation;
- b. provide, or provide for, counselling to the consumer debtor in accordance with directions issued by the Superintendent;

- c. prepare a consumer proposal in the prescribed form; and
- d. unless the licensed trustee concludes the debtor is not eligible to make a consumer proposal, file the consumer proposal and the prescribed statement of affairs with the official receiver.

28. Once the consumer proposal and prescribed statement of affairs are filed and distributed by the licensed trustee to the creditors, the consumer proposal may be accepted or deemed to be accepted by the debtor's creditors, in which case the consumer proposal is either accepted or deemed to be accepted by the Court, or the consumer proposal may be rejected by the debtor's creditors all in accordance with the procedures set out in the *BIA*.

29. The *BIA* in s. 156, and the *Bankruptcy and Insolvency General Rules*, CRC c. 368 (the "*Bankruptcy Rules*") in s. 129(1), prescribe the fees that can be charged for a consumer proposal. A consumer debtor is charged \$750 to file a consumer proposal. If, and only if, the consumer proposal is accepted by the creditors, the licensed trustee may charge another \$750, payable upon approval or deemed approval by the Court of the proposal, and a fee equal to 20% of the monies distributed to creditors under the proposal, payable on the distribution of the monies. In addition, under s. 131(1) of the *Bankruptcy Rules*, a licensed trustee may charge a fee of \$85 per hour for individual counselling, or \$25 for group counselling provided to a consumer debtor.

30. Since April 1, 2016, persons who provide services to assist debtors in making arrangements with their creditors to compromise their debt are required to be licensed under the *BPCPA* as debt repayment agents. Certain classes of persons are exempted from this licensing requirement, such as lawyers in the ordinary course of their practice and trustees licensed under the *BIA*.

31. Under s. 127 of the *BPCPA*, a debt repayment agent must enter in a written contract with the debtor which must contain certain prescribed terms, information and disclosure statements. In addition, a debtor repayment agent must not:

- a. charge fees or disbursements in the excess of the prescribed amount;
- b. charge, require, or accept any amount from a debtor before a repayment proposal is accepted by one or more of the debtor's creditors;

- c. assist or offer to assist the debtor to obtain a loan or credit from a lender; or
- d. require, request or accept any amount for agreeing to assist the debtor to obtain loan or credit from a lender.

32. Under the *Debt Collection Industry Regulation*, B.C. Reg. 400/2008 as amended (the “*Regulation*”), a debt repayment agent must not charge a debtor fees or disbursements in excess of 10% of the gross amount to be paid to the creditors if that the amount is to be paid to the creditors over a term lasting less than 90 days, or 15% of the gross amount to be paid to the creditors if that amount is to be distributed to the creditors over a term lasting 90 days or more. In the latter instance, the debt repayment agent may also charge a one-time charge of no more than the average monthly distribution made to the creditors.

33. The overall effect of this legislative scheme is to prevent debtors from being exploited by paying for debt restructuring services which do not result in any compromise of their debt. Under the scheme created by the *BIA* and *BPCPA*, a debtor cannot be charged for debt restructuring services until a debt restructuring is achieved, except for the \$750 payable to a licensed trustee under the *BIA* for filing a consumer proposal. When a debt restructuring does occur, the fees charged to the debtor can be no greater than 20% of the amount to be paid to the creditors under the compromise, except for the \$750 payable to a licensed trustee upon approval of a consumer proposal under the *BIA* and the one-time fee permitted by the *Regulation* under the *BCPCA* for compromises which have a payment period of longer than 90 days.

#### **4 Pillars’ Debt Restructuring Business**

34. The 4 Pillars debt restructuring business is carried on by the Franchisors and the Franchisees contrary to the scheme created by the *BIA* and *BPCPA*. Neither the Franchisors or any of the Franchisees are licensed trustees under the *BIA* or are licensed debt repayment agents under the *BPCPA*.

35. The main, if not the only, debt restructuring service provided in the operation of the 4 Pillars business is to prepare and arrange for consumer proposals to be filed by a licensed trustee under the *BIA*. 4 Pillars also represents that 4 Pillars may negotiate debt settlements directly with



a debtor's creditors but that service is rarely, if ever, provided in the operation of the 4 Pillars business.

36. Under the standard operating procedures of the 4 Pillars business, a debtor is required, after an initial consultation, to enter in a standard form of contract for debt restructuring services, the printed terms of which are not negotiable by the debtor. The standard form agreement used in the operation of the 4 Pillars business provides that:

- a. a debtor will pay an initial fee upon execution of the agreement in a set amount, which has varied from time to time but which has been at least \$500;
- b. the debtor will pay a further fee in a set amount, as determined by 4 Pillars in relation to the debtor's net income before any debt payments, which fee is generally payable in three or more instalments over 90 days or more; and
- c. 4 Pillars is authorized to speak to the debtors' creditors on the debtor's behalf, pursuant to a notice authorization signed by the debtor as part of the standard form agreement.

37. Under the standard operating procedures of the 4 Pillars' business, once the standard form agreement is executed by the debtor and the initial fee is collected:

- a. 4 Pillars instructs the debtor to cease making any payments to its creditors, and 4 Pillars contacts the debtor's creditors using the authorization signed by the debtor to advise the debtor's creditors that it is working on the debtor's behalf and that time will be required to make arrangements;
- b. 4 Pillars then meets with the debtor several times over a 90-day period to collect information from the debtor, prepare a consumer proposal to present to a licensed trustee, review the consumer proposal with the debtor, and then meet with the licensed trustee to present the consumer proposal; and
- c. during this time, 4 Pillars collects the installment fee payable under its standard form agreement, which fee is payable from funds available to the debtor that would otherwise had been used by the debtor to pay its creditors.

38. Once the installment fee is collected from the debtor, 4 Pillars arranges for the debtor to meet with a licensed trustee. If the debtor is eligible to make a consumer proposal, the debtor then pays the licensed trustee the \$750 fee payable under the *BIA* to file the consumer proposal and the consumer proposal process then proceeds under the *BIA*. If the consumer proposal is accepted by the debtor's creditors, then the debtor pays the additional \$750 fee and the percentage fee which the licensed trustee is permitted to charge under the *BIA*.

39. The total amount of initial fee and the installment fee collected by 4 Pillars routinely, if not always, exceed the percentage amounts that may be charged to a debtor for an accepted proposal under either the *BIA* or the *BPCPA*. These fees are collected by 4 Pillars before the consumer proposal prepared by 4 Pillars is ever presented to or accepted by the debtor's creditors, and the fees collected by 4 Pillars are payable by the debtor in addition to the fees collected by the licensed trustee under the *BIA*.

40. The standard operating procedures of the 4 Pillars business, as set out in paragraphs 35 through 39 above, are designed to delay the filing of a consumer proposal by the debtor so that the additional income now available to the debtor, as a result of the debtor ceasing to make payments to the debtor's creditors as instructed by 4 Pillars, may be used to pay fees to 4 Pillars for the preparation of the consumer proposal. These operating procedures have the effect of an:

- a. increasing amount of debt that must be compromised under the eventual consumer proposal submitted by the licensed trustee;
- b. increasing the fees payable by the debtor for the consumer proposal in the amount far beyond that permitted the *BIA* or the *BPCPA*.

41. If the consumer proposal is accepted by the debtor's creditors, 4 Pillars offers its debtor's a credit rebuilding program for a set cost, currently set at \$1,200. Under this program, 4 Pillars offers to and does arrange loans for the debtor to finance the consumer proposal. The fees charged by 4 Pillars, and the cost of the credit it arranges for the debtor, further add to the cost to the debtor of the consumer proposal.

42. The Franchisors and the Franchisees, in operating the 4 Pillars business, have:

- a. provided debt restructuring services to the Class members in accordance with the standard operating procedures of the 4 Pillars business set out in paragraphs 35 through 39 above;
- b. collected fees from the Class members for those debt restructuring services, as set out in paragraphs 36 through 39 above; and
- c. for some of the Class members, have collected fees for arranging credit for those Class members under the 4 Pillars credit rebuilding program, as set out in paragraph 41 above.

### **The 4 Pillars Franchise System**

43. The Franchisors have entered into franchise agreements with each of the Franchisees, which requires the Franchisees to operate their locations and provide debt restructuring services under the name of 4 Pillars, in accordance with standard operating procedures and terms of the 4 Pillars business set by the Franchisor and as set out in paragraphs 35 to 39 above.

44. The Franchisors of 4 Pillars operates a “business system” to provide the 4 Pillars debt restructuring services. The system includes a computer-based client tracking system, marketing materials, and intellectual property such as documents (including the standard form agreement used in the 4 Pillars business), training materials, forms, formulas, trademarks, web application form, welcome letters, and other proprietary information.

45. Under the franchise arrangements between the Franchisors and the Franchisees, Franchisees pay the Franchisors royalty and other payments. These payments are made from the fees collected by the Franchisees in the operation of the 4 Pillars, including the fees collected from Class members.

46. The Franchisors maintain an operation manual with which Franchisees are required to comply in providing 4 Pillars’ debt restructuring services. At all material times, the Franchisees were required to provided debt restructuring services in accordance with the standard operating procedures and terms set by 4 Pillars set by the Franchisor and as set out in paragraphs 35 through 39 above.

### **The Officers and Directors**

47. At all material times, 4 Pillars Inc. and 7196181 Canada Ltd. carried on the business of 4 Pillars under the direction and control of the Defendants, Troy Tisserand, Paul Murphy and Reginald Rocha, and each of these individual Defendants was a directing mind of 4 Pillars and 7196181 Canada Ltd.

48. At all material times, Celestial Consulting Group Corp. carried on the business of 4 Pillars under the direction and control of the Defendant Dale Chen, and the other corporate franchisees of 4 Pillars operating in British Columbia, including the Defendants Chauhdry Consulting Inc. and Chauhdry Holdings Inc., Sergius Consulting Group Inc. and Verso Financial Inc., carried on the business of 4 Pillars under the direction and control of the individual Defendants who were officers and directors of these corporate franchisees, including the defendants Navaiz Chaudhry, Barbara Wyant, and Blair Greenwood. At all material times, the Defendant Dale Chen was the directing mind of Celestial Consulting Group Corp., and the other individual Defendants who were officers and directors of corporate franchisees of 4 Pillars operating in British Columbia, including the Defendants Navaiz Chaudhry, Barbara Wyant and Blair Greenwood, were the directing minds of the corporate entities for which they were officers and directors.

49. At all material times, the Defendants Troy Tisserand, Paul Murphy, Reginald Rocha, Dale Chen, Naviar Chaudhry, Barbara Wyant, Blair Greenwood and any of the other individual Defendants who were officers and directors of a corporate franchisee of 4 Pillars operating in BC (collectively, the “Officers and Directors”), directed the corporate entities they controlled to carry on the business of 4 Pillars in a manner that was, and to collect and receive fees in the operation of the 4 Pillars business that were, contrary to the *BIA* and *BPCPA*, and each of these Officers and Directors did so knowing that, or in willful or reckless disregard as to whether, the business of 4 Pillars was operated in a manner that was, and the fees collected in the operation 4 Pillars business were, contrary to the *BIA* and *BPCPA*.

### **The Plaintiff’s Contract for Debt Restructuring Services**

50. On about July 11, 2017, following an initial consultation with the Defendant Dale Chen (“Chen”) at the 4 Pillars location in Richmond, BC, the Plaintiff entered into a standard form of

contract for debt restructuring services with the Defendant Franchisee, Celestial Consulting Group Corp. (“Celestial Corp.”).

51. On about July 11, 2017, the Plaintiff paid an initial fee of \$650 to the Celestial Corp. The Plaintiff then made the following instalment payments to Celestial Corp. on about the dates indicated:

- a. August 31, 2017 - \$1,253.67;
- b. September 25, 2017 - \$1,253.67;
- c. November 17, 2017 - \$1,253.67.

52. In accordance with the standard operating procedures of the 4 Pillars business, Chen met several times with the Plaintiff to prepare materials to make a consumer proposal. Chen advised the Plaintiff to cease making payments to his creditors and the Plaintiff did so. At no time did the Chen take steps to negotiate directly with the Plaintiff’s creditors.

53. After the final instalment payment, on about November 22, 2017, Chen arranged for the Plaintiff to meet with a licensed trustee, at the firm of Alan Farber. Upon reviewing the materials prepared with the assistance of 4 Pillars, the licensed trustee informed the Plaintiff that the consumer proposal presented by 4 Pillars was unlikely to succeed and the Plaintiff did not pursue the consumer proposal.

54. On November 29, 2017, the Plaintiff wrote to Chen demanding the refund of the amounts of the Plaintiff paid to Celestial Corp. on the basis that services the Plaintiff paid for were not properly provided. The Plaintiff did not receive any response to that demand.

## **Part 2: RELIEF SOUGHT**

55. A declaration pursuant to s. 172(1)(a) of the *BPCPA* that:

- a. the fees charged by 4 Pillars for debt restructuring services, constitute an unconscionable act or practice, contrary to ss. 8(1) and 9(1) of the *BPCPA*;

- b. the fees charged by 4 Pillars for debt restructuring services are contrary to s. 127(3) and (4) of the *BPCPA*; and
- c. the fees charged by 4 Pillars for the credit rebuilding program is contrary to s. 127(6)(d) of the *BPCPA*.

56. A declaration that the debt restructuring services provided in the operation of the 4 Pillars business are contrary to ss. 66.11 and 202(1)(g) of the *BIA* and s. 129(1) of the *Bankruptcy Rules*.

57. An Order pursuant to s. 172(3)(a) of the *BPCPA* that the Franchisors and the Franchisees restore to the Class all fees that the Defendants collected from the Class in contravention of the *BPCPA*.

58. An accounting and restitution of all fees collected by the Franchisors and the Franchisees in the operation of the 4 Pillars business in contravention of the *BIA* and the *BPCPA*, on the ground of unjust enrichment.

59. Damages under s. 171 of the *BPCPA*.

60. Damages in conspiracy.

61. A declaration that the Officers and Directors are jointly and severally liable to the Class members for any liability of the Franchisors or the Franchisees, of which they were officers and directors, arising out of the collection of fees from the Class members in the operation of the 4 Pillars business.

62. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

### **Part 3: LEGAL BASIS**

#### **Violation of the *BPCPA***

63. The debt restructuring services provided in the operation of the 4 Pillars business to the Plaintiff and the Class members, in respect of their personal debt, were “consumer transactions”

within the meaning of s. 1 of the *BPCPA*, and the Franchisors and the Franchisees were suppliers of those consumer transactions, with the meaning of s. 1 of the *BPCPA*.

64. The fees charged for debt restructuring services provided in the operation of the 4 Pillars business constitute an unconscionable act and practice, within the meaning of s. 8 of the *BPCPA*, because those fees grossly exceeded the total price at which the same or similar services were available from licensed trustees under the *BIA*, or licensed debt repayment agents under the *BPCPA*, and the fees charged to the Plaintiff and the Class members were contrary to, and collected in violation of, s. 9(1) of the *BPCPA*.

65. The debt restructuring services offered and provided in the operation of the 4 Pillars business, as set out in paragraphs 35 through 39 above, fall within the definition of the business and occupation of a “debt repayment agent” in s. 125 of the *BPCPA*, and as such, the Franchisors and the Franchisees are debt repayment agents under the *BPCPA*.

66. The debt restructuring services provided in the operation of 4 Pillars business were offered and provided in violation of the provisions of the *BPCPA* dealing with debt repayment agents, as:

- a. none of the Franchisors or the Franchisees were licensed debt repayment agents, contrary to s. 8(1) of the *Regulation* and s. 143 of the *BPCPA*;
- b. the standard form agreements for the debt restructuring services used in the operation of the 4 Pillars business, and used to provide the debt restructuring services to the Plaintiff and Class members, did not contain the terms, information and disclosure statements prescribed by the *Regulation*, contrary to s. 127(2)(c) of the *BPCPA*;
- c. the fees charged for restructuring services in the operation of the 4 Pillars business, and collected from the Plaintiff and the Class members, were charged and collected before any repayment proposal was accepted by their creditors, contrary to s. 127(4) of the *BPCPA* and the amount of those fees were in excess of the prescribed amount under s. 15 of the *Regulation*, contrary to s. 127(3) of the *BPCPA*; and

- d. the credit rebuilding program offered and provided in the operation of 4 Pillars business was offered and provided to the Plaintiff and Class members in violation of s. 127(6)(c) of the *BPCPA*, and the fees collected from the Class in respect of that credit rebuilding program were collected in contravention of s. 127(6)(d) of the *BPCPA*.

67. The Plaintiff and Class members are entitled to restoration of all fees charged to them by 4 Pillars in violation of the *BPCPA*, or alternatively are entitled to damages under s. 171 for those fees.

### **Violation of the *BIA***

68. The debt restructuring services provided in the operation of the 4 Pillars business were contrary to the *BIA* in that:

- a. none of the Franchisors or the Franchisees were licensed trustees under the *BIA*, in breach of *BIA*, ss. 2, 66.11, 66.12, 66.13 and Directive 13R6;
- b. the services provided in the operation of the 4 Pillars business concerning consumer proposals are services that the *BIA* requires a licensed trustee to provide, in breach of *BIA*, ss. 2, 66.11, 66.12, 66.13 and 202; and
- c. the fees charged by 4 Pillars in relation to the consumer proposal greatly exceeds the fees permitted to be charged for a consumer proposal under the *BIA*, s. 66.12 and *Bankruptcy Rules*, ss. 129, 131.

69. In addition, s. 202(1)(f) of the *BIA* prohibits a person from directly or indirectly soliciting or canvassing any person to make a consumer proposal. The debt restructuring services offered and provided in the operation of the 4 Pillars business constitute the direct solicitation or canvassing of the Plaintiff and Class members to make a consumer proposal under the *BIA*, and are contrary to and prohibited by s. 202(1)(f) of the *BIA*.



## **Unjust Enrichment**

70. The Franchisors and Franchisees have been enriched by the receipt of fees collected from the Plaintiff and Class members in the operation of the 4 Pillars business.

71. The Plaintiff and the Class members have been deprived through the payment of those same fees collected from the Plaintiff and Class members in the operation of the 4 Pillars business.

72. There is no juristic reason why the Franchisors or the Franchisees should have received or should retain the benefit of fees collected from the Plaintiff and Class members in violation of the *BPCPA* and *BIA*. In particular, the breaches of the *BPCPA* and *BIA*, as set out in paragraphs 66 through 69 above, void the contracts between the Plaintiff and Class members as a juristic reason for the enrichment of the Franchisors and the Franchisees.

73. As a result, the Franchisors and the Franchisees have been unjustly enriched from the fees collected from the Plaintiff and the Class members in violation of the *BPCPA* and the *BIA*, and the Plaintiff and Class members are entitled to restitution of those fees.

## **Conspiracy**

74. The Franchisors agreed with each of the Franchisees, through the execution of a franchise agreement with each of them, to implement a scheme to collect fees for debt restructuring services in breach of the *BIA* and the *BPCPA* for the mutual benefit of the Franchisors and the Franchisees (the “Conspiracy”).

75. In furtherance of the Conspiracy, the Franchisors and the Franchisees have committed the following over and unlawful acts:

- a. the Franchisors developed a business model with standard documentation and operating procedures for the provision of debt restructuring services on terms that were designed to result in the collection of fees in breach of the *BIA* and the *BPCPA*;
- b. pursuant to the terms of their franchise agreements, the Franchisors required the Franchisees to provide debt restructuring services using the standard-form documentation and operating procedures determined by the Franchisors, which

requirements have resulted in the collection of fees from Class members in breach of the *BIA* and the *BPCPA*;

- c. the Franchisees have operated their stores and provided debt restructuring services in accordance with the standard operating procedures and terms set by the Franchisors, and as a result have collected fees from Class members in breach of the *BIA* and the *BPCPA*;
- d. the Franchisors has assisted the Franchisees in the operation of their business by providing administrative and technical support, and as a result the Franchisors have aided and abetted the Franchisees in collecting fees from Class members in breach of the *BIA* and the *BPCPA*; and
- e. the Franchisors have received from the Franchisees a portion of the unlawful fees collected from Class members in breach of the *BIA* and the *BPCPA*, through the payment by the Franchisees of royalty and other fees to the Franchisors.

76. Both the Franchisors and the Franchisees knew or ought to have known that the unlawful acts each of them committed in furtherance of the Conspiracy, as set out in paragraph 75 above, were likely to cause harm and injury to the Class members, including the Plaintiff.

77. As a result of the unlawful acts committed in furtherance of the Conspiracy, as set out in paragraph 75 above, the Class members, including the Plaintiff, have suffered loss and damage through payment of the fees, and each of the Franchisors and the Franchisees is liable for the entirety of this damage and loss.

### **Joint and Several Liabilities of the Officers and Directors**

78. Each of the Officers and Directors is jointly and severally liable for the acts of the Franchisors or the Franchisees, for which they were an officer or director, in collecting fees in the operation of the 4 Pillars business from the Plaintiff and Class members that are contrary to the *BIA* and *BPCPA*, as those acts were committed by the Franchisors and the Franchisees at the direction and under the control of their respective Officers and Directors, and those Officers and

Directors knew, or were willfully blind to whether, the fees collected in the operation of the 4 Pillars business were contrary to the *BIA* and *BPCPA*.

79. The Plaintiff pleads and relies on the *Limitation Act*, SBC 2012, c 13, s 30.

Plaintiff's address for service:


Bennett Mounter LLP  
#400 - 856 Homer Street  
Vancouver, British Columbia, V6B 2W5  
pb@hbmlaw.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: March 9, 2018



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Signature of lawyer for the Plaintiff

Mathew P. Good

Paul R. Bennett  
Mark W. Mounter

Co-Counsel for the  
Plaintiff  
Good Barristers

Co-Counsel for the  
Plaintiff  
Bennett Mounter LLP

**Endorsement for Service Outside British Columbia.**

The Plaintiff claims the right to serve this Notice of Civil Claim on the Defendant Troy Tisserand pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c. 28, s. 10 (*CJPTA*), on the grounds that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia, (*CJPTA*, s. 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s. 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s. 10(h)).

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
  - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
  - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim for damages arising out of the Defendants' provision of debt consulting services in breach of the provincial Business Practices and Consumer Protection Act and the federal Bankruptcy and Insolvency Act.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Bankruptcy and Insolvency Act, RSC 1985, c B-3*

*Business Practices and Consumer Protection Act, SBC 2004, c 2*

*Class Proceeding Act, RSBC 1996, c 50*

*Court Order Interest Act, RSBC 1996, c 79*