

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

PEOPLES TRUST COMPANY

Applicant

AND

CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

Respondents

MOTION RECORD

(RETURNABLE NOVEMBER 17, 2023)

November 15, 2023

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AND TO:	JIM PEPLINSKI LEASING INC. 2425 Matheson Boulevard East, Suite 120 Mississauga, Ontario L4W 5K4
AND TO:	FORD CREDIT CANADA LEASING, DIVISION OF CANADIAN ROAD LEASING COMPANY P.O. Box 1800 RPO Lakeshore West Oakville, Ontario L6K 0J8 Email: bbankrup@ford.com
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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

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CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

Respondents

**NOTICE OF MOTION
(Re Comeback Hearing)
(Returnable November 17, 2023)**

The Applicant, Peoples Trust Company (the “**Applicant**” or “**PTC**”) will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Friday, November 17, 2023 at 2:00 pm, or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING:

- ☐ In writing under subrule 37.12.1(1);
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person
- ☐ By telephone conference.
- ☒ By video conference

at the following location:

<https://ca01web.zoom.us/j/61474879934?pwd=NDQvb3ZKRkN0b3hpTWNPNU1RaaWt0QT09%27>

THE MOTION IS FOR:

1. An amended and restated initial order (the “**Amended and Restated Initial Order**”) substantially in the form of the draft order attached at Tab 3 of the Applicant’s Motion Record, amending and restating the initial order granted by Her Honour Justice Conway on November 9, 2023 (the “**November 9 Initial Order**”), among other things:
 - (a) Abridging the time for service of this Motion and the Motion Record and dispensing with service on any other person other than those served;
 - (b) Extending the stay of proceedings (the “**Stay of Proceedings**”) currently in effect under the November 9 Initial Order to February 10, 2024;
 - (c) Approving an increase to the maximum availability under the interim financing facility (the “**DIP Facility**”) to the maximum principal amount amount of fifteen million dollars (\$15,000,000) pursuant to the terms of a DIP term sheet dated as of November 9, 2023 (the “**DIP Term Sheet**”), and a corresponding increase to the DIP Lender’s Charge (as defined in the November 9 Initial Order); and
 - (d) Increasing the maximum amount of the Administrative Charge (as defined in the November 9 Initial Order) from two hundred and fifty thousand dollars (\$250,000) to one million five hundred thousand dollars (\$1,500,000); and
2. Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE

Background

3. On November 9, 2023, the Applicants applied for and obtained the November 9 Initial Order;
4. The November 9 Initial Order, among other things:
 - (a) Appointed KPMG Inc. as monitor of the Respondents (in such capacity the “**Monitor**”);
 - (b) Appointed HWS Consulting Inc. as Chief Restructuring Officer of the Respondents (the “**CRO**”);

- (c) Granted an initial ten (10) day Stay of Proceedings up to and including November 19, 2023, staying all proceedings and remedies taken or that might be taken in respect of the Respondents' assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"); and
 - (d) Authorized the Respondents to obtain and borrow up to one million one hundred thousand dollars (\$1,100,000) under the DIP Facility during the initial 10-day Stay of Proceedings;
5. Since the November 9 Initial Order was issued on November 9, 2023, the Applicants have acted in good faith and with due diligence;

Extension of the Stay of Proceedings

6. The Stay of Proceedings expires on November 19, 2023. The Applicant is seeking an extension of the Stay of Proceedings to and including February 10, 2024;
7. The extension being sought is necessary and appropriate in the circumstances to provide the Simply Green Leasing Group with continued breathing space, to stabilize operations under the guidance of the CRO, and determine a strategy to maximize value for the benefit of its stakeholders through the CCAA proceedings;

Increase in Availability Under the DIP Facility

8. The Applicant is seeking an approval of an increase to the maximum availability under the DIP Facility to the amount of fifteen million dollars (\$15,000,000), and a corresponding increase to the DIP Lender's Charge;
9. The increase to the maximum availability under the DIP Facility and corresponding increase to the DIP Lender's Charge being sought are necessary and appropriate in the circumstances, and the Monitor is supportive of such increases;

Increase in the Amount of the Administrative Charge

10. Pursuant to the November 9 Initial Order, the Applicants were granted the Administrative Charge in the amount of two hundred and fifty thousand dollars (\$250,000);

11. The Applicant is seeking an increase in the Administrative Charge to one million five hundred thousand dollars (\$1,500,000), securing the fees and disbursements of the Monitor, counsel to the Monitor, the CRO, counsel to the CRO, and counsel to the Applicant incurred from time to time during the pendency of the *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 (the "CCAA"), proceedings;
12. The increased quantum of Administrative Charge has been reviewed and is supported by the Monitor;

Other Grounds

13. The Applicant also relies on:
 - (a) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
 - (b) Section 106 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended;
 - (c) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended; and
 - (d) Such further and other grounds as counsel for the Applicant may advise and this Honourable Court may permit.
14. The following documentary evidence will be used at the hearing of the motion:
 - (a) The Affidavit of Michael Lombard sworn November 6, 2023 and the exhibits thereto;
 - (b) The Affidavit of Katherine Yurkovich sworn November 9, 2023 and the exhibits thereto;
 - (c) The Affidavit of Michael Lombard sworn November 15, 2023 and the exhibits thereto;
 - (d) The Pre-Filing Report of the proposed Monitor, KPMG Inc. dated November 7, 2023 and the appendices thereto;
 - (e) The First Report of the Monitor, KPMG Inc. and the appendices thereto, to be filed; and

- (f) Such further and other materials as counsel for the Applicant may advise and as this Honourable Court may permit.

Date: November 15, 2023

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, c.C-36 AS AMENDED

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP.,
SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION

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Lawyers for Peoples Trust Company, the Applicant

TAB 2

Court File No. CV-23-00709183-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL
MANAGEMENT CORP., CROWN CREST FINANCIAL CORP.,
CROWN CREST FUNDING CORP., SIMPLY GREEN HOME
SERVICES INC., SIMPLY GREEN HOME SERVICES CORP.,
AND CROWN CREST CAPITAL TRUST**

PEOPLES TRUST COMPANY

Applicant

AND

**CROWN CREST CAPITAL MANAGEMENT CORP., CROWN
CREST FINANCIAL CORP., CROWN CREST FUNDING
CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY
GREEN HOME SERVICES CORP., AND CROWN CREST
CAPITAL TRUST**

Respondents

AFFIDAVIT OF MICHAEL LOMBARD

(Sworn November 15, 2023)

I, **MICHAEL LOMBARD**, of the City of Aurora, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Credit Officer, of the Applicant, Peoples Trust Company (“**PTC**”). As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I have stated the source of the information and verily believe it to be true. In preparing this affidavit, I have also consulted with other individuals from

PTC and with PTC's advisors. PTC does not waive or intend to waive any applicable privilege by any statement herein. Capitalized terms used in my affidavit and not otherwise defined have the meanings given to them in my prior affidavit sworn in these proceedings on November 6, 2023 (the "**Lombard November 6 Affidavit**"). A true copy of the Lombard November 6 Affidavit (without exhibits) is attached as [Exhibit "A"](#).

2. On November 9, 2023 (the "**November 9 Hearing**"), the Honourable Justice Conway of the Ontario Superior Court of Justice [Commercial List] issued an Initial Order (the "**November 9 Initial Order**") in respect of the Simply Green Leasing Group pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**").

3. This affidavit is sworn in support of a motion by PTC returnable on November 17, 2023 (the "**Comeback Hearing**"), pursuant to the CCAA seeking an amended and restated initial order (the "**Amended and Restated Initial Order**") under the CCAA substantially in the form of the draft order included at Tab 3 of PTC's Motion Record, among other things, (a) extending the stay of proceedings currently in effect under the November 9 Initial Order to February 10, 2024 (the "**Stay of Proceedings**"); (b) increasing availability under the DIP Facility to \$15,000,000 with a corresponding increase to the DIP Lender's Charge; and (c) increasing the amount of the Administration Charge to \$1,500,000.

Extension of Stay of Proceedings

4. As noted above, under the Amended and Restated Initial Order, PTC is seeking an extension of the Stay of Proceedings to February 10, 2024.

5. I have been advised by Joe Prosperi, the principal of the CRO, that since the November 9 Initial Order was granted, the Companies under the stewardship of the CRO have:

- (a) met with key employees to discuss the ongoing business of the Simply Green Leasing Group in these CCAA proceedings and their continued employment in order to stabilize the business;
- (b) met with certain former directors and officers of the Simply Green Leasing Group to discuss temporary consulting agreements, in order to facilitate an orderly transition of the stewardship of the business to the CRO as part of these CCAA proceedings. Given the nascency of the CRO's engagement, these consulting agreements are designed to allow certain members who were formerly part of the management of the Simply Green Leasing Group to assist the CRO in furthering its understanding of the day-to-day operations of the Simply Green Leasing Group;
- (c) in concert with former senior management of the Simply Green Leasing Group, distributed a press release announcing the commencement of these CCAA proceedings and the issuance of the November 9 Initial Order;
- (d) communicated with, and provided information to various stakeholders;
- (e) consulted with the Monitor concerning the Monitor's preparation of a revised cash flow-forecast for the Simply Green Leasing Group, to be filed, as part of the Monitor's First Report; and
- (f) met with the Monitor to discuss various matters, including the cash flow and interim financing requirements of the Companies both before and after the Comeback Hearing.

6. It is my belief that the Respondents, under the stewardship of the CRO, have acted, and are acting, in good faith and with due diligence so far in these CCAA proceedings. The extension of the Stay of Proceedings is necessary and appropriate in the circumstances to provide the Simply Green Leasing Group with continued breathing space, to stabilize operations under the guidance of the CRO,

and determine a strategy to maximize value for the benefit of its stakeholders through the CCAA proceedings.

DIP Facility

7. As previously noted in the Lombard November 6 Affidavit, in light of the Simply Green Leasing Group's insolvency and ongoing liquidity issues, the Simply Green Leasing Group requires interim financing to sustain its operations going forward, including the payment of professional fees, during these CCAA proceedings. As part of the November 9 Initial Order, PTC obtained limited approval of the DIP Facility established under the DIP Term Sheet.

8. The November 9 Initial Order contemplated that during the initial ten (10) day stay period, availability under the DIP Facility would be limited to an initial advance in the principal amount of up to \$1,100,000, which was the amount reasonably necessary for the continued operations of the Simply Green Leasing Group until the Comeback Hearing. That amount has now been fully advanced by PTC.

9. At the Comeback Hearing, PTC is seeking to increase the maximum amount permitted to be drawn under the DIP Term Sheet to \$15,000,000 (the "**Maximum Amount**"). To the extent drawn either in part or whole, under the proposed Amended and Restated Initial Order a corresponding increase in the amount secured by the DIP Lender's Charge will occur.

10. The Cash Flow Forecast, previously filed in these CCAA Proceedings, indicates a need for the Simply Green Leasing Group to be able to draw up to the Maximum Amount, in order to sustain its operations and cover its professional fees during these CCAA proceedings

11. I understand that the Monitor is of the view that the terms of the DIP Term Sheet are reasonable and that the Maximum Amount is necessary and supported by the Cash Flow Forecast as filed.

Administration Charge

12. It is contemplated under the form of Amended and Restated Initial Order that the Administration Charge securing the fees and disbursements of the Monitor, counsel to the Monitor, the CRO, counsel to the CRO, and counsel to PTC will be increased from \$250,000 to \$1,500,000 (the “**Revised Administration Charge**”).

13. I believe that the amount of the Revised Administration Charge is the amount necessary to ensure the continued participation of the proposed beneficiaries of the Administration Charge, whose expertise, knowledge and assistance will be critical to the success of these CCAA proceedings.

14. I understand the Proposed Monitor supports the amount of the Revised Administration Charge, and believes that the Revised Administration Charge is in line with the Cash Flow Forecast.

Further Information on the Need for CCAA Proceedings

15. In light of what I understand be concerns from certain parties, in particular MNP Corporate Finance Inc. (“**MNP**”), of the propriety of these CCAA proceedings, I wish at this time to provide the Court with further background information on PTC’s decision to commence these CCAA proceedings.

16. As noted in the Lombard November 6 Affidavit, in July of 2023 at a meeting with representatives of PTC, senior management of the Simply Green Leasing Group advised PTC that the Simply Green Leasing Group was facing significant near-term liquidity challenges as a result of contractual interest rate increases, resulting in an approximate loss of \$300,000 a month without taking into account the payment of operating expenses.

17. Following this disclosure, PTC and senior management of the Simply Green Leasing Group engaged in protracted, and frankly intensive and adversarial negotiations regarding a potential restructuring the Simply Green Leasing Group’s credit facilities over a period of approximately fifteen

weeks. This process involved the engagement by PTC of Gowling WLG (Canada) LLP (“**Gowling**”) and KPMG as legal and financial advisors, respectively, from very early in the discussions. As part of these negotiations, senior management of the Simply Green Leasing Group advised PTC of their inability to continue to fund the losses arising from Simply Green Leasing Group’s operations, through TopCo or otherwise, and sought what I believe to be significant financial concessions from PTC. PTC also formed the view that it was not obtaining the operational level information and financial details that it required to inform the negotiations.

18. Ultimately, PTC determined it could not reach an acceptable agreement with the Simply Green Leasing Group on a way forward. On October 30, 2023, on a video conference call held between, PTC, its counsel Gowling, senior management of the Simply Green Leasing Group, and the Companies’ counsel, Miller Thomson LLP, PTC formally advised senior management that it had decided to terminate negotiations and that it would be proceeding to commence these CCAA proceedings on a creditor-initiated basis. This was a unilateral decision made by PTC. It was only after PTC had communicated that it would not continue negotiations and that it was proceeding with an application under the CCAA that discussions concerning cooperation in relation to PTC’s CCAA filing began.

19. On November 12, 2023, Gowling received a letter from counsel to MNP, requesting certain information from PTC (the “**Bennett Jones November 12 Letter**”). Attached hereto as [Exhibit “B”](#) and [Exhibit “C”](#), respectively, are true copies of the Bennett Jones November 12 Letter, and a responding letter issued by Gowling on behalf of PTC.

20. I note that if the Stay of Proceedings is not extended at the Comeback Hearing, and the CCAA proceedings are terminated, as it appears is MNP’s preferred relief, PTC would be left with no acceptable alternative but to seek the appointment of a receiver over all of the assets, property, and undertakings of the Simply Green Leasing Group. Among other things, this is due to the fact that if the CCAA proceedings are terminated the Simply Green Leasing Group will have no source of funding for its

ongoing operations, including the technical servicing of home energy equipment in place with customers, and will be without any management or board of directors, the directors and officers having resigned prior to the initial hearing of PTC's application. In all circumstances, these facts will lead to extreme prejudice to PTC and other stakeholders of the Respondents.

Class Action Claim

21. At the November 9 Hearing in these proceedings, counsel to the representative plaintiffs in the Bonnick Action, made numerous allegations regarding the historic conduct of the Simply Green Leasing Group in operating its business that are the subject of its litigation with the Simply Green Leasing Group. As I noted in my prior affidavit filed in these proceedings, the Bonnick Action has not yet been certified and to my knowledge, none of the allegations it contains have been the subject of any adjudication. I note that the allegations in the Bonnick Action are specifically denied by the Simply Green Leasing Group. Attached as [Exhibit "D"](#) and [Exhibit "E"](#), respectively, are true copies of the statements of defense filed by the Simply Green Leasing Group and its former principal Lawrence Krimker in connection with the Bonnick Action which address the Simply Green Leasing Group's position on these allegations.

MNP Action

22. At the November 9 Hearing in these proceedings, counsel to MNP made reference to the contingent, unliquidated and unsecured claims their client has alleged in litigation against two of the members of the Simply Green Leasing Group (the "**MNP Action**"). As noted during the hearing and in the Lombard November 6 Affidavit, although the trial has concluded in this matter, the presiding judge has not yet released his decision. Attached as [Exhibit "F"](#) are the pleadings that counsel advises were exchanged by the parties to the MNP Action.

SWORN BEFORE ME over videoconference on this 15th day of November, 2023. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the city of Toronto, in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Katherine Yurkovich

BE136400C72D4E9

A Commissioner for taking Affidavits

DocuSigned by:

Michael Lombard

88C7303DC8FE048D...

MICHAEL LOMBARD

This is Exhibit "A"
to the Affidavit of Michael Lombard sworn
remotely before me on November 15, 2023

DocuSigned by:

Katherine Yurkovich

A commissioner for taking affidavits

Court File No.

**ONTARIO
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**IN THE MATTER OF THE *COMPANIES' CREDITORS
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Respondents

AFFIDAVIT OF MICHAEL LOMBARD

(Sworn November 6, 2023)

I, **MICHAEL LOMBARD**, of the City of Aurora, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Credit Officer, of the Applicant, Peoples Trust Company (“PTC”). As a result, I
have personal knowledge of the matters to which I hereinafter depose save and except where I refer to

matters based on information and belief, in which case I verily believe that information to be true. Where I refer to matters pertaining to the structure and operation of the Respondents and their business, my information is derived from files maintained by PTC, information obtained from the Respondents and publicly available data.

2. This affidavit is sworn in support of an application by PTC pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") seeking an initial order (the "**Initial Order**") under the CCAA substantially in the form of the draft order included at Tab 3 of the Application Record, which includes relief related to the engagement of a chief restructuring officer in respect of the Respondents (the "**Proposed CRO**"). Should the Initial Order be granted, PTC intends to bring a motion, returnable during the initial ten (10) day stay period (the "**Comeback Hearing**"), seeking, among other things: (a) an extension of the stay of proceedings; and, (b) increases to the DIP Facility and DIP Lender's Charge and to the Administrative Charge (as those terms are defined below; and, (c) such further relief as may be necessary or desirable.

I. OVERVIEW AND INTRODUCTION

3. The "Simply Green Leasing Group", as that term is used in my affidavit is comprised of Crown Crest Financial Corp. ("**CCFC**"), Simply Green Home Services Inc. ("**New Simply Green**"), Simply Green Home Services Corp. ("**Old Simply Green**"), Crown Crest Capital Management Corp. ("**CC Management Co**"), Crown Crest Funding Corp. ("**Trustee Co**"), and Crown Crest Capital Trust ("**CC Trust**"). In this affidavit, I will sometimes refer to the Simply Green Leasing Group as the "**Companies**".

4. At a high level, and as further described below, the Companies operate a vertically integrated home improvement equipment rental, leasing and servicing business.

5. Since 2016, PTC has been a principal source of secured financing for the Simply Green Leasing Group. It has done so through warehouse loan agreements and secured debentures advanced to certain of the Companies (the “**Loan Agreements**”). It has also entered into a number of concurrent leases (effectively a form of securitization, through “true lease” transactions), with members of the Simply Green Leasing Group under which PTC has certain rights pertaining to the underlying rents payable for specific portfolios of consumer rental agreements (“**Concurrent Leases**”). As of September 30, 2023, PTC is owed approximately \$39,737,421.00 under the Loan Agreements and has further exposure under the Concurrent Leases in the amount of approximately \$279,655,155.00.

6. As is described in greater detail below, the Simply Green Leasing Group is currently in a precarious position, faced with mounting liquidity issues as a result of significant increases in interest rates that are not offsetable by consumer lease payments, as well as potential class action litigation against certain of the Companies, which has not been certified.

7. If PTC’s Application is granted it is the intent of PTC to use these CCAA Proceedings in order to stabilize the business of the Simply Green Leasing Group and ultimately implement a strategy that will maximize stakeholder recovery from the equipment lease portfolios that represent substantially all of the value of the Companies’ business.

II. BUSINESS OF THE RESPONDENTS AND BACKGROUND

The Business of the Simply Green Leasing Group

8. Generally speaking, the Simply Green Leasing Group is in the business of renting and servicing home improvement equipment to retail consumers including hot water heaters, furnaces, heat pumps, air conditioners, boilers, air filtration systems and other related products. The equipment lease portfolio

owned by the Simply Green Leasing Group is spread across the common law provinces of Canada, with the majority of the equipment leases concentrated in Ontario. The equipment lease portfolio includes equipment leases originated directly by the Simply Green Leasing Group and equipment leases acquired through transactions with other originators.

9. Under the typical equipment lease, customers make regular payments, typically for a term of ten (10) years, which the Simply Green Leasing Group collects and administers. Customers generally do not pay any upfront fee for the acquisition or installation of rented home improvement equipment, and the lease agreements provide that customers would not be responsible in the normal course for repairs of the equipment.

10. As noted above, from time to time, the Simply Green Leasing Group has acquired whole portfolios of equipment leases originated by third parties either by purchasing the equipment leases themselves or by acquiring companies that own pools of equipment leases. These transactions have been a significant driver of the Simply Green Leasing Group's growth. I understand that the majority of the Simply Green Leasing Group's current equipment lease portfolio has been acquired through transactions of this nature.

11. The Simply Green Leasing Group has also historically had arrangements with third party suppliers who would originate rental agreements with customers, and immediately sell those rental agreements to the Simply Green Leasing Group under an ongoing program agreement.

Corporate Structure and Description of the Simply Green Leasing Group

12. Each member of the Simply Green Leasing Group was incorporated and is existing in Ontario under the *Business Corporations Act* (Ontario). True copies of corporate profile reports for the entities

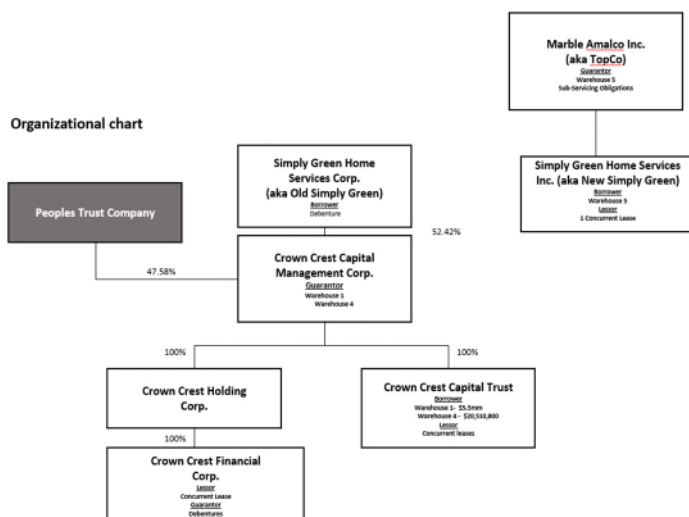
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that make up the Simply Green Leasing Group issued by the provincial ministry for the province of Ontario are attached as [Exhibit “A”](#) (the “**Corporate Profile**”).

13. The registered corporate office for each member of the Simply Green Leasing Group is located at 2225 Sheppard Ave East, here in Toronto (the “**Sheppard Office**”). My understanding is that the Sheppard Office is the head office of each of the Companies.

14. An organizational chart for the Simply Green Leasing Group is attached hereto as [Exhibit “B”](#) and set out below:



15. The Companies are further described in paragraphs 17 through 27 below.

Old Simply Green:

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16. Old Simply Green is the direct and/or indirect parent of CC Management Co., CC Trust, Trustee Co., and CCFC. Prior to the 2020 Reorganization (as defined and described below), Old Simply Green held the operational assets used in the Simply Green Leasing Group's business to service the rental contract portfolio held by it, CCFC, and CC Trust. I understand that the servicing of the rental portfolios involves, among other things, financial monitoring and accounting, rental administration, default and collection management and management of the technical servicing of rented equipment.

17. Prior to the 2020 Reorganization, Old Simply Green originated rental agreements but no longer did so thereafter. As part of the 2020 Reorganization, Old Simply Green changed its name to "Simply Green Home Services Corp." from its prior name of "Simply Green Home Services Inc.". After the 2020 Reorganization, all new rental agreements that were originated "in-house" were originated by New Simply Green.

CCFC

18. CCFC is a party to a Concurrent Lease Agreement and a guarantor of certain debentures given by Old Simply Green. CCFC holds pools of equipment leases originated by third parties prior to the 2020 Reorganization.

CC Trust / CC Trustee / CC Management Co:

19. CC Trust is a special purpose funding trust and is also a party to three Concurrent Lease Agreements. It holds pools of equipment leases originated by other entities within the Simply Green Leasing Group and their affiliates, as well as portfolios bought from third parties prior to the 2020 Reorganization. CC Trustee is the trustee of the CC Trust. CC Management Co is the beneficiary and administrator of CC Trust.

New Simply Green:

20. New Simply Green was created in fall of 2020, as a part of a corporate reorganization (the “**2020 Reorganization**”) accomplished in tandem with the formation of 2775996 Ontario Inc. (“**277**”) to acquire adjacent consumer lending businesses (the “**Loan Business Acquisition**”). New Simply Green was originally incorporated as “2775153 Ontario Inc.” and thereafter changed its name to “Simply Green Home Services Inc.” the former name of Old Simply Green. As I understand it, the sole shareholder of New Simply Green is 277, now known as Marble Amalco Inc.

21. As part of the 2020 Reorganization, the operational assets (i.e. the assets other than the rental agreement portfolio assets) held by Old Simply Green were transferred to New Simply Green, including (a) all management and operational employees and independent contractors; (b) the head-office lease; (c) the owned and leased office furniture, equipment and vehicles used in the business; and, (d) other third party agreements, including servicing agreements, licenses required for the operation of the business.

22. I understand that part of the rationale for this transfer, was to realize synergies and economies of scale by unifying the servicing functions previously performed at the New Simply Green level with the assets and staff that were being acquired as part of the Loan Business Acquisition.

23. Existing consumer rental agreements held by CC Trust, CCFC, and Old Simply Green as at the time of the closing of the 2020 Reorganization were not transferred to New Simply Green. It was intended that these rental agreements would be run-off over the following 10-15 years within their existing Companies (the “**Pre 2020 Portfolio**”). Given that Old Simply Green, would no longer have the operational assets required to service the Pre 2020 Portfolio on closing, New Simply Green and Old Simply Green entered into a sub-servicing agreement with PTC’s consent, pursuant to which New Simply

Green agreed to fulfill all of the servicing obligations previously performed by Old Simply Green in relation to the Pre 2020 Portfolio (the “**Sub-Servicing Agreement**”). Post-closing, new rental agreements were originated via New Simply Green and no new rentals agreements were originated or otherwise transferred to Old Simply Green, CC Trust, or CCFC. New Simply Green continued to originate rentals from consumers until its origination operations were wound down commencing in June 2023.

Indebtedness to PTC

24. Since 2016, PTC has been a major source of financing for the Simply Green Leasing Group.

25. PTC has established credit facilities in favour of members of the Simply Green Leasing Group pursuant to three (3) warehouse loan agreements and two (2) debentures.

26. The Loan Agreements currently in place between members of the Simply Green Leasing Group and PTC are described in the below chart:

#	Borrower	Principal Amount of Facility	Title and Date of Agreement	Defined Term in this Affidavit	Exhibit to this Affidavit
1	CC Trustee in its capacity as trustee of CC Trust	\$5,500,000	Fourth Amended and Restated Warehouse Line of Credit Agreement dated January 1, 2023	“Warehouse 1”	Exhibit “C”
2	CC Trustee in its capacity as trustee of CC Trust	\$20,514,800	Third Amended and Restated Warehouse Line of Credit Agreement dated January 1, 2023	“Warehouse 4”	Exhibit “D”
3	New Simply Green	\$25,000,000	Second Amended and Restated Warehouse Line of Credit Agreement dated January 1, 2023	“Warehouse 5”	Exhibit “E”
4	Old Simply Green	\$10,000,000	Debenture dated January 19, 2018	“Debenture 1”	Exhibit “F”

Warehouse Loan Agreements

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27. As a general matter, the Warehouse Loan Agreements provide for the financing of originated customer rental agreements, and the equipment and services to which they relate, on a rolling basis by way of advance requests for transactions that meet certain specified eligibility requirements. Advances to the Simply Green Leasing Group under the Warehouse Loan Agreements are limited to maximum amounts and sub-limited by borrowing base formulas based on a percentage of the remaining stream of payments under all rental agreements held by the borrower, discounted to present value.

28. Under the Warehouse Loan Agreements, rental transactions can be financed in weekly tranches as they are generated by authorized originators, or, subject to prescribed limits, can be the subject of portfolio refinancing transactions where “books of business” may be acquired and refinanced.

29. The Warehouse Loan Agreements establish applicable interest rates on outstanding advances, payable monthly. Subject to permitted and required prepayments, advances under the Warehouse Loan Agreements are payable in full on specified maturity dates unless extended at PTC’s option.

30. Collections received from rental customers are deposited in remittance or collection accounts, which are subject to blocked account agreements, as further described below. These collections, the rental agreements, the subject equipment, and all other assets relating to the customer rental transactions are subject to the security interests created under the security summarized in paragraphs 42 and 43 below.

31. Based on Simply Green Leasing Group’s own statements concerning its cash flow deficits resulting from significant rises in interest rates and lack of liquidity to offset them, relevant members of the Simply Green Leasing Group are in default under the applicable Warehouse Loan Agreements.

32. As at September 30, 2023, PTC is owed \$32,859,800.00 under the Warehouse Loan Agreements and \$6,877,620.00 under the Debenture.

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Concurrent Lease Agreements

33. PTC and various entities within the Simply Green Leasing Group have also entered into Concurrent Leases, pursuant to which PTC is the concurrent lessee, and the applicable Company is the lessor and servicer. The Concurrent Lease Agreements currently in effect are described in the below chart:

	Concurrent Lessor and Servicer	Title and Date of Agreement	Exhibit to this Affidavit
1	CCFC	Fourth Amended and Restated Concurrent Lease dated June 30, 2021	<u>Exhibit “G”</u>
2	CC Trustee in its capacity as trustee of CC Trust	Concurrent Lease Agreement dated May 29, 2019	<u>Exhibit “H”</u>
3	New Simply Green	Second Amended and Restated Concurrent Lease dated November 1, 2021	<u>Exhibit “I”</u>
4	CC Trustee in its capacity as trustee of CC Trust	Second Amended and Restated Concurrent Lease Agreement dated April 15, 2019	<u>Exhibit “J”</u>
5	CC Trustee in its capacity as trustee of CC Trust	Third Amended and Restated Concurrent Lease Agreement dated April 15, 2019	<u>Exhibit “K”</u>

34. As a general matter, the Concurrent Lease Agreements provide for the lease of the interest of relevant members of the Simply Green Leasing Group in originated customer rental agreements, and the equipment and services to which they relate, to PTC in return for a payment by PTC of a calculated amount of prepaid rent. Prepaid rent paid by PTC under the Concurrent Leases represents a percentage of the payments to be made on the underlying customer rental agreements during the term of the Concurrent Lease, discounted to present value at a prescribed rate.

35. The effect of these concurrent lease transactions is generally to provide the totality of the

beneficial interest in the originated customer rental agreements to PTC during a specified term. Over the term of these Concurrent Leases, collections from originated customer rental agreements are received into collection accounts held by relevant members of the Simply Green Leasing Group and remitted to PTC on a monthly basis. These collection accounts are subject to blocked account agreements in favour of PTC.

36. Collections and management of cash flows from the originated customer rental agreements are administered by the relevant member of the Simply Green Leasing Group, subject to such sub-servicing agreements as may be in place. In addition, subject to such sub-servicing agreements as may be in place, technical servicing of equipment provided under customer rental agreements is managed by members of the Simply Green Leasing Group. Upon certain prescribed events of default, PTC has the right to designate a replacement servicer.

37. The Concurrent Lease Agreements also provide for security over the interests of relevant Simply Green Leasing Group members in the customer rental agreements and related rights, in addition to the property interests in favour of PTC established by the Concurrent Leases.

38. Under the terms of the Concurrent Lease Agreements, PTC may elect to pay further prepaid rent at the end of a Concurrent Lease, thereby extending additional financing of the relevant customer rental agreement during its continuing term. Under the Concurrent Lease Agreements these further advances of prepaid rent by PTC are referred to as Additional Term Prepaid Rent (“ATPR”). ATPR is not an investment in a Simply Green Leasing Group corporate entity but a further advance on customer rental agreement assets.

39. The structure established under the Concurrent Lease Agreements is effectively a species of a

securitization transaction.

40. In addition to other events of default under the Concurrent Lease Agreements, including insolvency defaults, the said agreements provide for cross default to certain of the Warehouse Loan Agreements, which as noted above, are in default. Notwithstanding these defaults, PTC has not elected to designate replacement servicers at present.

41. As at September 30, 2023, PTC's exposure under all Concurrent Lease Agreements totals \$279,665,155.00.

Security Held by PTC

42. In connection with the Loan Agreements and the Concurrent Leases, PTC has been granted general security agreements from each of CCFC, New Simply Green, Old Simply Green, CC Management Co., Trustee Co and CC Trust pursuant to which PTC obtained a first ranking general security interest in all of the personal property, assets, and undertakings of the applicable grantor, as security for all indebtedness, liability and obligations of that grantor to PTC, including, without limitation, guarantee obligations and future indebtedness. True copies of the GSAs are attached as the exhibits identified below:

- (a) GSA from CCFC dated January 19, 2018 – [Exhibit “L”](#);
- (b) GSA from New Simply Green dated April 21, 2021 – [Exhibit “M”](#);
- (c) GSA from Old Simply Green dated January 19, 2018 – [Exhibit “N”](#);
- (d) GSA from CC Management Co dated December 1, 2016 – [Exhibit “O”](#); and

- (e) GSA from Trustee Co in its own capacity and its capacity as trustee of CC Trust dated December 1, 2016 – [Exhibit “P”](#).

43. I note that in addition to the GSAs, under each of the Concurrent Leases, PTC has been granted a security interest in the underlying rented assets, including without limitation all amounts owed to or received by the applicable lessor, and all of the lessor’s right, title and interest, in and to all collections in respect of the remaining term of the rental agreements.

Guarantees Granted to PTC

44. In connection with the Loan Agreements, PTC has been granted certain guarantees of existing credit facilities by non-borrower entities within the Simply Green Leasing Group. These guarantees are identified below (true copies of which are attached as the corresponding exhibits listed below):

- (a) A Guarantee granted by 277 (now Marble Amalco Inc.) dated April 21, 2021 of the obligations, liability and indebtedness of New Simply Green under Warehouse 5 – [Exhibit “Q”](#) (the “Warehouse 5 Guarantee”);
- (b) A Guarantee from CC Management Co dated December 1, 2016 of the obligations, liability and indebtedness of CC Trust under Warehouse 1 – [Exhibit “R”](#);
- (c) A Guarantee from CC Management Co dated May 29, 2019 of the obligations, liability and indebtedness of CC Trust under Warehouse 4 – [Exhibit “S”](#); and,
- (d) A Guarantee granted by CCFC dated January 19, 2018 of the obligations, liability and indebtedness of Old Simply Green under Debenture 1 – [Exhibit “T”](#).

45. In addition to the more traditional financing/payment guarantees described above, 277 (now [73165422.2](#)

Marble Amalco Inc.) granted a guarantee to PTC under the terms of the Sub-Servicing Agreement, guaranteeing the performance and fulfilment of the Sub-Servicing Obligations by New Simply Green and indemnifying PTC from any loss, damage, suit, cost or other proceeding arising from the failure of New Simply Green to perform its obligations under that agreement. A true copy of the Sub-Servicing Agreement is attached as [Exhibit “U”](#).

Other Secured Creditors

46. PTC has registered its security interests against the members of the Simply Green Leasing Group across Canada.

47. The Simply Green Leasing Group has a limited number of other creditors with registered financing statements in the applicable personal property security registries. These creditors are as follows:

- (a) Jim Peplinski Leasing Inc. (the “**Peplinski Registrations**”);
- (b) The Toronto-Dominion Bank (the “**TD Registration**”);
- (c) Ford Credit Canada Leasing, Division Of Canadian Road Leasing Company (the “**Ford Registration**”);
- (d) Shabnam Raheema Morin and Edward Dustin Morin (the “**Morin Registration**”); and
- (e) Greypoint Capital Inc. (the “**Greypoint Registration**”).

48. A summary of PPSA searches recently obtained against the Simply Green Leasing Group and current as of the date indicated therein, is attached hereto as [Exhibit “V”](#) (the “**PPSA Summary**”).

49. I have been advised by Clifton Prophet a partner at Gowling WLG (Canada) LLP, counsel to the [73165422.2](#)

Applicant that:

- (a) the Peplinski Registrations appear to relate to the leasing and/or financing of motor vehicles;
- (b) the TD Registration appears to relate to operating bank accounts maintained with Toronto-Dominion Bank and not credit facilities;
- (c) the Ford Registration appears to relate to the leasing and/or financing of motor vehicles for use in the business; and
- (d) The Morin Registration appears to relate to a writ of enforcement in the amount of \$3,500 registered under the PPSA in Alberta.

50. In respect of the Greypoint Registration, which is against Old Simply Green, my understanding is that Greypoint Capital Inc. previously provided financing to Old Simply Green by way of a warehouse loan agreement (the “**Greypoint Warehouse**”). Based on the notes to 2022 Audited Financial Statements (as defined below), the Greypoint Warehouse Agreement was repaid in full on January 26, 2022.

Unsecured/Other Creditors

51. Based on information provided by KPMG LLP in its capacity as financial advisor¹ to PTC, it appears that wages for employees of the Simply Green Leasing Group and source deductions were current to the last remittance date.

¹ KPMG LLP, an affiliate of the Proposed Monitor KPMG Inc., was appointed as financial advisor to PTC on or about August 8, 2023, with the consent of the Companies.

52. I am aware that senior management has stated that there are inter-company amounts owing by Old Simply Green to New Simply Green based on services provided by New Simply Green but I am unaware of the particulars of these claimed amounts in detail or their exact nature. I have no information concerning amounts which may be claimed by the shareholder of New Simply Green.

Litigation

53. I understand that members of the Simply Green Leasing Group are currently subject to certain litigation. The material litigation that I am aware of is described below in paragraphs 54 through 56.

Bonnick Class Action

54. All of the Companies' are subject to a claim commenced under the *Class Proceedings Act, 1992*, by Alga Adina Bonnick and Goran Stoilov Donev (the "**Bonnick Action**"). In the Bonnick Action, the class plaintiffs allege, among other things, that consumer agreements entered into by the defendants in that Action, breached the *Consumer Protection Act* (Ontario) (the "**CPA**") by (a) failing to set out material information required to be disclosed under the CPA; and (b) failing to deliver a disclosure statement compliant with the CPA. They further allege that the applicable Companies "slandered" the title to consumers' houses by registering "notices of security interests" against the underlying lands.

55. The Plaintiffs in the Bonnick Action, are seeking, among other things, (a) rescission, cancelation and or a declaration that the agreements entered into with class members are unenforceable, (b) general damages for all payments the class members made to the defendants, (c) punitive and exemplary damages in the amount of \$5,000,000, (d) and relief from amounts that the defendants claim are owed or owing by the class members. I understand that a certification hearing in respect of the Bonnick Action is

currently scheduled for October 2024. A true copy of the Amended Fresh as Amended Statement of Claim issued by Ms. Bonnick and Mr. Donev is attached as [Exhibit “W”](#).

MNP Claim

56. Old Simply Green and Trustee Co in its capacity as trustee of the CC Trust are defendants in litigation commenced by MNP Corporate Finance Inc. (“**MNP**”), pursuant to which MNP, is seeking, among other things, damages in the amount of \$12,000,000 for breach of contract in relation to the prior engagement of MNP to assist with a capital raise (the “**MNP Claim**”). I am advised by Clifton Prophet of Gowling that the MNP Claim was heard by the Ontario Superior Court of Justice, sitting in Toronto, between September 18 and 29, 2023. To my knowledge, no decision has been released on the MNP Claim litigation as of the date of this affidavit.

Banking Arrangements

57. I am not aware of the full extent of the Simply Green Leasing Group’s current banking arrangements. I am aware that the Simply Green Leasing Group maintains certain operating accounts with Toronto-Dominion Bank.

Financial Statements

The Old Simply Green FS Entities:

58. The most recent audited financial statements in PTC’s possession for the Simply Green Leasing Group are consolidated financial statements for Old Simply Green for the fifteen-month period ending December 31, 2022 (the “**2022 Audited Financial Statements**”). The 2022 Audited Financial Statements, as consolidated financial statements, cover, among other entities, each of the Companies

other than New Simply Green (the Companies included in the Audited Financial Statements, the “**Old Simply Green FS Entities**”).

59. According to the 2022 Audited Financial Statements, as at December 31, 2022 the Old Simply Green FS Entities had total consolidated assets with a net book value of approximately \$256,381,975. The majority of these consolidated assets are comprised of “finance receivables” which I understand to be the net book value of rental payments owing to the Old Simply Green FS Entities in the amount of \$224,914,260.

60. The 2022 Audited Financial Statements further provide that as of December 31, 2022, the Old Simply Green FS Entities had total liabilities in the amount of \$312,293,996, including secured debt in the amount of \$255,768,251 and accounts payable in the amount of \$12,964,867. Attached hereto and marked as **Exhibit “X”** are copies of the 2022 Audited Financial Statements.

New Simply Green Financial Statements

61. As noted above, the 2022 Audited Financial Statements do not include New Simply Green.

62. PTC has been periodically provided unaudited financial statements for New Simply Green. The most recent unaudited financial statements in PTC’s possession for New Simply Green are for the quarterly period ending March 31, 2023 (the “**New Simply Green March 2023 FS**”). The New Simply Green March 2023 FS, indicate assets in the amount of \$61,249,533 (made up primarily of “finance receivables” in the amount of \$55,581,278) and liabilities of \$90,889,955 (including secured borrowings of \$55,416,123), with such mismatch of assets and liabilities traditionally stemming from the structure of the Concurrent Lease Agreements. Attached hereto and marked as **Exhibit “Y”** are copies of the New

Simply Green March 2023 FS and unaudited financial statements for New Simply Green for the year ending December 31, 2022.

III. FINANCIAL DIFFICULTIES OF THE SIMPLY GREEN LEASING GROUP

63. At or around July of 2023, senior management of the Simply Green Leasing Group advised PTC, that it was facing significant near-term liquidity challenges resulting from contractual interest rate increases, resulting in an approximate loss of \$300,000 a month without taking into account the payment of operating expenses, based on, among other things, its debt service requirements and other variable costs that are rising as a result of inflation. Senior Management of the Simply Green Leasing Group further advised PTC that it was projecting a significant net cash flow shortfall over the period ending December 31, 2026 that could not be covered by its existing resources and that in order to manage its liquidity it required a significant restructuring of its debt obligations. At present Simply Green Leasing Group has no other source of financing to meet these shortfalls.

64. Given current leverage levels and the potential implications of the Bonnick Action, senior management also told PTC that, at this time, they did not believe a near term sale of its portfolio would be viable.

65. As I understand it from my discussions with senior management of the Simply Green Leasing Group, the Companies' financial distress has come about as a result of factors which include the fixed streams of income flowing from their equipment lease portfolios vs. the variable rates applicable to their debt under the PTC Loan Agreements and their obligations under the Concurrent Lease Agreements; the lack of active interest in the current financial markets for asset classes such as theirs; and, the effects of significant inflationary pressures on the operating costs of the business.

66. After extensive discussions among PTC, the Companies and their senior management, the Proposed Monitor, and advisors, all parties determined that it was in the best interests of stakeholders to seek CCAA protection for the Simply Green Leasing Group on the terms of the Initial Order included in PTC's application materials, for the reasons detailed below. Since reaching this conclusion, the parties have worked cooperatively to finalize arrangements for these proceedings.

IV. CCAA PROCEEDINGS

Debtor-In-Possession/Creditor Initiated

67. PTC has brought these proceedings in the form of a creditor-initiated CCAA application based in significant part on the specifics of the Simply Green Leasing Group business and with the support of Simply Green Leasing Group management. In order to preserve value for PTC and other stakeholders, continuity of the entities which are the counterparty on approximately 80,000 consumer home equipment leases is essential. In these circumstances, I am concerned that the disruption caused by other structures for the recovery of amounts outstanding would affect performance of the equipment lease portfolios. As well, the stability of existing contracts with suppliers and service providers and of banking arrangements will be significantly enhanced by permitting continuity of the existing corporate entities through these proceedings.

68. It is also important to the thousands of rental customers using Simply Green Leasing Group home improvement equipment in their homes that the Companies and their business are preserved, in order to ensure that continued repair and servicing of furnaces and water heaters will be available as winter approaches. The protections afforded by the CCAA relief being sought, including the stay of proceedings and the funding to be made available under the DIP Facility described below (if approved by this Court),

should facilitate the delivery of needed technical services and provide a measure of certainty to customers.

69. I am specifically concerned that approaches to the financial distress of the Simply Green Leasing Group that are alternatives to the contemplated CCAA proceedings, such as the appointment of a receiver over the PTC collateral and rental assets, could have significant negative effects. These effects could include impairment of the streams of payment from the rental customers that represent substantially all of the value of the Simply Green Leasing Group business, as well as customer cancellations. I am concerned that the introduction of a receiver and manager as the counterparty to the rental agreements, and customer perceptions of receivership in general, could have a very detrimental effect on portfolio value. These and other reasons have caused PTC to apply for CCAA protection for the Simply Green Leasing Group with the support of its management.

Stay of Proceedings

70. PTC seeks a stay in respect of the Companies in order to allow it time to develop a plan for restructuring its finances and/or its business. As well, a stay of proceedings, which prevents contract counterparties from interrupting their services, will ensure that losses on the portfolio are minimized and that the cash flows are protected.

71. The granting of the requested CCAA relief, including the stay of proceedings, will also allow the Proposed Monitor and the Proposed CRO to work with Simply Green Leasing Group employees to ensure the stable operation of the business and to preserve the asset base.

72. As set out in more detail below, in addition to extending the stay and increasing the DIP Lending Facility and relevant court-ordered charges, PTC intends to use the initial 10-day stay period to work

with the Proposed Monitor and the Proposed CRO to achieve an efficient transition of control over the business to the CRO, under the Monitor's oversight, which will include the assistance of the Simply Green Leasing Group's management team. Ultimately, PTC intends to explore all options for maximizing value from the Simply Green Leasing Group's business and equipment lease portfolio. These options could include a variety of marketing and sale approaches, attempts to refinance, and longer-term solutions aimed at maximizing cash flow from the rental portfolio within the existing corporate structures. PTC will work on these issues with the Proposed Monitor and the Proposed CRO and with existing Simply Green Leasing Group employees.

Appointment of Monitor

73. PTC is seeking the appointment of KPMG Inc. ("**KPMG**") to serve as the CCAA Monitor in these proceedings (in such capacity, the "**Proposed Monitor**"). A copy of the consent of KPMG to act as Monitor is attached as [Exhibit "Z"](#).

74. I have been advised by Pritesh Patel of KPMG, that KPMG is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* and is not subject to any of the restrictions set out in Section 11.7(2) of the CCAA.

75. An affiliate of KPMG previously served as financial advisor to PTC in connection with the Simply Green Leasing Group (with the consent of the Simply Green Leasing Group, which consent includes a waiver of any claim of conflict in the event of KPMG's appointment as a monitor or other court officer).

76. I believe that KPMG's familiarity with the Simply Green Leasing Group's financial records and general business model, will create cost efficiencies during the course of the proposed CCAA proceedings that will be beneficial to all of the Simply Green Leasing Group's stakeholders.

77. The proposed Initial Order being sought by PTC would require the consent of the Proposed Monitor in respect of all disbursements except governmental priority payables arising or requiring to be remitted after the date of the Initial Order. These powers are necessary in my view as a measure to preserve cash and to ensure that critical payables are met during the period of the initial stay.

78. In connection with KPMG's proposed appointment, a pre-filing report of the Proposed Monitor has been prepared (the "**Proposed Monitor's Report**") and I have had the opportunity to review it. Among other things, the Proposed Pre-Filing Report appends the Cash Flow (defined below) and sets out the methods and assumptions adopted in its preparation.

Appointment of CRO

79. As noted, PTC also seeks relief relating the engagement of HWG Consulting Inc., acting through Joe Prosperi and others, as chief restructuring officer of the Simply Green Leasing Group (the "**CRO**"). The Companies have engaged the CRO, with the approval of PTC, under the terms of an agreement to be entered into in advance of the Application for CCAA relief in respect of the Companies, a copy of which is attached hereto as [Exhibit "AA"](#) (the "**CRO Engagement**"), with the rates of compensation redacted.

80. Since the directors and officers of the Simply Green Leasing Group have resigned (although senior management of the Companies is cooperating with PTC and has agreed to continue to support the business as consultants through a transition period, on terms agreed with PTC and the Proposed CRO) the CRO Engagement will vest significantly all of the powers of management in the CRO. The proposed CRO powers include the ability to exercise consents and discretions provided under the Initial Order.

81. The CRO Engagement also provides that it may be terminated and the CRO may resign or be

terminated on 10 days written notice by the CRO or the Monitor, as applicable. In the unlikely event of this occurring, PTC anticipates that it would seek the relief from the Court to expand the powers of the Monitor to provide for the continued stewardship of the Companies and their business.

82. It is proposed that the CRO retain independent counsel for the purposes of its role and that the CRO will be at liberty to cause the Respondents to retain other advisors as needed, in the exercise of the management powers conferred.

83. The principal of the proposed CRO, Mr. Prosperi, has significant expertise in managing complex and significant value restructurings. I understand based on my discussions with Mr. Prosperi and others who know his work that he has particular expertise both in managing teams of employees during operating restructurings and in executing on sophisticated sale and investment processes. As indicated by his biography, a copy of which is attached as [Exhibit "BB"](#) to this affidavit, he has many years of experience in the corporate finance field and in private equity roles.

84. I understand that the Proposed Monitor is satisfied with the qualifications, expertise and experience of the CRO and supports the retention of HWG Consulting Inc. as CRO on the terms of the CRO Engagement and the relief related to the engagement provided for in the proposed Initial Order.

DIP Facility

85. In light of the Simply Green Leasing Group's liquidity issues, the Simply Green Leasing Group requires interim financing to sustain its operations, including the payment of professional fees, during these CCAA proceedings.

86. Under a DIP term sheet to be entered into by the CRO, on behalf of the Companies, subject to this Court's prior approval in the Initial Order (the "**DIP Term Sheet**"), PTC has agreed to establish an interim financing facility (the "**DIP Facility**") in the maximum principal amount of \$15,000,000.00 for use during these CCAA proceedings. A copy of the DIP Term Sheet is attached hereto as [Exhibit "CC"](#).

87. During the initial ten (10) day stay period, availability under the DIP Facility will be limited to an initial advance in the principal amount of up to \$1,100,000.00, which is the amount reasonably necessary for the continued operations of the Simply Green Leasing Group until the Comeback Hearing.

88. The DIP Term Sheet contains among other things, the following terms:

- (a) Borrowers: each entity within the Simply Green Leasing Group.
- (b) Principal Amount of DIP: \$1,100,000.00 (the "**Initial Maximum Amount**"), and, subject to the satisfaction of certain conditions precedent, an aggregate maximum amount of \$15,000,000.00 (the "**Maximum Amount**").
- (c) Court Orders: All advances under the DIP Facility are subject to the condition precedent that an Initial Order be made and in full force and effect, in form and content substantially similar to the draft order included in PTC's application and otherwise acceptable to PTC, including the appointment of KPMG as Monitor and the appointment of the CRO. Advances in excess of the Initial Maximum Amount are subject to the condition precedent that an amended and restated initial order has been granted by the Court in a form acceptable to PTC.
- (d) Closing Fees: (1%) of the Maximum Amount.

- (e) Use of Proceeds: (i) to fund the Borrowers' operating expenses and general corporate and working capital requirements during the CCAA proceedings, (ii) to fund the administrative expenses of the CCAA proceedings; (iii) to make payments expressly permitted under the DIP Term Sheet, including payments to PTC under the terms of the Warehouse Loans, the Debenture and the Concurrent Lease Agreements; and (iv) to pay costs, expenses, interest and other obligations owing under the DIP Facility; each in accordance with an approved cash flow forecast from time to time in effect.
- (f) Payment of Interest and Concurrent Lease Agreement Remittances – The DIP Term Sheet requires that interest on the Warehouse Loans and the Debenture be paid during the CCAA proceedings and that remittances of amounts required to be paid under the Concurrent Lease Agreements continue, although the latter will be deferred for the period from the date of the Initial Order until the Comeback Hearing.
- (g) Interest: an annual rate equal to 9.5% per annum.
- (h) DIP Charge: the DIP Facility requires a super-priority ranking charge (the “**DIP Lender’s Charge**”) against all of the current and future assets, undertakings and property of the Simply Green Leasing Group.

89. I understand that the Proposed Monitor is of the view that the terms of the DIP Term Sheet are reasonable and that the Initial Maximum Amount is reasonably necessary to maintain the operations and business of the Simply Green Leasing Group pending the Comeback Hearing.

Cash Flow Forecast

90. The Proposed Monitor, in consultation with PTC and using the information obtained from the Companies, has prepared a 13-week cash flow forecast (the “**Cash Flow Forecast**”).

91. To the best of my understanding the hypothetical assumptions set out in the Proposed Monitor’s Report in relation to the Cash Flow Forecast are reasonable and consistent with the purpose of the Cash Flow Forecast and the probable assumptions are not inconsistent with the plans concerning the Simply Green Leasing Group and provide a basis for the projections that is not unreasonable. I note that since this is a creditor-initiated CCAA proceeding, my understanding of the reasonability of the Cash Flow Forecast assumptions and their consistency with the plans concerning the Simply Green Leasing Group is necessarily limited by the fact that I do not have the information about the Companies that I would have if I were one of their officers or senior management employees. In this regard, I have also relied on the fact that the Cash Flow Forecast has been developed by KPMG, which has significant expertise in these matters.

92. I note that the Cash Flow Forecast contemplates payment of interest on the Warehouse Loans and the Debenture and the payment of all amounts to be remitted under the Concurrent Leases but defers payment of the latter until after the date of and subject to the Comeback Hearing. Principal payments on the Warehouse Loans and the Debenture are not contemplated in the Cash Flow Forecast. PTC is making the forgoing accommodations to minimize the cash pressure on the Companies.

Charges

Administration Charge

93. It is contemplated under the form of Initial Order being sought that the Proposed Monitor, along with its counsel, and counsel to PTC will be granted a Court-ordered charge in the amount of \$250,000

73165422.2

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(the “**Administration Charge**”) during the initial ten (10) day stay period, as security for their fees and disbursements incurred at their standard rates and charges.

94. I believe that the amount of the proposed Administration Charge is the amount reasonably necessary for the initial ten (10) day stay period to ensure the continued participation of the proposed beneficiaries of the Administration Charge, whose expertise, knowledge and assistance will be critical to the success of these CCAA proceedings.

95. I understand the Proposed Monitor supports the quantum of the proposed Administration Charge, which I believe is fair and reasonable in the circumstances.

96. I do not believe that there is any unwarranted duplication of roles between the proposed beneficiaries of the Administration Charge.

97. PTC intends to seek an increase in the maximum amount of the Administration Charge at the Comeback Hearing.

DIP Lender's Charge

98. The DIP Facility is conditional upon an order of this Court, among other things, approving the amount and priority of the DIP Lender’s Charge.

99. As outlined above, during the initial ten (10) day stay period availability under the DIP Facility will be limited to the Initial Maximum Amount. The form of Initial Order being sought by the Applicants contemplates a DIP Charge in this amount.

100. I am of the belief that the amount of the proposed DIP Lender’s Charge is reasonably necessary for the initial ten (10) day stay period and is supported by the Cash Flow Forecast prepared with the [73165422.2](#)

assistance and review of the Proposed Monitor.

101. At the Comeback Hearing, PTC intend to seek an increase in the amount of the DIP Lenders' Charge.

Priorities of Charges

102. It is contemplated by PTC that the Charges will be against all of the Simply Green Leasing Group's group current and future assets, undertakings and property, and will have the following priorities as between them:

(a) First – the Administration Charge; and

(b) Second – the DIP Lenders' Charge;

Comeback Hearing

103. As noted above, should this Honourable Court grant the initial order sought by PTC, at the Comeback Hearing PTC intends to seek an extension of the stay or proceedings, and increases to the DIP Lender's Charge and the Administration Charge.

V. CONCLUSION

104. Simply Green Leasing Group is insolvent and requires immediate support to maintain the viability of its business. PTC is the senior creditor and has a proprietary interest in a significant part of the Companies' asset portfolio of customer rental agreements. PTC has security interests over all assets. PTC's position is in jeopardy and it has arrived at a consensual arrangement with the Companies to enter into CCAA protection. This relief is needed to ensure the stability of the broad-based assets that make up the business and to ensure continuity of the cash flows which are critical to PTC's position. To the extent that the Simply Green Leasing Group can be maintained while the Proposed Monitor and Proposed CRO work with PTC to develop restructuring options, all stakeholders will benefit.

SWORN BEFORE ME over videoconference on this 6th day of November, 2023. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the city of Toronto, in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Katherine Yurkovich

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A Commissioner for taking Affidavits

DocuSigned by:

Michael Lombard

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MICHAEL LOMBARD

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, c.C-36 AS AMENDED

Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP.,
SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL LOMBARD
(Sworn November 6, 2023)

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

David F.W. Cohen (33195Q)
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Thomas Gertner (67756S)
thomas.gertner@gowlingwlg.com

Tel: (416) 862-7525

Lawyers for Peoples Trust Company, the Applicant

**This is Exhibit “B”
to the Affidavit of Michael Lombard sworn
remotely before me on November 15, 2023**

DocuSigned by:

Katherine Yurkovich

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A commissioner for taking affidavits



Bennett Jones

Bennett Jones LLP

3400 One First Canadian Place, PO Box 130

Toronto, Ontario, Canada M5X 1A4

Tel: 416.863.1200 Fax: 416.863.1716

Joseph Blinick

Partner

Direct Line: 416.777.4828

e-mail: blinickj@bennettjones.com

November 12, 2023

Via Email

Gowling WLG (Canada) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Attention: David Cohen, Clifton Prophet and Thomas Gertner

Counsel:

Re: In the Matter of Crown Crest Capital Management Corp. et. al

As you know, we are the lawyers for MNP Corporate Finance Inc. As we advised the Court at the initial order hearing, our client has significant concerns about the creditor-driven CCAA process that is being pursued by PTC in coordination with the respondents, including as it relates to both PTC's and the respondents' statutory and common law obligations to act in good faith with respect to the proceeding.

In connection with the comeback hearing in the above-noted matter currently returnable November 17, and with a view to potentially avoiding cross-examinations of the PTC representatives who have sworn affidavits in the proceeding, as well as Rule 39.03 examinations of other individuals (including representatives of the Simply Green/Crown Crest entities), we have set out below our initial requests for documentation and information.

We ask that you please provide us with the required documents and information in a timely manner, by no later than end of day on Tuesday, November 14, so that we have it sufficiently in advance of the comeback hearing. We of course seek no documentation or information that is privileged.

Capitalized terms used below but not otherwise defined have the meanings given to them in the affidavit of Michael Lombard sworn November 6, 2023 (the "**Lombard Affidavit**").

1. Full particulars of PTC's ownership interest in Marble Amalco Inc. (aka TopcCo), as well as full particulars of its ownership interest in any other entities involved in the CCAA proceeding or otherwise related to any such entities. We note that paragraph 14 of the Lombard Affidavit discloses PTC's 47.58% ownership interest in CCMC; however, the

- Lombard Affidavit is silent with respect to, and does not disclose, any other relevant ownership interests PTC may have.
2. All correspondence and other documents exchanged between the Simply Green Leasing Group and PTC relating to the "near-term liquidity challenges" and any other liquidity issues more generally facing the Simply Green Leasing Group from January 1, 2023 onwards, including as referenced at paragraph 63 of the Lombard Affidavit.
 3. Copies of all statements made to PTC by the Simply Green Leasing Group, to the extent reduced to writing, regarding the Simply Green Leasing Group's cash flow deficits, including as referenced at paragraph 31 of the Lombard Affidavit. To the extent such statements were not reduced to writing, please provide particulars of all such statements, including the content of the statements, who the statements were made by, when the statements were made, to whom they were made, how those statements were communicated and how they were memorialized, if at all.
 4. Any documents within PTC's possession, power or control memorializing or relating to the liquidity and cash flow issues facing the Simply Green Leasing Group.
 5. Particulars of all alleged defaults by the Simply Green Leasing Group, as referenced at paragraph 31 of the Lombard Affidavit, together with any and all documents supporting such alleged defaults by the Simply Green Leasing Group (such as any notices or other correspondence delivered by PTC or its representatives to any of the respondents notifying them of such alleged defaults).
 6. Particulars of all alleged defaults under the Concurrent Lease Agreements, as referenced at paragraph 40 of the Lombard Affidavit, together with any and all documents supporting such alleged defaults by the Simply Green Leasing Group (such as any notices or other correspondence delivered by PTC or its representatives to any of the respondents notifying them of such alleged defaults).
 7. All communications involving PTC relating to the claim and/or trial involving the respondents, Simply Green Home Services Inc. and the Crown Crest Capital Trust (by its trustee Crown Crest Funding Corp.), as defendants, and MNP Corporate Finance Inc., as plaintiff.
 8. All communications and other documents informing or relating to the timing of the CCAA filing by PTC, including all communications and other documents exchanged by PTC personnel as well as all communications and other documents exchanged between PTC and the Simply Leasing Group (including by or through their respective advisors or representatives).
 9. All financial statements and other documents in PTC's possession, power or control (beyond the 2022 financial statements already included in the Application Record) reflecting the respondents' financial position from 2016 onwards, until the present time.

10. An explanation, with supporting documents, for how the information contained in the Lombard Affidavit, particularly regarding the respondents' alleged defaults and PTC's exposure to losses, is maintained in the face of the evidence given by PTC's Chief Financial Officer, Samson Lim, under oath on September 26, 2023 that PTC has consistently made returns on the Simply Green portfolio of consumer leases and that PTC is "overall profitable" with respect to its relationship with the Simply Green Leasing Group.
11. A detailed breakdown of all amounts that PTC has received on an annual basis from the Simply Green Leasing Group since the beginning of the relationship between PTC and the Simply Green Leasing Group, broken down by the various agreements between the parties, with supporting documentation.
12. All correspondence and other documentation within PTC's possession, power or control relating to (i) the declaration and payment of any dividends to any shareholders of any entities within the Simply Green Leasing Group, (ii) the repurchase of shares by any entities within the Simply Green Leasing Group, and (iii) any other transactions involving any payments by any entities within the Simply Green Leasing Group to any of the shareholders of any such entities.
13. A detailed breakdown of the forecasted payroll to be paid to senior management of the Simply Green Leasing Group throughout the forecast period, including (i) the identity of all members of senior management who will be compensated, (ii) their title, role and responsibilities, (iii) the specific amounts they are each forecasted be paid, and (iv) the basis for such payments (whether contractual or otherwise), with supporting documentation.
14. A detailed breakdown of the forecasted technical servicing costs to be incurred throughout the forecast period, including (i) full particulars of the parties to which such amounts will be paid, (ii) the nature of the relationship between such parties and the respondents, (iii) the specific services such parties are anticipated to provide, (iv) the specific amounts they are forecasted to be paid for such services, and (v) the basis for such payments (contractual or otherwise), with supporting documentation.

The above-requested documentation and information are critical to the issues to be adjudicated at the comeback hearing and the positions MNP Corporate Finance Inc. may take with respect to the sought relief at the hearing. Accordingly, we trust it will be provided promptly given the currently scheduled date, which is fast-approaching.

We would be pleased to discuss the above in more detail, and we look forward to hearing from you and receiving the required documents and information in a timely manner.

November 12, 2023

Page 4

Yours truly,



Joseph Blinick

JB

cc:

Alan Gardner, Sean Zweig and Shaan Tolani, *Bennett Jones LLP*
Marc Wasserman, Shawn Irving, and Martino Calvaruso, Osler, Hoskin & Harcourt
Huey Lee, Paul Van Eyk and Pritesh Patel, KPMG Inc.



**This is Exhibit “C”
to the Affidavit of Michael Lombard sworn
remotely before me on November 15, 2023**

DocuSigned by:

Katherine Yurkovich

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A commissioner for taking affidavits

November 15, 2023

SENT BY EMAIL:

blinickj@bennettjones.com

BENNETT JONES LLP

Attention: Joseph Blinick
3400 One First Canadian Place
Toronto, Ontario, M5X 1A4

Re: *Companies' Creditors Arrangement Act* proceedings of Simply Green Home Services Inc. et al. (the "Simply Green Leasing Group")

We are writing in response to your letter of November 12, 2023 in this matter.

As a preliminary comment, we wish to advise that the responses to the questions posed in your letter below are not to be construed as an admission that your client has the right to examine on affidavits sworn on behalf of our client in this matter, to proceed with examinations under Rule 39.03 or to pose these or further interrogatories. Further, our client reserves its rights concerning the standing of your client in this matter, given that it is a claimant in a matter that is currently pending decision before a different Court, following the conclusion of a contested trial concerning liability and quantum of the claims asserted. As such, your client's claims are at present entirely contingent and unliquidated. They will also remain unsecured no matter the outcome of the trial.

We further believe your questions are pre-mature. You have filed no evidence or other material in this matter to date and you appear to be engaging in questioning as a fishing expedition. As well, your questions have been posed without the benefit of the supplementary affidavit of Michael Lombard, which will be filed today and which we believe will likely address your client's underlying concerns around these proceedings.

In the interim, however, and in the interest of time, our responses adopt your system of question numbering.

1. Peoples Trust Company ("PTC") is not a direct shareholder of Marble Amalco Inc. PTC is the indirect holder of a 2.23% ownership interest in Marble Amalco Inc. PTC is not a shareholder, either directly or indirectly, of any of the Respondents other than CCMC (this interest, as you noted, was previously disclosed in Mr. Lombard's prior affidavit).

2. PTC understands that the Monitor will further address the lack of liquidity and the insolvency of the Respondents in a report to the Court to be filed in relation to the Comeback Hearing.
3. See answer to Question Two above. Further questions are disproportionate and do not seek best evidence.
4. See answer to Question Two above. Further questions are disproportionate and do not seek best evidence.
5. Among other things, contrary to the provisions of the applicable Warehouse Loan Agreements and general security agreements attached to the affidavit of Michael Lombard sworn November 6, 2023, credit parties in the Simply Green Leasing Group have defaulted on their obligations insofar as: (i) acts of bankruptcy as defined under the *Bankruptcy and Insolvency Act* (Canada) had occurred; and, (ii) based on statements by representatives of the Credit Parties in the Simply Green Leasing Group, PTC in good faith believed at the time of the filing of the initial application (and continues to believe) that the prospect of repayment or performance of their obligations is impaired.
6. See answer to Question Five above.
7. Communications of this type, if any, are or would be the subject of applicable privilege at law.
8. Information concerning the lead up to the filing of the CCAA Application will be the subject of the supplementary affidavit of Michael Lombard referenced above. The disclosure request otherwise lacks any adequate factual foundation. PTC further notes that the Simply Green Leasing Group faced a liquidity crisis in advance of PTC's application and that the filing and its timing were responsive to this fact.
9. In accordance with the requirements of the CCAA, PTC has filed the most current financial information that it has in its possession pertaining to the Respondents. PTC is not in possession of complete financial statements concerning the Respondents. Historical financial information concerning the Respondents is also irrelevant to PTC's application under the CCAA.
10. This question lacks necessary context. A transcript of the evidence of Mr. Lim will be required to assess the totality of his evidence. Further, given that this evidence is currently under consideration by the Court that presided over the trial of the matter in which your client makes its allegations, it would be inappropriate to comment in any fashion on this evidence.
11. This question is entirely irrelevant to any matter in issue in relation to PTC's application.
12. This question should be addressed to the Respondents.
13. The arrangements with the former CEO and CFO of the Respondents are expected to be transitional in nature and are the subject of ongoing discussion and negotiation which has not been finalized between the independent CRO, on the one hand, and the former CEO and CFO, on the other hand. Subject to the outcome of these discussions, the tenure of any arrangements with the former CEO is expected to be on the order of approximately 30 days. The tenure of the consulting arrangements with the

former CFO will depend upon the needs of the Respondents, as determined by the CRO in consultation with the Monitor. All compensation arrangements with senior management, if and when reached, will be subject to approval by the Monitor and disclosed to the Court. The responsibility for concluding these arrangements rests with the CRO and the Monitor, not PTC.

14. PTC does not have this information. PTC understands that the Monitor and the CRO are in the process of obtaining and verifying this information as a priority, but do not yet have a full picture of the situation.

Yours very truly,

GOWLING WLG (CANADA) LLP



Clifton Prophet

CP/KY/adc

cc:

D. Cohen, Gowling WLG (Canada) LLP
T Gertner, Gowling WLG (Canada) LLP

**This is Exhibit “D”
to the Affidavit of Michael Lombard sworn
remotely before me on November 15, 2023**

DocuSigned by:

Katherine Yurkovich

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A commissioner for taking affidavits

REGISTRAR

SUPERIOR COURT OF JUSTICE

CHIEF JUSTICE

COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ALGA ADINA BONNICK and GORAN STOILOV DONEV

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act*, 1992

AMENDED STATEMENT OF DEFENCE
OF THE CORPORATE DEFENDANTS

1. The Defendants Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Capital Trust, Crown Crest Capital II Trust, Crown Crest Billing Corp., Crown Crest Capital Corp., Crown Crest Funding Corp., Sandpiper Energy Solutions and Sandpiper Energy Solutions Home Comfort, Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp. (together, the "**Corporate Defendants**") admit the allegations contained in paragraph 78 of the Amended Fresh as Amended Statement of Claim.

2. The Corporate Defendants deny the balance of the allegations contained in the Amended Fresh as Amended Statement of Claim except as expressly admitted herein, and put the Plaintiffs to the strict proof thereof.

3. The Defendants Sandpiper Energy Solutions and Sandpiper Energy Solutions Home Comfort are not legal entities and do not exist.

The Corporate Defendants

4. The only Corporate Defendants that had any involvement with the ~~Plaintiffs~~ Plaintiffs' home comfort equipment leases (the "**Leases**" and each, individually, a "**Lease**") are Simply Green Home Services Corp., Crown Crest Capital Management Corp., Crown Crest Capital Trust, and its trustee Crown Crest Funding Corp.

5. **Crown Crest Capital Management Corp.**, an Ontario corporation, is a management company. It has been the beneficiary of the defendant Crown Crest Capital Trust since January 1, 2019.

6. **Crown Crest Capital Trust** is a special purpose funding trust existing under the laws of Ontario.

7. **Crown Crest Funding Corp.** is an Ontario corporation and the trustee of Crown Crest Capital Trust.

8. Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp., purchased from and was assigned ~~the Plaintiffs~~ Ms. Alga Adina Bonnick's ("**Ms. Bonnick**") Lease by 2558561 Ontario Inc. dba. MGA Home Services ("**MGA Home Services**"). Crown Crest Capital Management Corp. registered a notice of security interest (the "**NOSI**") on title to ~~the Plaintiff~~ Ms. Bonnick's property in relation to the Bonnick Lease.

9. **Simply Green Home Services Corp.**, formerly known as Simply Green Home Services Inc., is an Ontario corporation. It had no involvement with Ms. Bonnick's Lease. It originated Mr. Goran Stoilov Donev's ("Mr. Donev") Lease.
10. None of the other Corporate Defendants had any involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
11. **Crown Crest Financial Corp.** is an inactive Ontario subsidiary of the Defendant Crown Crest Capital Management Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
12. **Crown Crest Capital II Trust** is an inactive trust. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
13. **Crown Crest Billing Corp.** is an Ontario corporation. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
14. **Crown Crest Capital Corp.** is an inactive Ontario corporation and a wholly owned subsidiary of the Defendant Simply Green Home Services Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
15. **Simply Green Home Services (Ontario) Inc.** is an Ontario corporation. It is a wholly-owned subsidiary of the Defendant Simply Green Home Services Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
16. **Simply Green Home Services Inc.** is an Ontario corporation. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.

17. ~~Simply Green Home Services Corp., formerly known as Simply Green Home Services Inc., is an Ontario corporation. It had no involvement with the Plaintiff's Lease.~~

18. **Sandpiper Energy Solutions** and **Sandpiper Energy Solutions Home Comfort** are not legal entities and do not exist. Sandpiper Energy Solutions is a registered business name of the Defendant Simply Green Home Services Corp. Sandpiper Energy Solutions Home Comfort is a registered business name of the Defendant Crown Crest Funding Corp. ~~Neither Simply Green Home Services Corp. nor Crown Crest Funding Corp. had any no involvement with the Plaintiff's~~ Plaintiffs' Leases. Simply Green Home Services Corp. did not have involvement with Ms. Bonnick's Lease.

19. Lawrence Krimker is an individual residing in Toronto, Ontario. He is the founder and Chief Executive Officer of Simply Green Home Services Corp. and Crown Crest Capital Management Corp.

20. At all material times, Mr. Krimker was an officer and director of the Corporate Defendants Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Billing Corp., Simply Green Home Services (Ontario) Inc., Simply Green Home Services Corp. and Simply Green Home Services Inc., and an officer of Crown Crest Capital Corp. Mr. Krimker was not an officer or director of the other Corporate Defendants at any relevant time.

The Plaintiff Ms. Bonnick's Lease

21. On or about July 22, 2017, the Plaintiff, Ms. Bonnick, entered into a home comfort equipment lease agreement with MGA Home Services for the lease of a water softener, carbon filter and HEPA air filter in the Plaintiff's home (~~defined above as the~~ **"Bonnick Lease"**).

22. The ~~Plaintiff's~~ Bonnick Lease was originated by MGA Home Services. MGA Home Services is an arm's length party from the Corporate Defendants. None of the Corporate Defendants has any interest in MGA Home Services.

23. The Corporate Defendants had no involvement in the origination of the Bonnick Lease, including the events alleged at paragraphs ~~28-42~~ 29-43 of the Amended Fresh as Amended Statement of Claim. The Corporate Defendants put the Plaintiff, Ms. Bonnick, to the strict proof thereof.

24. The terms of the ~~Plaintiff's~~ Bonnick Lease provided the following:

- The initial monthly charges payable by ~~the Plaintiff~~ Ms. Bonnick, being \$59.99/month plus tax for each piece of equipment, for a total of \$179.97/month plus tax;
- The monthly charges could increase by up to 3.5% annually throughout the term of the Bonnick Lease, at the discretion of the lessor;
- The term of the Bonnick Lease, which ends when the Lease is terminated in accordance with its terms, or the useful life of the leased equipment has ended;
- The lessor's obligation to service and repair the leased equipment at no cost to ~~the Plaintiff~~ Ms. Bonnick during the Bonnick Lease term;
- The lessor's obligation to replace the leased equipment at no cost to ~~the Plaintiff~~ Ms. Bonnick if it is beyond repair;
- ~~The Plaintiff's~~ Ms. Bonnick's option to purchase the leased equipment or the Bonnick Lease for the buyout price specified in the Lease;

- MGA Home Services and its authorized personnel, representatives, contractors and assigns have the right to assign any interest in the Lease and the leased equipment, in their sole discretion without consent of or notice to ~~the Plaintiff~~ Ms. Bonnick; and
- ~~The Plaintiff~~ Ms. Bonnick granted an exclusive security interest to MGA Home Services and its authorized personnel, representatives, contractors and assigns and granted them the right to register the security interest against ~~the Plaintiff~~ Ms. Bonnick and against title to the lands where the leased equipment is located. ~~The Plaintiff~~ Ms. Bonnick waived the right to receive a copy of such registration.

25. The Lease advised ~~the Plaintiff~~ Ms. Bonnick of her consumer rights in large font, on the front and back page of the Bonnick Lease, including her right to cancel the Lease within 10 days of receiving the Lease.

26. ~~The Plaintiff~~ Ms. Bonnick received a verification call from MGA Home Services to confirm the Lease when it was entered into, before the leased equipment was installed. ~~The Plaintiff~~ Ms. Bonnick confirmed that she had a copy of the Lease, understood its terms, and understood her right to cancel the Lease within 10 days.

27. The Corporate Defendants deny the allegation that any sales representative of MGA Home Services who interacted with ~~the Plaintiff~~ Ms. Bonnick held themselves out as working for "Enercare". ~~The Plaintiff~~ Ms. Bonnick understood that the Lease was with MGA Home Services and that the sales representative with whom she dealt was a representative of MGA Home Services. The Corporate Defendants deny paragraphs 29 and 30 of the Amended Fresh as Amended Statement of Claim and put ~~the Plaintiff~~ Ms. Bonnick to the strict proof thereof.

28. ~~The Plaintiff~~ Ms. Bonnick received a number of goods and services under the Bonnick Lease, including the following:

- use of good and valuable home equipment over the course of the Lease term;
- the ability to finance the cost of using the leased equipment over the Lease term, instead of pay for equipment up-front;
- installation of the leased equipment at no additional cost;
- removal of her old home comfort equipment at no additional cost;
- repairs to or replacement of the leased equipment at no additional cost;
- access to a customer care service centre to address any problems with the leased equipment; and
- “peace of mind” that any problems with the leased equipment would be addressed without additional cost to her.

29. The Bonnick Lease disclosed all material terms required by law. ~~The Plaintiff~~ Ms. Bonnick received a copy of the Lease. ~~The Plaintiff~~ Ms. Bonnick was aware of and understood the terms of the her Lease before entering into it. ~~The Plaintiff~~ Ms. Bonnick was not at a gross informational disadvantage.

30. There was no obligation to disclose to ~~the Plaintiff~~ Ms. Bonnick the total lease cost, total amount payable, the security granted or the implicit finance charge or annual percentage rate under the Lease. In the alternative, these items were disclosed to ~~the Plaintiff~~ Ms. Bonnick at the time the Lease was entered into, insofar as it was possible to describe the manner in which they would

be calculated. However, it was not possible to quantify these items at the time the Bonnick Lease was entered into.

31. In any event, the information that ~~the Plaintiff~~ Ms. Bonnick pleads she did not receive, including as alleged at paragraphs ~~22-23, 51, 64, 66-67, 69, 72-73 and 76~~ 23-24, 52, 80, 82-83, 85, 88-89 and 92 of the Amended Fresh as Amended Statement of Claim, was not material and would not reasonably have affected ~~the Plaintiff's~~ Ms. Bonnick's or any decision to enter into the Lease. Importantly, ~~the Plaintiff~~ Ms. Bonnick did not request any such information when she entered into the Lease.

32. Contrary to the allegations in paragraph ~~49~~ 20 of the Amended Fresh as Amended Statement of Claim, MGA Home Services determined the Bonnick Lease terms, not the Corporate Defendants. MGA Home Services did not require the Corporate Defendants' approval to set the Lease terms or to enter into the Lease with ~~the Plaintiff~~ Ms. Bonnick. The Corporate Defendants did not "vet" ~~the Plaintiff~~ Ms. Bonnick before MGA Home Services could or did enter into the Lease.

33. The leased equipment was installed in ~~the Plaintiff's~~ Ms. Bonnick's home in a good and workmanlike manner. The leased equipment was good and valuable working home comfort equipment. ~~The Plaintiff~~ Ms. Bonnick did not ask that the leased equipment be repaired or replaced in accordance with the Lease. The leased equipment was not defective and did not cause damage to ~~the Plaintiff's~~ Ms. Bonnick's home. The Corporate Defendants specifically deny the allegations at paragraph ~~53~~ 54 of the Amended Fresh as Amended Statement of Claim.

34. Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp., subsequently purchased and was assigned ~~the Plaintiff's~~ Ms. Bonnick's Lease from MGA Home Services

pursuant to a Master Assignment and Program Agreement, after determining in its discretion that the Lease was suitable for purchase. This included a determination that the Lease terms were satisfactory to Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust, confirmation of a satisfactory credit check for ~~the Plaintiff~~ Ms. Bonnick and confirmation that she owned the property where the leased equipment was installed.

35. Although not required, Ms. Bonnick was subsequently advised that Crown Crest Capital Trust had purchased and taken assignment of the Lease. ~~The Plaintiff~~ Ms. Bonnick did not object to the assignment, and nor did she have a reason or right to object to the assignment.

36. MGA Home Services is an arm's length third party from the Corporate Defendants. Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust acquired the Lease for fair value. It took reasonable steps to confirm the Lease was lawful and complied with applicable consumer protection laws before purchasing it. It did not have, and could not through reasonable diligence have had, notice of the possible liabilities alleged in ~~the Plaintiff's~~ Ms. Bonnick's Amended Fresh as Amended Statement of Claim.

37. On or about April 3, 2018, Crown Crest Capital Management Corp. registered a notice of security interest in the leased equipment in the amount of \$14,448.00 (defined above as the "NOSI"). The Bonnick Lease expressly permitted the registration of the NOSI on title to ~~the Plaintiff's~~ Ms. Bonnick's property. The ~~amount~~ registration of the NOSI was not unconscionable. The amount of the NOSI was not the total amount payable or total lease cost to be paid by ~~the Plaintiff~~ Ms. Bonnick under the Lease.

38. Contrary to paragraphs 1(i), ~~13, 24, 26, 57, 71, 93~~ 14, 25, 27, 73, 87, and 109 of the Amended Fresh as Amended Statement of Claim, the NOSI is not a lien or encumbrance on ~~the~~

~~Plaintiff's~~ Ms. Bonnick's property. The NOSI is notice that the Crown Crest Capital Management Corp. holds a security interest in the leased equipment that is installed in ~~the Plaintiff's~~ Ms. Bonnick's property. Without the NOSI, a subsequent purchaser for value might purchase the leased equipment or the entire property without knowledge of Crown Crest Capital Management Corp.'s interest. However, the NOSI does not entitle Crown Crest Capital Management Corp. to enforce the security interest against ~~the Plaintiff's~~ Ms. Bonnick's real property.

39. The registration of the NOSI ~~against the Plaintiff's~~ on title to Ms. Bonnick's property did not impede her ability to deal with the property, including to refinance or sell it. If ~~the Plaintiff~~ Ms. Bonnick had any concerns about the NOSI in connection with a sale of her property, Crown Crest Capital Management Corp. would have granted a reasonable waiver of its priority of registration. However, ~~the Plaintiff~~ Ms. Bonnick made no such request.

40. ~~The Plaintiff~~ Ms. Bonnick was invoiced \$67.79 per month for each piece of equipment, including HST. Thereafter, the monthly payments were increased for each piece of equipment as permitted under the Lease, as follows: \$70.16 including HST starting January 4, 2019; \$72.61 including HST starting January 23, 2020; and \$75.16 including HST starting March 23, 2021. All amounts invoiced to ~~the Plaintiff~~ Ms. Bonnick were in accordance with the Lease.

41. The price of ~~the Plaintiff's~~ Ms. Bonnick's Lease did not grossly exceed the price at which similar goods or services provided under the Lease are readily available to customers like ~~the Plaintiff~~ Ms. Bonnick. The cost of the Lease cannot be compared to the cost of purchasing the equipment outright. The Lease was a means of financing the cost of using home comfort equipment over a lengthy period of time, rather than making an upfront payment. The Lease also included lifetime services, including repair and replacement as needed, installation of the new equipment,

and the removal of any old equipment. Long-term financing and extended “peace of mind” services offer material value. ~~The Plaintiff’s~~ Ms. Bonnick’s Lease was competitively priced, including relative to any providers offering comparable packages of equipment and services.

42. ~~The Plaintiff’s~~ Ms. Bonnick’s Lease remains in effect and has not terminated in accordance with its terms. To date, ~~the Plaintiff~~ Ms. Bonnick has made no payments of the monthly amounts due under the Lease. Nor has ~~the Plaintiff~~ Ms. Bonnick ever paid the buyout amount to terminate her Lease. At all times, Crown Crest Capital Trust has been entitled to request payment from ~~the Plaintiff~~ Ms. Bonnick and to enforce the terms of the Lease.

Mr. Donev’s Lease

43. On or about May 19, 2015, the Plaintiff, Mr. Donev, entered into a home comfort equipment lease agreement with Simply Green Home Services Corp. (at the time known as Simply Green Home Services Inc.) (“Simply Green”) for the lease of an air conditioner in Mr. Donev’s home (the “Donev Lease”).

44. The Donev Lease was originated by Simply Green. The Donev Lease was subsequently assigned to Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp. The remaining Corporate Defendants had no involvement in the Donev Lease.

45. Before Mr. Donev entered into the Donev Lease, the sales representative who attended Mr. Donev’s home accurately explained the Lease terms, answered all of Mr. Donev’s questions, and Mr. Donev indicated that he understood the terms.

46. The Corporate Defendants put Mr. Donev to the strict proof of the facts alleged, including the events alleged at paragraphs 57-69 of the Amended Fresh as Amended Statement of Claim.

47. The terms of the Donev Lease provided the following:

- The initial monthly charges payable by Mr. Donev, being \$79.99/month plus tax for the air conditioner;
- The monthly charges could increase by up to 3.5% annually throughout the term of the Donev Lease;
- The term of the Donev Lease, which was 180 months;
- The lessor's obligation to service and repair the leased equipment at no cost to Mr. Donev during the Donev Lease term;
- The lessor's obligation to replace the leased equipment at no cost to Mr. Donev if it was beyond repair;
- Mr. Donev's option to purchase the leased equipment for the buyout price that can be calculated based on the formula in the Donev Lease;
- Simply Green and its authorized personnel, representatives, contractors and assigns have the right to assign any interest in the Donev Lease and the leased equipment, in their sole discretion without consent of or notice to Mr. Donev; and
- Mr. Donev expressly granted an exclusive security interest to Simply Green and its authorized personnel, representatives, contractors and assigns and granted them the right to register the security interest against Mr. Donev and against title to the lands where the leased equipment is located. Mr. Donev waived the right to receive a copy of such registration.

48. Mr. Donev received a verification call from Simply Green to confirm the Donev Lease when it was entered into, before the leased equipment was installed. Among other things, Mr. Donev confirmed that he had received a copy of the Donev Lease, understood its terms, and understood his right to cancel the Donev Lease within 10 days.

49. Mr. Donev received a number of goods and services under the Donev Lease, including the following:

- use of good and valuable home equipment over the course of the Donev Lease term;
- the ability to finance the cost of using the leased equipment over the Donev Lease term, instead of pay for equipment up-front;
- installation of the leased equipment at no additional cost;
- removal of his old home comfort equipment at no additional cost;
- repairs to the leased equipment at no additional cost;
- access to a customer care service centre to address any problems with the leased equipment; and
- “peace of mind” that any problems with the leased equipment would be addressed without additional cost to him.

50. Government rebates and energy cost savings for upgrading to and using more energy efficient equipment were generally available at the time of the Donev Lease. The Corporate Defendants have no knowledge of what specific rebates or cost savings Mr. Donev sought or

received or Mr. Donev's assertion at paragraph 58 of the Amended Fresh as Amended Statement of Claim.

51. The Donev Lease disclosed all material terms required by law. Mr. Donev received a copy of the Donev Lease. Mr. Donev was aware of and understood the terms of the Donev Lease before entering into it. Mr. Donev was not at a gross informational disadvantage.

52. There was no obligation to disclose to Mr. Donev the total lease cost, total amount payable, the security granted or the implicit finance charge or annual percentage rate under the Donev Lease. In the alternative, these items were disclosed to him at the time the Donev Lease was entered into, insofar as it was possible to describe the manner in which they would be calculated; however, it was not possible to quantify these items at the time the Donev Lease was entered into.

53. In any event, the information that Mr. Donev pleads he did not receive, including as alleged at paragraphs 23-24, 64, 80, 82-83, 85, 88-89 and 92 of the Amended Fresh as Amended Statement of Claim, was not material and would not reasonably have affected Mr. Donev's or any decision to enter into the Donev Lease. Importantly, Mr. Donev did not request any such information when he entered into his Lease.

54. Following the installation of the home comfort equipment, Simply Green called Mr. Donev who confirmed that the equipment was installed in a good and workmanlike manner. The leased equipment was good and valuable working home comfort equipment.

55. On or about July 30, 2015, Simply Green registered a notice of security interest in the leased equipment in the amount of \$7,269.00 (defined above as a "NOSI"). The Donev Lease expressly permitted the registration of the NOSI on title to Mr. Donev's property. The registration

of the NOSI was not unconscionable. The amount of the NOSI was not the total amount payable or total lease cost to be paid by Mr. Donev under the Donev Lease.

56. The Donev Lease was subsequently assigned to Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp.

57. The registration of the NOSI on title to Mr. Donev's property did not impede his ability to deal with the property, including to refinance or sell it. If he had any concerns about the NOSI in connection with a sale of his property, Crown Crest Capital Trust would have granted a reasonable waiver of its priority of registration. However, he made no such request.

58. Mr. Donev was invoiced \$90.39 per month for the air conditioner, including HST. Thereafter, the monthly payments were increased for the equipment as permitted under the Donev Lease, as follows: \$93.55 including HST starting February 28, 2018; \$96.83 including HST starting January 23, 2019; \$100.22 including HST starting February 19, 2020; \$103.72 including HST starting May 16, 2021; and \$107.35 including HST starting February 16, 2023. All amounts invoiced to Mr. Donev were in accordance with his Lease.

59. Simply Green and Crown Crest Capital Trust were entitled to invoice and collect, and Mr. Donev paid, all amounts invoiced under the Donev Lease.

60. The price of Mr. Donev's Lease did not grossly exceed the price at which similar goods or services provided under the Donev Lease are readily available to customers like Mr. Donev. The cost of the Donev Lease cannot be compared to the cost of purchasing the equipment outright. The Donev Lease was a means of financing the cost of using home comfort equipment over a lengthy period of time, rather than making an upfront payment. The Donev Lease also included lifetime

services, including repair as needed. Long-term financing and extended “peace of mind” services offer material value. Mr. Donev’s Lease was competitively priced, including relative to any providers offering comparable packages of equipment and services.

61. Mr. Donev’s Lease remains in effect and has not terminated in accordance with its terms. At all times, Crown Crest Capital Trust has been entitled to request payment from Mr. Donev and to enforce the terms of his Lease.

No Liability of Defendants Not Involved or Non-Existent

62. Sandpiper Energy Solutions and Sandpiper Energy Solutions Home Comfort are not legal entities and do not exist. They cannot have any liability to the Plaintiffs.

63. Crown Crest Financial Corp., Crown Crest Capital II Trust, Crown Crest Billing Corp., Crown Crest Capital Corp., Simply Green Home Services (Ontario) Inc., and Simply Green Home Services Inc., ~~and Simply Green Home Services Corp.~~ had no involvement in the ~~Plaintiff’s~~ Plaintiffs’ Leases at any time and do not have any liability to the Plaintiffs.

No Liability Under the Consumer Protection Act

Corporate Defendants Not Liable

64. The Corporate Defendants are not liable under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A (“CPA”) in relation to the Plaintiffs or ~~her~~ their Leases, as alleged in the Amended Fresh as Amended Statement of Claim or at all.

65. None of the Corporate Defendants are or were “suppliers” with respect to the ~~Plaintiff’s~~ Plaintiffs’ Leases as defined under the CPA. The Leases was not originated by any of the Corporate

Defendants, except for Simply Green. There was no relationship between the Corporate Defendants and MGA Home Services regarding the Bonnick Lease that would make any of the Corporate Defendants “suppliers” under the *CPA* in relation to the Plaintiff, Ms. Bonnick, or her Lease.

66. Other than Crown Crest Capital Trust through its trustee Crown Crest ~~Financial~~ Funding Corp., none of the Corporate Defendants are or were “assignees” with respect to the ~~Plaintiff's~~ Plaintiffs' Leases as defined under the *CPA*.

67. In the alternative, and further, the Corporate Defendants did not breach the *CPA* in relation to the Plaintiffs or ~~her~~ their Leases, as alleged in the Amended Fresh as Amended Statement of Claim or at all.

68. In the alternative, and further, the Leases ~~was~~ were not unlawful or contrary to the *CPA*, as alleged or at all. In the further alternative, the Corporate Defendants did not know, and had no reason to believe, that the Leases ~~was~~ were unlawful or contrary to the *CPA*, which is denied.

No Unfair Practices

69. The Corporate Defendants deny that they engaged in, or that the Leases constitutes, any unfair practices contrary to sections 14 or 15 of the *CPA* as alleged or at all.

70. None of the Corporate Defendants, except for Simply Green, originated the ~~Plaintiff's~~ Plaintiffs' Lease. Providing financing for, registering a NOSI in relation to, and subsequently

taking assignment of the Leases or originating and subsequently assigning the Leases does not constitute an unfair practices contrary sections 14 or 15 of the CPA.

71. There was no failure to disclose to the Plaintiffs any material information required to be disclosed to ~~her~~them. The Plaintiffs received all material information ~~she~~ they ~~was~~ were entitled to receive. There was no exaggeration, innuendo or ambiguity as to any material fact, and no failure to state a material fact. Any inadequate disclosure, which is denied, did not deceive or tend to deceive.

72. The total lease cost, total amount payable and the security given under the Leases are not material facts requiring disclosure to the Plaintiffs. In the alternative, they were adequately described to the Plaintiffs. In the further alternative, it was not possible to ascertain these amounts at the time the Leases ~~was~~ were entered into.

73. The terms of the Leases are not excessively one-sided, or so adverse to the Plaintiffs as to be inequitable, including with respect to the NOSIs.

74. The Lease prices does not grossly exceed the prices at which similar goods and services are readily available to customers like the Plaintiffs.

No Breach of the Direct Agreement Provisions

75. There is no breach of s. 42(1) of the CPA or of the *Requirements for Direct Agreements Subject to Section 43.1 of Act*, O. Reg 8/18 (the "**Direct Agreements Regulation**") in relation to the Plaintiffs or ~~her~~ their Leases, as alleged or at all.

76. The Corporate Defendants, except for Simply Green, did not originate the Leases. They put the Plaintiffs to strict proof of establishing that the Leases ~~is~~ are a "direct agreement" as defined under the CPA.

77. Further, and in the alternative, the Direct Agreements Regulation does not have any application to the ~~Plaintiff's~~ Plaintiffs' Leases. The Direct Agreements Regulation came into force on March 1, 2018 and May 1, 2018, after the ~~Plaintiff's~~ Plaintiffs' Leases ~~was~~ were entered into, and does not have retroactive effect.

78. Further, and in the alternative, the Leases complied with all requirements of s. 42(1) of the CPA in force at the time of, and which apply to, the ~~Plaintiff's~~ Plaintiffs' Leases.

79. All prescribed information was disclosed to the Plaintiffs as required by law. The total amount payable under the Leases and the security given were not material facts requiring disclosure.

80. The Leases ~~was~~ were for goods and services to be supplied during an indefinite period. The Leases described the amount and frequency of the periodic payments.

81. In the alternative, the total amount payable under the Leases and the security given were appropriately described in the Leases. In the further alternative, it was not possible to ascertain the total amount payable under the Leases at the time the Leases ~~was~~ were entered into. In the further alternative, the Plaintiffs had sufficient information to ascertain the total amount payable and the security given under the Leases, and this was disclosed to the Plaintiffs at the time the Leases ~~was~~ were entered into.

No Breach of Lease Requirements

82. There is no breach of s. 89(2) of the *CPA* or s. 74(2) of *General Regulation*, O. Reg 17/05 in relation to the Plaintiffs or ~~her~~ their Leases, as alleged or at all.

83. At all times, all prescribed information was disclosed to the Plaintiffs as required by law, including any disclosure statement.

84. Further, and in the alternative, there was no requirement to disclose the total lease cost or implicit finance charge. It was not possible to determine the total lease cost or the amount of every periodic payment under the Leases at the time the Leases ~~was~~ were entered into. The Leases expressly provided that the periodic payments under the Leases could change during the Lease, and said changes were both variable and discretionary. Additionally, the term of the leases ~~was~~ were measured by the useful life of the equipment, which could not be determined at the outset. The Corporate Defendants plead and rely on s. 77 of *General Regulation*, O. Reg 17/05.

85. In the alternative, the Leases described the payments under the Leases, how the payments could change over time, and at whose discretion. The Plaintiffs had sufficient information to ascertain the total cost of the Leases and the implicit finance charge, and this information was appropriately disclosed to the Plaintiffs before the Leases ~~was~~ were entered into.

Slander of Title

86. The Corporate Defendants deny the registration of the NOSIs constituted slander of title, as alleged or at all.

87. The Leases expressly granted an exclusive security interest to MGA Home Services and Simply Green and their ~~its~~ authorized personnel, representatives, contractors and assigns, and

granted them the right to register notice of the security interest on title to the ~~Plaintiff's~~ Plaintiffs' ~~property properties~~ without further notice to the Plaintiffs.

88. The security granted under the Leases was lawful, and the registrations of the NOSIs on the title to the ~~Plaintiff's~~ Plaintiffs' ~~property properties~~ was were lawful.

89. The registrations of the NOSIs was were not a false statements that the Plaintiffs had defective title or otherwise. Further, and in the alternative, the NOSIs was were not published maliciously or with malicious intent.

90. The Plaintiffs ~~is~~ are and ~~was~~ were at all times able to dispose of and deal with ~~her~~ their property. ~~Her~~ Their ability to do so is and was not affected by the registrations of the NOSIs.

91. The registrations of the NOSIs did not lower the values of the ~~Plaintiff's~~ Plaintiffs' ~~property properties~~.

92. The Plaintiffs ~~has~~ have not suffered any loss or damage as a result of the registrations of the NOSIs, and the Corporate Defendants put ~~her~~ them to the strict proof thereof.

No Remedies

93. The Plaintiffs ~~has~~ have not suffered any loss or damage for which the Corporate Defendants are liable under the CPA or at law, as alleged or at all.

94. The Leases ~~was~~ were made in accordance with the CPA and is binding on the Plaintiffs. In any event, the Plaintiff, Ms. Bonnick, never made any payment under ~~the~~ her Lease or suffered any loss in connection with the Lease.

95. The Plaintiffs ~~is~~ are not entitled to any damages, under the *CPA* or at law, as alleged or at all.

96. The Plaintiffs ~~is~~ are not entitled to any remedies under s. 18 of the *CPA*, as alleged or at all.

97. The Plaintiffs ~~is~~ are not entitled to rescission of ~~her~~ their Leases. Rescission would deprive any applicable Corporate Defendants, who are third parties, of a right in the subject-matter of the Leases that they acquired in good faith and for value. The Corporate Defendants plead and rely on s. 18(2) of the *CPA*.

98. Further, and in the alternative, rescission of the Leases is not available because the Plaintiffs used the leased equipment and ~~is~~ are not in a position to return it in its original condition. Return or restitution of the leased goods and services is no longer possible.

99. Further, and in the alternative, the Plaintiffs ~~has~~ have not given notice of ~~her~~ their claims in accordance with the *CPA*, and as such is not entitled to rescission of ~~her~~ their Leases or any other remedies sought. It is not in the interest of justice to waive any notice requirement. The Corporate Defendants rely on s. 18(3) of the *CPA*.

100. Further, and in the alternative, if any Corporate Defendant, except for Simply Green Home Services Corp., ~~is~~ are liable to the Plaintiffs, which is denied, they are an “assignee” as defined under the *CPA* and their liability is limited to the amounts paid by the Plaintiffs to that specific assignee.

101. The Plaintiffs ~~is~~ are not entitled to disgorgement of any Corporate Defendant's profits, as alleged or at all. Disgorgement is not an available remedy under the *CPA*. Further, and in the alternative, it is not an appropriate remedy in the circumstances.

Unjust Enrichment

102. The Corporate Defendants have not been unjustly enriched, as alleged or at all.

103. None of the Corporate Defendants charged or retained any unlawful amounts from the Plaintiff.

104. The Plaintiffs ~~has~~ have not suffered any deprivation. ~~She~~ They received the goods and services provided to ~~her~~ them under the Leases and, in the case of Ms. Bonnick, she did not pay any amount due under the Lease.

105. Further, and in the alternative, the Plaintiffs ~~has~~ have not suffered any deprivation that corresponds to any alleged unjust enrichment of the Corporate Defendants.

106. Further, and in the alternative, the Leases ~~is~~ are a juristic reason for any enrichment of any Corporate Defendants.

107. Further, and in the alternative, the Plaintiffs ~~is~~ are not entitled to restitution of any amount by which any Corporate Defendant was enriched.

Injunctive Relief

108. There is no basis for injunctive relief with respect to the Plaintiffs. The Corporate Defendants deny the conduct alleged in the Amended Fresh as Amended Statement of Claim with

respect to their involvement with the Leases or the Plaintiffs, if any, was unlawful or that they are liable for it.

Punitive Damages

109. The Plaintiffs ~~is~~ are not entitled to punitive or exemplary damages as alleged or at all. None of the Corporate Defendants engaged in any wrongful conduct that was willful, deliberate, high-handed, outrageous, callous, or in contemptuous disregard of the ~~Plaintiff's~~ Plaintiffs' rights and interests or took advantage of any alleged vulnerability of the Plaintiffs. The Corporate Defendants' conduct did not depart to a marked degree from ordinary standards of decent behaviour.

No Joint and Several Liability

110. The Corporate Defendants deny that they are jointly or severally liable with any other Defendant in relation to the Plaintiffs or ~~her~~ their Leases, as alleged or at all, under s. 18(12) of the CPA, in law, or otherwise.

Claims ~~is~~ are Statute-Barred

111. The ~~Plaintiff's~~ Plaintiffs' claims ~~is~~ are statute-barred pursuant to s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B. The Corporate Defendants rely on s. 5 of the *Limitations Act*. The facts on which the Plaintiffs ~~relies~~ rely in the Amended Fresh as Amended Statement of Claim were available to ~~her~~ them more than two years before ~~she~~ they commenced the within Action.

112. The Corporate Defendants did not engage in any fraudulent concealment as alleged or at all. They not willfully or fraudulently conceal the ~~Plaintiff's~~ Plaintiffs' alleged causes of action,

any material term of the Leases or the NOSIs. It would not be unconscionable to enforce the applicable limitation period against the Plaintiffs.

Set Off

113. In the event that the Plaintiffs ~~is~~ are entitled to any damages, which is denied, the Leases remains a valid, subsisting, and binding agreement. The Plaintiff, Ms. Bonnick, has paid none of the amounts due under ~~the~~ her Lease and she is in breach of its terms.

114. Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust purchased the Bonnick Lease in good faith and in an arm's length transaction with the expectation of receiving the amounts due under the Lease. Because of ~~the Plaintiffs~~ Ms. Bonnick's breach of her obligations under ~~the~~ her Lease, Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust, has received nothing.

115. Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust is entitled to set off the price of the buyout under the terms of the Bonnick Lease as against any damages due to the Plaintiff, Ms. Bonnick, which are denied. In the alternative, Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust, is entitled to set off the cost of the Bonnick Lease as against any damages due to the Plaintiff, Ms. Bonnick, which are denied.

Class Proceeding Not Suitable

116. The Corporate Defendants deny that this action is suitable for a class proceeding. The criteria for certification under s. 5(1) of the *Class Proceedings Act*, S.O. 1992, c. 6 (the "***Class Proceedings Act***") have not been met.

117. The Corporate Defendants deny that that the Plaintiffs ~~is~~ are entitled to aggregate damages under the *Class Proceedings Act*. The requirements under s. 24 of the *Class Proceedings Act* have not been met.

118. This Amended Statement of Defence responds to the ~~Plaintiffs~~ Plaintiffs' individual claims only. The Corporate Defendants reserve the right to amend this Amended Statement of Defence if the action is certified as a class proceeding and respond to the claims, if any, as certified.

119. The Corporate Defendants ask that this action be dismissed with costs.

~~April 17, 2023~~ July 28, 2023

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act*, 1992

AMENDED STATEMENT OF DEFENCE

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Lawyers for the Corporate Defendants

MTDOCS 46925539

**This is Exhibit “E”
to the Affidavit of Michael Lombard sworn
remotely before me on November 15, 2023**

DocuSigned by:

Katherine Yurkovich

BF136400C72D4F9...

A commissioner for taking affidavits

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ALGA ADINA BONNICK and GORAN STOILOV DONEV

Plaintiffs

and

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

Defendants

**AMENDED STATEMENT OF DEFENCE
OF THE DEFENDANT, LAWRENCE KRIMKER**

1. Except as expressly admitted herein, the Defendant Lawrence Krimker denies all of the allegations contained in the Amended Fresh as Amended Statement of Claim and puts the ~~Plaintiff~~ Plaintiffs to the proof thereof.

LAWRENCE KRIMKER

2. Mr. Krimker is an individual residing in Toronto, Ontario. He is the founder and Chief Executive Officer of Simply Group. Mr. Krimker is the director and/or officer of certain corporations within Simply Group, as described below.

THE CORPORATE DEFENDANTS

3. Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Capital Trust, Crown Crest Capital II Trust, Crown Crest Billing Corp., Crown Crest Capital Corp., Crown Crest Funding Corp., Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp. (together, the “Corporate Defendants”) are or were each part of Simply Group.

4. Crown Crest Capital Management Corp. is a corporation incorporated under the laws of Ontario. It is a management company and has been the beneficiary of the Defendant Crown Crest Capital Trust since January 1, 2019. At all material times, Mr. Krimker was an officer and director of Crown Crest Capital Management Corp.

5. Crown Crest Financial Corp. is an inactive Ontario subsidiary of Crown Crest Capital Management Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was the President and a director of Crown Crest Financial Corp.

6. Crown Crest Capital Trust is a special purpose funding trust existing under the laws of Ontario.

7. Crown Crest Capital II Trust is an inactive trust. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases.

8. Crown Crest Billing Corp. is a corporation incorporated under the laws of Ontario. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer and director of Crown Crest Billing Corp.

9. Crown Crest Capital Corp. is an inactive corporation incorporated under the laws of Ontario and a wholly owned subsidiary of the Defendant Simply Green Home Services Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer of Crown Crest Capital Corp.

10. Crown Crest Funding Corp. is a corporation incorporated under the laws of Ontario. It is the trustee of the Defendant Crown Crest Capital Trust.

11. Simply Green Home Services (Ontario) Inc. is corporation incorporated under the laws of Ontario. It is a wholly-owned subsidiary of the Defendant Simply Green Home Services Corp It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer and director of Simply Green Home Services (Ontario) Inc.

12. Simply Green Home Services Inc. is a corporation incorporated under the laws of Ontario. It had no involvement with the ~~Plaintiff's~~, Alga Adina Bonnick's, home comfort equipment lease. It originated the Plaintiff, Goran Stoilov Donev's, home comfort equipment lease. At all material times, Mr. Krimker was an officer and director of Simply Green Home Services Inc.

13. Simply Green Home Services Corp., formerly known as Simply Green Home Services Inc., is a corporation incorporated under the laws of Ontario. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer and director of Simply Green Home Services Corp.

14. Sandpiper Energy Solutions and Sandpiper Energy Solutions Home Comfort are not legal entities and do not exist. Sandpiper Energy Solutions is a registered business name of the

Defendant Simply Green Home Services Corp. Sandpiper Energy Solutions Home Comfort is a registered business name of the Defendant Crown Crest Funding Corp. Neither Simply Green Home Services Corp. nor Crown Crest Funding Corp. had any involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases.

MR. KRIMKER'S ROLE WITHIN SIMPLY GROUP

15. Simply Group is a large organization with a number of business lines, including but not limited to the consumer equipment leasing business. While the size and organization of Simply Group and the Corporate Defendants has changed over time, Mr. Krimker has consistently held a senior role focused on high-level strategic matters. Mr. Krimker has not generally been involved in day-to-day operational matters pertaining to Simply Group or any of the Corporate Defendants. The vast majority of decisions made by the Corporate Defendants, including decisions relating to the subject-matter related to the allegations in the Amended Fresh as Amended Statement of Claim, have been made by others working at corporations within Simply Group.

16. In terms of Simply Group's structure, by way of example, as of early 2022:

- (a) Simply Group was led by an Executive Team, who oversaw a broader Leadership Team, who in turn directly or indirectly supervised hundreds of employees.
- (b) Mr. Krimker was the CEO of Simply Group. He was part of the Executive Team, along with the Chief Financial Officer and the Chief Operating Officer.
- (c) At that time, reporting to the COO was a broader Senior Leadership Team, which included individuals in the following roles:

- (i) Chief Risk Officer;
 - (ii) Executive Vice-President, Operations;
 - (iii) Executive Vice-President, Strategic Relationships and Business Development;
 - (iv) Senior Vice-President, Technology;
 - (v) Senior Vice-President, Product and Consumer Lending;
 - (vi) Executive Vice-President, Sales;
 - (vii) Senior Vice-President, Sales;
 - (viii) Vice-President, Marketing;
 - (ix) Vice-President, Collection and Recovery;
 - (x) Senior Vice-President, Operations; and
 - (xi) Vice President, Human Resources.
- (d) The individuals on the Senior Leadership team themselves oversaw, directly or indirectly, teams of up to 20 employees.

17. Mr. Krimker's role at Simply Group and the Corporate Defendants in particular is limited primarily to strategic decisions and initiatives. Mr. Krimker's primary efforts have been directed at growing Simply Group's business through the acquisition of portfolios of relationships that have been originated by third-parties.

18. Contrary to paragraph 96 97 of the Amended Fresh as Amended Statement of Claim, Mr. Krimker has not personally engaged in or directly overseen any of the conduct alleged to be unlawful in the Amended Fresh as Amended Statement of Claim. In particular, Mr. Krimker did not:

- (a) Draft the lease agreements (“Agreements”) entered into with customers, including the ~~Plaintiff~~ Plaintiffs;
- (b) Determine the content of any particular contractual terms contained in any Agreements entered into with customers, including the ~~Plaintiff~~ Plaintiffs;
- (c) Make any decisions about what information was disclosed or not disclosed to customers, including the Plaintiff, in connection with the purchase or lease of home comfort equipment, or provide any directions or guidance to anyone else about what information should or should not be disclosed to customers, including the ~~Plaintiff~~ Plaintiffs;
- (d) Engage in any sale or lease of home comfort equipment to customers, including the ~~Plaintiff~~ Plaintiffs;
- (e) Supervise any employees or agents of any Corporate Defendants, or any third-parties, who engaged in the sale or lease of home comfort equipment to customers, including the ~~Plaintiff~~ Plaintiffs;
- (f) Determine the cost of the equipment sold to particular customers, including the ~~Plaintiff~~ Plaintiffs;

- (g) Determine the cost of the monthly rent of the equipment sold to particular customers, including the ~~Plaintiff~~ Plaintiffs;
- (h) Engage in any negotiations of the Agreements entered into with customers, including the ~~Plaintiff~~ Plaintiffs;
- (i) Engage in any credit verifications or otherwise with customers, including the ~~Plaintiff~~ Plaintiffs;
- (j) Determine which customers, including the ~~Plaintiff~~ Plaintiffs, have a notice of security interest (“NOSI”) registered on their home;
- (k) Determine the quantum of any security interest on a customer’s home, including the Plaintiffs; or
- (l) Register any NOSIs on any customers’ homes, including the Plaintiffs.

19. Simply put, Mr. Krimker had no direct involvement or communication with customers, including the ~~Plaintiff~~ Plaintiffs, nor did he have any indirect involvement regarding any of the matters alleged in the Amended Fresh as Amended Statement of Claim.

NO PERSONAL LIABILITY

20. There is no basis for imposing any personal liability on Mr. Krimker in respect of any allegations advanced in the Amended Fresh as Amended Statement of Claim.

21. Mr. Krimker did not personally engage in any of the alleged conduct which is alleged to be unlawful in the Amended Fresh as Amended Statement of Claim.

22. Moreover, Mr. Krimker denies that there is any basis under which to pierce the corporate veil and/or impose any liability on him in respect of the conduct alleged as against any of the Corporate Defendants. In particular, contrary to paragraphs ~~89-97~~ 90-98 of the Amended Fresh as Amended Statement of Claim:

- (a) Mr. Krimker is not the directing mind of the Corporate Defendants with respect to the matters alleged in the Amended Fresh as Amended Statement of Claim;
- (b) Mr. Krimker has not had any involvement, directly or indirectly, with the drafting, negotiation, or execution of the Agreements entered into with the ~~Plaintiff~~ Plaintiffs on the one hand and any Corporate Defendant on the other hand;
- (c) Mr. Krimker has not had any involvement, directly or indirectly, with the registration of NOSIs and/or other encumbrances on the title to the home of the ~~Plaintiff~~ Plaintiffs. Nor does Mr. Krimker have any involvement, directly or indirectly, with when the NOSIs are registered and/or in what amount;
- (d) Mr. Krimker did not incorporate the Corporate Defendants in order to conduct any improper activity; and
- (e) Mr. Krimker denies that he used the Corporate Defendants as a puppet, a sham, or as a mere façade acting as his agent in carrying out the conduct alleged in the Amended Fresh as Amended Statement of Claim.

NO BREACH OF THE CONSUMER PROTECTION ACT

23. Mr. Krimker is not liable under the *Consumer Protection Act* (“CPA”) in respect of any of the conduct alleged. Mr. Krimker specifically denies paragraphs ~~66-68~~ 67-69, ~~70-73~~ 71-74, and ~~76-82~~ 77-83 of the Amended Fresh as Amended Statement of Claim.

24. Mr. Krimker did not personally engage in any conduct alleged to be unlawful under the *CPA*.

25. Mr. Krimker is not a “supplier” as defined in section 1 of the *CPA*. A “supplier” is a “person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services.” Mr. Krimker is not personally in the business of selling, leasing, or trading in goods or services.

26. Likewise, Mr. Krimker is not an “assignee” as defined in section 82(1) of the *CPA*. Section 82(1) provides that if a “a person assigns a negotiable instrument given to secure credit or a loan of money”, then certain obligations flow therefrom. No person or corporation has ever assigned a negotiable instrument to Mr. Krimker.

27. Moreover, Mr. Krimker has never had direct interactions with any of the customers of any of the Corporate Defendants. Mr. Krimker has never been involved in the drafting of the Agreements, communicating with customers regarding their home comfort equipment, or the registering NOSIs on title to customers’ homes. Mr. Krimker has never engaged in any unfair practices under sections 14 and 15 of the *CPA*.

28. There is no basis in law or fact to pierce the corporate veil and/or impose any liability on Mr. Krimker in respect of any breaches of *CPA* alleged as against any of the Corporate Defendants.

29. In any event, Mr. Krimker denies that any of the Corporate Defendants engaged in any breaches of the *CPA* as alleged in the Amended Fresh as Amended Statement of Claim or at all.

NO SLANDER OF TITLE

30. Mr. Krimker is not liable for slander of title vis-à-vis the ~~Plaintiff~~ Plaintiffs. Mr. Krimker specifically denies paragraphs ~~83-87~~ 84-88 of the Amended Fresh as Amended Statement of Claim.

31. Mr. Krimker has never been involved in the registration of any NOSIs on title to customers' homes. He did not register or cause to be registered false statements contrary to the *CPA* or any other statutes.

32. There is no basis in law or fact to pierce the corporate veil and/or impose any liability on Mr. Krimker in respect of any slander of title alleged as against any of the Corporate Defendants.

33. In any event, Mr. Krimker denies that any of the Corporate Defendants engaged in any slander of title as alleged in the Amended Fresh as Amended Statement of Claim or at all. Mr. Krimker denies that the registration of NOSIs constitutes slander of title. He also denies that any NOSIs were registered with an improper motive to injure the ~~Plaintiff~~ Plaintiffs.

NO UNJUST ENRICHMENT

34. Mr. Krimker is not liable for unjust enrichment vis-à-vis the ~~Plaintiff~~ Plaintiffs. Mr. Krimker specifically denies the allegations at paragraphs ~~110-113~~ 111-114 of the Amended Fresh as Amended Statement of Claim.

35. Mr. Krimker specifically denies that he was enriched by charging and retaining unlawful fees, interest, and other amounts under the Agreements. Mr. Krimker did not charge and/or retain unlawful fees, interest, and other amounts, as he is not a counterparty to any of the Agreements.

36. In any event, the ~~Plaintiff~~ Plaintiffs did not suffer a deprivation corresponding to any enrichment to Mr. Krimker.

37. If Mr. Krimker was enriched, which is denied, there was a juristic reason for the charging of fees, interest, and other amounts, namely, the Agreements pursuant to which fees, interest, and other amounts were charged.

38. There is no basis in law or fact to pierce the corporate veil and/or impose any liability on Mr. Krimker in respect of unjust enrichment alleged as against any of the Corporate Defendants.

39. In any event, Mr. Krimker denies that any of the Corporate Defendants were unjustly enriched as alleged in the Amended Fresh as Amended Statement of Claim or at all.

NO ENTITLEMENT TO RESCISSION OF THE AGREEMENTS

40. The Plaintiff is not entitled to rescission of the Agreements. Mr. Krimker specifically denies paragraph ~~101~~ 102 of the Amended Fresh as Amended Statement of Claim.

41. Any Corporate Defendants involved with the ~~Plaintiff~~ Plaintiffs are third parties who acquired the Agreements in good faith and for value. Pursuant to subsection 18(2) of the *CPA*, rescission is not available to the ~~Plaintiff~~ Plaintiffs.

42. In the alternative, if subsection 18(2) does not apply, the ~~Plaintiff~~ Plaintiffs ~~is~~ are not entitled to rescission because ~~the~~ their home comfort equipment was used after ~~its~~ their installation.

The ~~Plaintiff~~ Plaintiffs cannot return the equipment in ~~its~~ their original condition. To the extent any remedy were available to the ~~Plaintiff~~ Plaintiffs, the only remedy available would be damages.

43. In the further alternative, if subsection 18(2) does not apply, the ~~Plaintiff~~ Plaintiffs ~~has~~ have not given notice of ~~her~~ their claims in accordance with the *CPA*. As such, ~~she~~ they ~~is~~ are not entitled to rescission.

NO DAMAGES

44. Mr. Krimker denies that the ~~Plaintiff~~ Plaintiffs has suffered any damages as a consequence of the alleged conduct or otherwise.

45. To the extent the ~~Plaintiff~~ Plaintiffs ~~has~~ have suffered damages, which is denied, such damages are excessive, remote, and/or arise from acts for which Mr. Krimker is not responsible in fact or in law. Further, the ~~Plaintiff~~ Plaintiffs ~~has~~ have failed to mitigate ~~her~~ their damages.

46. Mr. Krimker denies that the ~~Plaintiff~~ Plaintiffs ~~is~~ are entitled to disgorgement, as claimed in paragraphs ~~104-105~~ 105-106 of the Amended Fresh as Amended Statement of Claim. Disgorgement is not an available remedy under the *CPA*. In any event, disgorgement would not be an appropriate remedy in the circumstances.

NO ENTITLEMENT TO INJUNCTIVE RELIEF

47. The ~~Plaintiff~~ Plaintiffs ~~is~~ are not entitled to injunctive relief. Mr. Krimker specifically denies paragraphs ~~106-109~~ 107-110 of the Amended Fresh as Amended Statement of Claim.

NO PUNITIVE DAMAGES

48. Mr. Krimker denies that the ~~Plaintiff~~ Plaintiffs ~~is~~ are entitled to punitive damages.

49. Mr. Krimker denies that he has engaged in wrongful conduct that was willful, deliberate, high-handed, outrageous, callous, or in contemptuous disregard of the ~~Plaintiff's~~ Plaintiffs' rights and interests.

NO JOINT AND SEVERAL LIABILITY

50. Mr. Krimker denies that he is jointly or severally liable with any other Defendant in relation to the ~~Plaintiff~~ Plaintiffs, as alleged in the Amended Fresh as Amended Statement of Claim or at all, under s. 18(12) of the *CPA*, in law, or otherwise.

THE PLAINTIFF'S CLAIM IS STATUTE-BARRED

51. The ~~Plaintiff's~~ Plaintiffs' claims ~~is~~ are statute-barred pursuant to the *Limitations Act, 2002*, S.O. 2002, c. 24. The material facts on which the ~~Plaintiff~~ Plaintiffs ~~relies~~ rely in the Amended Fresh as Amended Statement of Claim were or reasonably ought to have been known to ~~her~~ them more than two years before ~~she~~ they commenced the within Action.

52. Mr. Krimker did not participate in any fraudulent concealment as alleged in the Amended Fresh as Amended Statement of Claim or at all. Mr. Krimker specifically denies paragraphs ~~118-~~ 119-120 of the Amended Fresh as Amended Statement of Claim.

53. Mr. Krimker denies that either he or any Corporate Defendant wilfully concealed any material facts from the ~~Plaintiff~~ Plaintiffs, including any material terms of any Agreement entered into by the ~~Plaintiff~~ Plaintiffs, or the identity of the companies through which Simply Group offers home comfort equipment to customers.

NOT SUITABLE FOR CLASS PROCEEDING

54. Mr. Krimker denies that this action is suitable for a class proceeding. The criteria for certification under s. 5(1) of the *Class Proceedings Act*, S.O. 1992, c. 6 have not been met.

55. This Statement of Defence responds to the ~~Plaintiff's~~ Plaintiffs' individual claims only. Mr. Krimker reserve the right to amend this Amended Statement of Defence if the action is certified as a class proceeding in order to respond to the action as certified, if at all.

56. Mr. Krimker asks that this action be dismissed with costs.

~~April 18, 2023~~ July 28, 2023

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ALGA ADINA BONNICK et al
Plaintiff

-and- LAWRENCE KRIMKER et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AMENDED STATEMENT OF DEFENCE
OF THE DEFENDANT, LAWRENCE KRIMKER**

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**This is Exhibit “F”
to the Affidavit of Michael Lombard sworn
remotely before me on November 15, 2023**

DocuSigned by:

Katherine Yurkovich

BE136400C72D4E9...

A commissioner for taking affidavits

Court File No.:

CV17-582744

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MNP CORPORATE FINANCE INC.

Plaintiff

-and-

SIMPLY GREEN HOME SERVICES INC. AND CROWN CREST FUNDING CORP. IN ITS
CAPACITY AS TRUSTEE OF CROWN CREST CAPITAL TRUST

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

DATE: September 14, 2017

Issued by:

Local Registrar

"A. Wijaywardena"

Address of Court Office:

Superior Court of Justice
393 University Avenue, 10th Floor
Toronto, ON
M5G 1E6

TO: SIMPLY GREEN HOME SERVICES INC.
200 Yorkland Blvd., Suite 1201
Toronto, ON M2J 5C1

AND TO: CROWN CREST FUNDING CORP.
200 Yorkland Blvd., Suite 1201
Toronto, ON M2J 5C1

AND TO: CROWN CREST CAPITAL TRUST
200 Yorkland Blvd., Suite 1201
Toronto, ON M2J 5C1

CLAIM

1. The plaintiff, MNP Corporate Finance Inc. (“MNP”), claims against the defendants, Simply Green Home Services Inc. (“**Simply Green**”) and Crown Crest Funding Corp. (“CCFC”) in its capacity as the trustee and/or representative of Crown Crest Capital Trust (collectively, the “**Defendants**”), jointly and severally, for the following relief:

- (a) damages in the amount of \$3,000,000 and/or such other amounts as may be proven at trial for breach of contract, unjust enrichment and/or *quantum meruit*;
- (b) a declaration that MNP is entitled to 1.5% and/or 0.5% of any additional or replacement debt facility that any of the Defendants obtain from an Approved Lender and/or any Lender or affiliated entity identified by MNP and not on the Excluded List (all as defined below) in accordance with terms of the engagement letter between MNP and the Defendants dated February 23, 2016 (the “**Engagement Letter**”);
- (c) special damages in an amount to be particularized prior to trial;
- (d) punitive and/or exemplary damages in the amount of \$100,000;
- (e) pre- and post-judgment interest on a compound basis or, alternatively, in accordance with the *Courts of Justice Act*, RSO 1990, s C43, as amended;
- (f) costs of this action on a full indemnity or other appropriate scale;
- (g) payment of HST and other applicable taxes on any sums awarded in favour of the plaintiff, including costs; and

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

The Parties

2. The plaintiff, MNP, is a company provincially incorporated pursuant to the laws of Alberta, which is extra-provincially registered in Ontario. It is a transaction advisory services firm, specializing in, among other things, corporate financings. At all material times, it acted as a financial advisor and professional services provider to the Defendants in connection with a senior debt financing (the “**Transaction**”).

3. The defendant, Simply Green, is a company provincially incorporated pursuant to the laws of Ontario. It is in the business of originating rental contracts, loans and other receivables relating to energy conservation equipment, including heating, cooling, air filtration and water filtration systems.

4. The Crown Crest Capital Trust (the “**Crown Crest Trust**”) is a special purpose financing trust established by a Declaration of Trust dated December 1, 2015, as amended by an Amended and Restated Declaration of Trust dated November 29, 2016. The Crown Crest Trust is involved in purchasing or otherwise acquiring, holding, leasing, servicing, collecting, enforcing and disposing of pools of rental contracts, loans, other receivables and/or related assets originated by Simply Green and/or others, and funding such activities wholly or partially with borrowed funds, including borrowed funds obtained through the issuance of debt obligations. At all material times, the Crown Crest Trust, by its trustee, was a party to the Engagement Letter as well as the Credit Facilities (as defined below).

5. The defendant, CCFC, is a company provincially incorporated pursuant to the laws of Ontario. At all material times, it was the trustee and/or representative of the Crown Crest Trust.

Relevant Non-Parties

6. Peoples Trust Company (“PTC”) is a financial institution federally regulated under the *Trust and Loan Companies Act*, S.C. 1991, c. 45, as amended. It is in the business of, among other things, providing credit facilities and advancing other forms of financing to corporations and other entities. At all material times, it was a party to the Credit Facilities (as defined below) and it extended debt financing to the Defendants.

Background

7. Prior to entering into the Engagement Letter, CCFC, in its capacity as trustee of the Crown Crest Trust, with Simply Green and other related entities acting as guarantors, entered into a bridge financing facility (the “**Bridge Facility**”) with Sprott Bridging Income Fund LP (“**Sprott**”). The Defendants entered into the Engagement Letter with MNP because they required replacement credit facilities for the Bridge Facility for some or all of the following reasons, amongst others:

- (a) The Bridge Facility was a short-term, one-year demand loan, which was only intended to finance the Crown Crest Trust until it obtained alternative, more permanent financing;
- (b) The Bridge Facility was costly. Under the Bridge Facility, the Crown Crest Trust was required to pay interest at the rate of 13% per annum, which consumed a substantial portion of its profit;

- (c) The Crown Crest Trust had used all of the funding available under the Bridge Facility and Sprott was unwilling to increase the facility;
- (d) Sprott agreed to two extensions for repayment of the Bridge Facility. It advised that no further extensions would be granted and/or it formally called the Bridge Facility; and
- (e) The deadline for repayment of the Bridge Facility was the earlier of demand or December 7, 2016. Sprott advised that if the Bridge Facility was not fully repaid by December 7, 2016, it was going to enforce its underlying security, which, at that time, was the pool of rental contracts, loans, other receivables and/or related assets worth approximately \$25 million.

The Engagement Letter

8. On February 23, 2016, Simply Green and the Crown Crest Trust, by its trustee, "Crown Crest Capital Inc." (which MNP believes is a misnomer in the Engagement Letter for CCFC), entered into the Engagement Letter with MNP, which sets out the scope and terms of MNP's engagement as a financial advisor to the Defendants in connection with the Transaction.

Purpose of Engagement

9. The Engagement Letter specifically provides that:

"[Simply Green], on behalf of [the Crown Crest Trust], desires to embark on a capital raising process in order to upgrade and enhance [the Crown Crest Trust's] financial capacity and to underwrite its longer term expansion plans...the capital raising process will relate to obtaining any or all of the following forms of capital to be used by [Simply Green], on behalf of [the Crown Crest Trust], to execute its medium-term growth plans over the next 12 months;

1. A long-term senior credit facility to be established for a value of up to CDN\$75 Million with draws made from time to time and on terms to be established by the parties (the “Senior Facility”).
2. A revolving warehouse facility of up to CDN\$5 Million with which to fund long term rental agreements pending draws under the Senior Facility (the “Warehouse Facility”).

Scope of MNP’s Services

10. Under the Engagement Letter, the Defendants acknowledged and agreed that MNP’s approach to the Transaction would be “adaptive and flexible to fit the situation as it evolves”. The Defendants further acknowledged and agreed that MNP “provides no guarantee or warranty that the Transaction will be completed under the original terms and conditions contemplated by MNP and [Simply Green], on behalf of [the Crown Crest Trust], or at all.”

MNP’s Fees

11. Under the Engagement Letter, the Defendants agreed to pay MNP, among other things, a completion fee, which was to be calculated at the closing of any Senior Facility or Warehouse Facility (as defined in the Engagement Letter) based on the aggregate of all amounts funded or committed to be funded, applying the following percentages depending on whether the lender was an “Approved Lender” or a “Lender” (as defined in the Engagement Letter):

Approved Lender	
Senior Facility	1.5%
Warehouse Facility	1.5%
Lender	
Senior Facility	0.5%
Warehouse Facility	0.5%

(the “Completion Fee”).

12. The Defendants further agreed that, in the event an Approved Lender also participates in a “first loss” preferred unit or subordinated debt offering (the “**Offering**”), the Completion Fee will also include an amount equal to 3% of the amount invested by such Approved Lender.

13. Under the Engagement Letter, the Completion Fee was required to be paid by Simply Green, on behalf of the Crown Crest Trust, to MNP on the closing date of the Transaction.

The Credit Facilities, PTC’s equity interest and the ECN Financing

14. Shortly after the Engagement Letter was signed by the parties, MNP began taking steps to perform its obligations under the contract and provide the Defendants with the services contemplated thereunder, including, among other things, reviewing the business and capital structure of the Crown Crest Trust, identifying potential lenders for the Transaction, approaching potential lenders to present the opportunity and assess their interest, presenting proposed financing term sheets to potential lenders and, ultimately, negotiating the terms of the Transaction with PTC, which is an “Approved Lender” under the Engagement Letter.

15. As a direct result of MNP’s efforts and contributions, the Crown Crest Trust, by its trustee, CCFC, entered into a Warehouse Line of Credit Agreement with PTC, with Crown Crest Capital Management Corp. (“**CCCMC**”) as guarantor, dated December 1, 2016 (the “**Warehouse Facility**”). The Crown Crest Trust, by its trustee, CCFC, also entered into a Sales and Servicing Agreement with PTC, with CCCMC as guarantor, also dated December 1, 2016 (the “**SSA**” and, and together with the Warehouse Facility, the “**Credit Facilities**”).

16. The Warehouse Facility provides the Crown Crest Trust with access to a demand revolving line of credit of up to \$30 million and the SSA provides it with access to take-out financing in excess of \$100 million.

17. While the Credit Facilities are comprised of two separate and individual funding platforms, they are integrally related to, and intertwined with, one another. Combined, they create a funding mechanism whereby one single lender — PTC — provides both the short term revolving debt (through the Warehouse Facility) and ongoing liquidity and take-out financing (through the SSA) to pay down draws made in the Warehouse Facility, thereby freeing up fresh capital to fund the Defendants' new and ongoing originations, as sought by the Defendants under the Engagement Letter.

18. Although the SSA is technically structured as a purchase and sale agreement, the SSA constitutes a debt instrument rather than a true sale, particularly when considered with all the terms of the SSA and the Warehouse Facility, including, among other terms:

- (a) the provision of funds by PTC under the SSA at a "Discount Rate" (*i.e.*, an interest rate) determined by the prime rate of interest charged by the Bank of Montreal for its commercial loans;
- (b) PTC's purchase of the lease assets under the SSA is deemed to be repayment under the Warehouse Facility;
- (c) the Credit Facilities each refer to one another in their repayment mechanics;
- (d) the Crown Crest Trust is obligated to repurchase defaulted rental contracts from PTC; and

- (e) the guarantees, cross-defaults, security and cross-collateralizations provisions of the Credit Facilities.

19. Under the SSA, the risks and rewards of ownership of the underlying assets do not pass to PTC by virtue of the assignments contemplated in the SSA but, rather, remain with the Defendants. The terms of the SSA, including all of the conditions and continuing obligations of the Crown Crest Trust under the SSA, constitute a senior debt facility designed to provide access to long term capital, as contemplated under the Engagement Letter.

20. The fundamental nature of the SSA as a senior debt instrument is further supported by virtually all of the other surrounding circumstances, including but not limited to PTC being referred to as “lender” and/or CCFC, in its capacity as trustee of the Crown Crest Trust, being referred to as “debtor” in several of the closing documents relating to the SSA, including in legal memoranda and board resolutions.

21. Importantly, the Defendants executed and closed the Credit Facilities. Immediately upon doing so, on December 1, 2016, the Defendants used the Warehouse Facility to pay out Sprott’s Bridge Facility, which was due (after two extensions had been granted). Had the Defendants not closed the Credit Facilities, they would have been unable to retire the Bridge Facility, and this event could have bankrupted them or caused them financial harm and jeopardized their viability as a going concern. The Defendants have since continued to use the Credit Facilities for the financing of long term rental contracts, all of which aligns with the express purpose for which MNP was engaged by the Defendants.

22. In connection with the Credit Facilities, PTC was also granted a 10% equity interest in CCCMC.

23. In or around December 2016, the Crown Crest Trust also secured additional financing in the amount of approximately \$33 million from ECN Capital (“ECN”), which is a Lender (as defined in the Engagement Letter). Pursuant to the terms of the Engagement Letter, MNP is also entitled to its Completion Fee in respect of this debt financing (the “ECN Financing”).

24. Although the Defendants have paid MNP a part of its Completion Fee (for the Warehouse Facility), the Defendants have refused or otherwise failed to pay MNP its full Completion Fee, including for: (i) the SSA, (ii) PTC’s equity interest in CCCMC, which it acquired in connection with an Offering, and (iii) the ECN Financing.

Breach of Contract

25. Despite MNP’s significant contributions toward negotiating and securing the Credit Facilities for the Defendants (and the SSA in particular) as well as the ECN Financing, which provide a useful and important source of funding that has enabled the continued operation and success of their business, the Defendants have refused or otherwise failed to compensate MNP in accordance with the terms of the Engagement Letter. Specifically, the Defendants have failed to pay MNP its full Completion Fee, being:

- (i) 1.5% of all amounts funded or committed to be funded by PTC under the SSA, which amounts to approximately \$1.5 million (*i.e.*, 1.5% x \$100+ million);
- (ii) 3% of the value of PTC’s 10% equity interest in CCCMC. The value of PTC’s equity interest in CCCMC is not presently known to MNP, but it is within the knowledge of the Defendants; and

- (iii) 0.5% of all amounts funded or committed to be funded by ECN in connection with the ECN Financing, which amounts to approximately \$165,000 (*i.e.*, 0.5% of \$33 million).

26. The Defendants' failure to pay the full Completion Fee due and owing to MNP under the Engagement Letter constitutes a material breach of contract. The Defendants have failed to remedy their breach despite repeated requests and demands by MNP.

Unjust Enrichment

27. The Defendants have been unjustly enriched. They received sources of funding and substantial benefits because of MNP's efforts and services in arranging and obtaining the Credit Facilities and, in particular, the SSA, as well as the ECN Financing.

28. MNP has suffered a corresponding deprivation in that it contributed significant labour, services and other resources towards identifying potential lenders, negotiating the terms of the Transaction and securing the Credit Facilities and, in particular, the SSA as well as the ECN Financing on behalf of the Defendants in order to establish and enhance their financial capacity and ability to underwrite their long term expansion plans, for which MNP was not properly compensated.

29. There is no juristic reason for the Defendants' enrichment and MNP's corresponding deprivation. Rather, the Defendants' enrichment and MNP's corresponding deprivation directly result from the Defendants' breach of their contractual and other legal and equitable obligations owed to MNP. There is no juristic reason why the Defendants should not be held to account for their enrichment and for MNP's corresponding deprivation.

Quantum Meruit

30. In the alternative, MNP is entitled to be reimbursed and compensated for the labour, services and other resources it reasonably advanced and provided to the Defendants, at the request and encouragement of the Defendants, to secure the Credit Facilities and, in particular, the SSA, amongst other things.

31. The labour, services and other resources were not provided by MNP to the Defendants gratuitously but, rather, they were provided with the reasonable expectation of being compensated in accordance with the terms of the Engagement Letter.

32. The Defendants freely accepted the benefits advanced by MNP in circumstances where they knew, or ought to have known, of MNP's reasonable expectation in that regard.

Compensation Owing to MNP for the Defendants' Further Debt Financing

33. Under the Engagement Letter, the Defendants further agreed that if at any time within twenty-four (24) months of MNP's engagement being terminated, the Crown Crest Trust receives debt financing from "an Approved Lender" or "any Lender or affiliated entity who had been identified by [MNP] and was not on the Excluded List" (all as defined in the Engagement Letter), MNP is entitled to the full amount of its Completion Fee. This obligation is separate and apart from the Defendants' obligations to pay fees and expenses, including the Completion Fee regarding the SSA, PTC's equity interest in CCCMC and the ECN Financing, incurred prior to the termination of MNP's engagement.

34. MNP has reason to believe that the Crown Crest Trust recently secured further debt financing from ECN, a Lender, in the amount of approximately \$250 million. Pursuant to the

terms of the Engagement Letter, MNP is entitled to its Completion Fee in respect of this debt financing, amounting to approximately \$1.25 million (*i.e.*, 0.5% of \$250 million).

35. The Defendants may have also obtained, and/or may obtain within the relevant twenty-four (24) month period, additional or alternative debt financing for which MNP is entitled to compensation.

36. MNP seeks an Order for compensation, and/or declaratory relief that it is entitled to compensation, at the rate stipulated in the Engagement Letter on any and all amounts advanced by ECN and/or any Approved Lender, Lender or affiliated entity who had been identified by MNP and is not on the Excluded List (all as defined in the Engagement Letter) within twenty-four (24) months of the termination of its engagement, in accordance with the terms of the Engagement Letter.

The Defendants' Recent Acquisition

37. MNP has reason to believe that the Defendants have also recently completed an acquisition in the amount of approximately \$200 million, which has resulted in a major new shareholder of Simply Green and a newly constituted Board of Directors for the company.

38. This transaction would not have occurred, and the Defendants' additional financing arrangements with ECN (and/or others) would not have been obtained, without MNP's significant contributions toward the Defendants' business, which secured their financing relationship with PTC and caused or contributed toward the continued operation and success of their business.

Damages

39. Because of the Defendants' breaches of their other contractual and other legal and equitable obligations owed to MNP, MNP has suffered significant damages for which the Defendants are jointly and severally responsible. MNP estimates that the full and just amount of its damages is approximately \$3,000,000, plus interest, but full particulars of MNP's damages will be provided prior to trial.

40. MNP has mitigated its damages.

Special Damages

41. MNP has also incurred, and is continuing to incur, costs arising from the Defendants' unlawful conduct as set out above, which form part of its claim for special damages. Full particulars of MNP's special damages will similarly be provided prior to trial.

Punitive and/or Exemplary Damages and Costs on an Elevated Scale

42. The actions of the Defendants as set out above were committed with willful, wanton and reckless disregard for their obligations and for the rights and interests of MNP. A material award of punitive and/or exemplary damages, and a costs award on a full or substantial indemnity basis, are appropriate and warranted in the circumstances.

Place of Trial

43. MNP proposes that the trial of this action take place in the City of Toronto in the Province of Ontario.

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