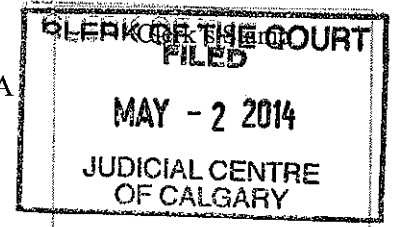


COURT FILE NUMBER 1401- 04781  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF **HARDIE & KELLY INC., IN ITS  
CAPACITY AS TRUSTEE IN  
BANKRUPTCY OF ASSISTIVE  
FINANCIAL CORP.**  
DEFENDANTS **RANDY SCHIFFNER, SLADE SCHIFFNER,  
BRANDON SCHIFFNER, ELAYNE  
SCHIFFNER, CAMERON SCHIFFNER  
AND BRANDI SCHIFFNER**  
DOCUMENT **STATEMENT OF CLAIM**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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#### **NOTICE TO THE DEFENDANTS**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

#### **Statement of facts relied on:**

##### **Parties**

1. Hardie & Kelly Inc. was appointed the trustee in bankruptcy (the "**Trustee**") of Assistive Financial Corporation ("**Assistive**") by Order of the Alberta Court of Queen's Bench, Judicial District of Calgary, Action No. BK 01-094419 (the "**Bankruptcy Action**") on February 3, 2014 (the "**Bankruptcy Order**"). Hardie & Kelly Inc. is a corporation formed in accordance with the provisions of the Alberta Business Corporations Act, R.S.A. 2000, c. B-9 ("**ABCA**"), doing

business as insolvency practitioners in Alberta. Hardie & Kelly Inc. sues in this matter as the Plaintiff in its capacity as the Trustee.

2. Assistive is a private corporation formed in accordance with the provisions of the ABCA with its head and registered offices located in the City of Calgary, in the Province of Alberta. Assistive was primarily in the business of raising capital and financing loans administered by a loan broker, The Cash Store Financial Services Inc. (“CSF”) to finance short term “payday” loans (the “Loans”).
3. Advance Finance Corporation (“Advance”), is a corporation formed in accordance with the provisions of the ABCA with a registered office in the City of Calgary, in the Province of Alberta, and is a wholly-owned subsidiary of Assistive.
4. Advance Finance Australia Pty Ltd. (“Assistive Australia”), is a corporation formed in accordance with the laws of Australia, and is a wholly owned subsidiary of Assistive.
5. Assistive, Advance and Assistive Australia are collectively referred to as the “Assistive Companies”.
6. The Defendant Randy Schiffner is an individual residing in the City of Calgary, in the Province of Alberta and was the sole registered director of Assistive and Advance prior to the Bankruptcy Order. He is also a shareholder of Assistive.
7. The Defendant Slade Schiffner is an individual residing in the City of Calgary, in the Province of Alberta and was the President of Assistive. He is the son of Randy and Elayne Schiffner and a shareholder of Assistive.
8. The Defendants Randy Schiffner and Slade Schiffner are together referred to as the “Directors & Officers”. At all material times the Directors & Officers were the directing and controlling minds of the Assistive Companies.
9. The Defendant Elayne Schiffner is an individual residing in the City of Calgary, in the Province of Alberta and is the wife of Randy Schiffner. She is a shareholder of Assistive.
10. The Defendant Brandon Schiffner is an individual residing in the City of Salmon Arm, in the Province of British Columbia and is the son of Randy and Elayne Schiffner. He is a shareholder of Assistive.

11. The Defendants Randy Schiffner, Slade Schiffner, Brandon Schiffner and Elayne Schiffner are collectively referred to as “the **Assistive Shareholders**”.
12. The Defendant Cameron Schiffner is an individual residing in the City of Calgary, in the Province of Alberta and is the son of Randy and Elayne Schiffner.
13. The Defendant Brandi Schiffner is an individual residing in the City of Calgary, in the Province of Alberta and was previously married to Cameron Schiffner.
14. The Directors & Officers, the Assistive Shareholders, Cameron Schiffner and Brandi Schiffner are collectively referred to as the “**Defendants**”.

#### *The Cash Store Group*

15. CSF is a corporation formed pursuant to the laws of Ontario and extra-provincially registered in Alberta.
16. The Cash Store Inc. (“**CSI**”) is a corporation formed pursuant to the laws of Alberta with a registered and records office located at Edmonton, Alberta. CSI is a loan broker in the business of arranging and facilitating the Loans and other financing services to third party customers from numerous store-front outlets (a “**Loan Broker**”) in Alberta. CSI is a wholly-owned subsidiary of CSF.
17. TCS Cash Store Inc. (“**TCS**”) is a corporation formed pursuant to the laws of Alberta. TCS is a Loan Broker in Alberta. TCS is a wholly-owned subsidiary of CSF.
18. 7252331 Canada Inc. (“**725 Canada**”) is a federally incorporated corporation. 725 Canada is a Loan Broker and is a wholly-owned subsidiary of CSF.
19. The Cash Store Australia Holdings Inc. (“**CSA**”) is a corporation formed pursuant to the laws of Ontario. CSA is a publicly listed company on the TSX Venture Exchange trading under the symbol “AUC”. CSF holds 18.3% of the common shares of CSA.
20. The Cash Store Pty Limited (“**CSA Pty**”) is a wholly-owned subsidiary and the operating arm of CSA. CSA Pty operated as a Loan Broker in Australia.
21. RTF Financial Holdings Inc. (“**RTF**”) is a corporation formed pursuant to the laws of Alberta. CSF holds 15.78% of the voting shares of RTF.

22. CSI conducts its Loan brokering operations in Alberta, either itself or through its wholly-owned subsidiary, Instaloes Inc. In addition to CSI, CSF also has a number of other wholly-owned subsidiaries that are Loan Brokers in Alberta, other jurisdictions in Canada, and in the United Kingdom, including TCS and 725 Canada (collectively, “**CSI Canada**”).
23. In 2008, CSA was formed and began conducting Loan brokering operations in Australia through its wholly-owned subsidiary CSA Pty.
24. In 2009, CSF expanded its brokering enterprise further internationally. RTF was incorporated in 2009 to conduct Loan brokering operations in Europe and South Africa. RTF has conducted its Loan brokering operations in these jurisdictions through its own subsidiaries, in which it holds all or a majority of the issued capital.
25. Under Services Agreements between CSF and CSA, dated January 31, 2008 (the “**CSA Services Agreement**”) and between CSF and RTF, dated December 31, 2009 (the “**RTF Services Agreement**”) CSF is authorized to manage, control, administer and operate the businesses of CSA, RTF and their subsidiaries. The CSA Services Agreement and the RTF Services Agreement are substantially similar and state that CSF will provide the following management services:
  - (a) Causing the carrying out of all day-to-day accounting, banking and financial support services;
  - (b) Providing contract administration services;
  - (c) Providing human resources services, including payroll and benefit services;
  - (d) Providing use to RTF and CSA of CSF’s information and telecommunications systems;
  - (e) Causing the carrying out of all day-to-day management, secretarial, administrative and general office support services;
  - (f) Causing the carrying out of all day-to-day government liaison and regulatory support services;
  - (g) Providing investor relations services;
  - (h) Providing insurance services, including arranging insurance coverage;
  - (i) Providing internal audit and marketing services; and
  - (j) Providing such other services consistent with the above and as agreed between CSF and RTF/CSA.

26. On April 14, 2014 in the Superior Court of Justice – Ontario, an Order was granted extending protection under the Companies Creditors' Arrangement Act to CSF, CSI, TCS and 725 (the "**CCAA Applicants**"). The CCAA Applicants are insolvent.
27. On September 13, 2013 CSA Pty appointed an independent Voluntary Administrator to take control of the assets of CSA Pty and to attempt to collect outstanding customer loans brokered by CSA Pty in Australia. CSA Pty and CSA have ceased operations and are insolvent.
28. RTF is unable to meet its liabilities generally as they become due, and is insolvent.

*The Broker Agreements*

29. On or about November 1, 2002, Assistive and CSI entered into a Financier-Broker Agreement pursuant to which Assistive agreed to finance the Loans to CSI's customers (the "**CSI Broker Agreement**").
30. The following were material, express or implied terms of the CSI Broker Agreement:
  - (a) CSI will offer the Loans to the Broker Customers from authorized storefront outlets;
  - (b) The Loans are advanced to the Broker Customer in the name of Assistive and are repayable to Assistive;
  - (c) Assistive is under no obligation to advance the Loans to the Broker Customers, or to re-invest funds collected from prior Loans into new Loans. Assistive may decide whether to advance on a case-by-case basis;
  - (d) No Loans may be advanced to a Broker Customer using Assistive's funds unless specifically approved by Assistive;
  - (e) No Loans may be advanced to a Broker Customer using Assistive's funds unless:
    - (i) The Broker Customer meets certain loan selection criteria (the "**Loan Selection Criteria**"); and
    - (ii) CSI performs certain detailed broker services (the "**Broker Services**") set out in the CSI Broker Agreement with respect to each specific Loan;
  - (f) CSI is obligated to collect the repayment of the Loans on behalf of Assistive and to hold such funds in trust in a segregated account for the benefit of Assistive;
  - (g) CSI is obligated to account to Assistive with respect to the use of all of its funds; and
  - (h) CSI will indemnify Assistive with respect to, among other things:

- (i) Any losses incurred by Assistive as a result of a breach of the CSI Broker Agreement; or,
  - (ii) Any losses caused by CSI's failure to perform the Broker Services under the CSI Broker Agreement;
- (i) Assistive will have the right upon written demand to inspect the Authorized Outlets, and all Records, computer facilities and operations of CSI (wherever located), and Assistive may employ qualified third party consultants for those purposes.
31. On September 2, 2008, a substantially similar agreement was executed between Assistive Australia and CSA Pty (the "**Australia Broker Agreement**").
32. At all relevant times it was Assistive's intention, and in its best interests, that:
- (a) all funds advanced by Assistive to CSF, CSI, TCS, 725 Canada, CSA, CSA Pty, RTF and MCO (the "**CSF Enterprise**") were to be advanced in trust for the express purpose of such funds being used to finance the Loans and that the terms of the CSI Broker Agreement and the Australia Broker Agreement (together "**the Broker Agreements**") would govern such advances until such time as there were formal agreements in place between Assistive and other members of the CSF Enterprise;
  - (b) no funds were advanced by Assistive to the CSF Enterprise for the CSF Enterprise's own use or the use of any of its affiliates other than for the purpose of making the Loans;
  - (c) all funds advanced to the CSF Enterprise would belong to Assistive, and were to be held in trust by the CSF Enterprise until the money was loaned to a customer pursuant to a direct loan agreement;
  - (d) when a customer repays the loan to the CSF Enterprise, the monies would belong to Assistive and would be held in trust for Assistive by the CSF Enterprise; and
  - (e) the CSF Enterprise would deposit all receipts and repayments from Loans into separate accounts segregated from the CSF Enterprise's own money and accounts;
- (the "**Trust Arrangement**").

### *The Debentures*

33. Assistive funded the Loans through the issuance of unsecured notes and debentures (together "**the Debentures**").
34. Assistive issued the Debentures to note and debentureholders (the "**Debentureholders**") pursuant to a standard form Subscription Agreement for Debentures (the "**Subscription Agreement**").
35. The following are material terms of the Subscription Agreements:

- (a) Subscribers subscribed for and agreed to purchase subordinated unsecured debentures of Assistive ranging from 14% - 18% per annum in most instances;
- (b) Assistive covenanted and agreed to duly and punctually pay to the Debentureholders principal amount and interest accrued on the Debentures;
- (c) Assistive covenanted and agreed to carry on and conduct its business in a proper and efficient manner and at all reasonable times;
- (d) Assistive covenanted and agreed to keep proper books of account and to make or cause to be made therein true and faithful entries of all material dealings and transactions in relation to its business;
- (e) Assistive covenanted and agreed that it will promptly notify the Debentureholders of any material change in its business;
- (f) Assistive covenanted and agreed that the principal amount of each Debenture would at all times be used to provide loans directly to, or to customers of, CSI, RTF and CSA or the affiliates of the foregoing (which were defined as the "**Cash Store Group**"), or be in a bank account on standby for such purpose;
- (g) In the event of default, maturity of principal and interest may be accelerated by the Debentureholders, and payment may be enforced by the Debentureholders.

***Breach of Duties and Trust***

- 36. At all material times, the Directors & Officers owed Assistive common law, statutory, and fiduciary duties to act honestly and in good faith with a view to the best interests of the corporation. Additionally, the Directors & Officers owed Assistive a duty to exercise care, diligence and skill that a reasonably prudent person would exercise in managing the affairs of Assistive.
- 37. The Trustee pleads and relies upon s. 122 of the ABCA.
- 38. The Directors & Officers were at all material times aware that it was in the best interest of Assistive to give effect to Assistive's intentions identified in paragraph 32 above, and the Directors & Officers owed Assistive a duty to ensure that effect to such intentions be given.
- 39. Assistive and the Directors & Officers owed the Debentureholders fiduciary duties and duties of care to ensure that all funds received by Assistive from the Debentureholders and advanced to the CSF Enterprise would enjoy the protection of the Broker Agreements and the Trust Arrangement, and Assistive and the Directors & Officers were trustees of the funds received from the Debentureholders. Assistive and the Directors & Officers were in a special relationship with the Debentureholders. Assistive and the Directors & Officers had the scope for the exercise of

unilateral discretion and power over the Debentureholders and the use of the Debentureholders' funds. The Debentureholders were vulnerable to Assistive and the Directors & Officers and their exercise of that discretion due to the complete control Assistive and the Directors & Officers had over the handling of the funds that the Debentureholders advanced to Assistive.

40. The Directors & Officers intentionally or negligently breached their aforesaid duties in the following manner:

- (a) They failed to take the necessary or adequate steps to ensure that all funds advanced by Assistive to the CSF Enterprise were advanced in trust for the express purpose of such funds being used to finance the Loans;
- (b) They failed to take the necessary or adequate steps to ensure that the terms of the Broker Agreements governed all advances to the CSF Enterprise until such time as there were formal agreements in place between Assistive and other members of the CSF Enterprise;
- (c) They failed to take the necessary or adequate steps to ensure that formal agreements were put in place between Assistive and other members of the CSF Enterprise;
- (d) They failed to take the necessary or adequate steps to ensure that the Broker Agreements properly remained in place and of full force and effect;
- (e) They failed to take the necessary or adequate steps to ensure that the CSF Enterprise did not apply funds advanced by Assistive for the CSF Enterprises' own use or for the use of its affiliates;
- (f) They failed to take the necessary or adequate steps to ensure that the funds advanced by Assistive to the CSF Enterprise were used solely for the purpose of making the Loans;
- (g) They failed to take the necessary or adequate steps to ensure that all funds advanced to the CSF Enterprise belonged to Assistive and were held in trust by the CSF Enterprise until the money was loaned to a customer pursuant to a direct loan agreement;
- (h) They failed to take the necessary or adequate steps to ensure that when a customer repaid a Loan to the CSF Enterprise, the monies belonged to Assistive and were held in trust for Assistive by the CSF Enterprise;
- (i) They failed to take the necessary or adequate steps to ensure that the CSF Enterprise deposit all receipts and repayments from customer loans into separate accounts segregated from the CSF Enterprise's own money and accounts;
- (j) They failed to take the necessary or adequate steps to ensure that Assistive's rights under the Broker Agreements were at all times enforced;
- (k) They failed to take the necessary or adequate steps to ensure that Assistive strictly complied with the provisions of the Broker Agreements;



- (l) They failed to take the necessary or adequate steps to ensure that the CSF Enterprise at all times strictly complied with the provisions of the Broker Agreements;
- (m) They failed to take the necessary or adequate steps to prevent Assistive from advancing funds to members of the CSF Enterprise which were not subject to the contractual obligations imposed by the Broker Agreements;
- (n) They failed to take the necessary or adequate steps to cause Assistive to properly monitor compliance by the CSF Enterprise with the provisions of the Broker Agreements;
- (o) They failed to take the necessary or adequate steps to cause Assistive to exercise its right to inspect the Authorized Outlets, the Records, computer facilities and operations of the CSF Enterprise (wherever located) and to employ qualified third party consultants for these purposes;
- (p) They failed to exercise the necessary vigilance and vigour in managing Assistive's business relationship with the CSF Enterprise, *inter alia*, because of family ties and friendships between the directors and officers and some of the principals and employees of the CSF Enterprise;
- (q) Randy Schiffner became a shareholder of RTF and was in a position of conflict;
- (r) When they discovered that CSA and CSA Pty had misappropriated approximately \$18 million of Assistive's funds and were in breach of the Trust Arrangement and the Australia Broker Agreement, the Directors & Officers, instead of causing Assistive to promptly recover such funds, caused Assistive to enter into a loan agreement with CSA unsupported by sufficient security for such loan;
- (s) They failed to take the necessary or adequate steps to ensure that CSF guaranteed the obligations of the CSF Enterprise, in particular those of CSI and RTF to Assistive;
- (t) They conspired, collaborated and assisted the management of the CSF Enterprise in perpetrating a fraud on the CSF Enterprise by making statements to the auditors of the CSF Enterprise knowing such statements to be false and/or adverse to the interests of the CSF Enterprise; alternatively, they were reckless in the making of such statements;
- (u) They conspired, collaborated and assisted the CSF Enterprise in perpetrating a fraud on Assistive by making statements to the auditors of Assistive, and causing the CSF Enterprise to make statements to the auditors of Assistive, which they knew to be false and/or adverse to the interests of Assistive; alternatively they made such statements recklessly, or caused such statements to be made recklessly;
- (v) They negotiated a Loan and General Security Agreement between Assistive and RTF and a Consent & Acknowledgment among RTF, Assistive and CSF which were contrary to and destructive of the Trust Arrangement;
- (w) They caused Assistive to continue making advances to the CSF Enterprise after January 2012 despite CSF's refusal to guarantee the obligations of CSI and RTF to Assistive;
- (x) They caused Assistive to advance funds directly to RTF despite the absence of a broker agreement establishing the Trust Arrangement between Assistive and RTF;

- (y) They failed to diligently review and/or understand the financial information and records received by Assistive from the CSF Enterprise and to protect Assistive's interests based on the information and records received;
- (z) They failed to take the necessary or adequate steps to protect the Trust Arrangement despite information, records and evidence emanating from the CSF Enterprise and its auditors that the Trust Arrangement was not being honoured by the CSF Enterprise;
- (aa) They failed to take the necessary or adequate steps to retain professional consultants to assist Assistive in protecting the Trust Arrangement in a timely manner, or at all;
- (bb) They failed to take the necessary or adequate steps to monitor the exact amounts advanced by Assistive to the CSF Enterprise to the extent that by the end of August 2013 Assistive was uncertain of the exact amount of the funds the Assistive Companies had advanced to the CSF Enterprise, and was unable to effectively counter or dispute the CSF Enterprises' version of what amounts Assistive had advanced to it;
- (cc) They failed to take the necessary or adequate steps to prevent the CSF Enterprise from effecting transfers of the Loans to other third party lenders, and expressly confirmed to the CSF Enterprise auditors that such arrangement was acceptable to Assistive;
- (dd) They failed to take the necessary or adequate steps to ensure that the CSF Enterprise kept funds advanced by Assistive to the CSF Enterprise in a separate bank account or bank accounts, instead of comingling such funds with the CSF Enterprises' own funds and funds from other third party lenders, and using such funds for operating expenses;
- (ee) They authorized the CSF Enterprise to use funds advanced by Assistive for payment of general operating expenses;
- (ff) They failed to realize, as they should have had they exercised due care and diligence, that the CSF Enterprise had been making interest payments to Assistive from Assistive's principal advances since at least July 2012;
- (gg) They failed to realize, as they should have had they exercised due care and diligence, that the CSF Enterprise did not treat Assistive's advances as trust receipts;
- (hh) They failed to take the necessary or adequate steps to ensure that the CSF Enterprise complied with the loan selection criteria set out in the Broker Agreements;
- (ii) They failed to take the necessary or adequate steps to ensure that the CSF Enterprise only made Loans authorized by Assistive in accordance with the requirements of the Broker Agreements;
- (jj) They failed to take the necessary or adequate steps to ensure that it was formally agreed and recorded that there would never be any erosion of the capital advanced by Assistive to the CSF Enterprise;
- (kk) They caused family members of Assistive to be paid salaries and other amounts without Assistive receiving services, value or other consideration in return;

- (ll) They knowingly assisted and made it possible for the CSF Enterprise to act in breach of the Trust Arrangement;
  - (mm) They knowingly assisted Assistive in the breach of trust Assistive owed to the Debentureholders;
  - (nn) They fraudulently induced some or all of the Debentureholders to make their investments in the belief that such investments would be protected by the Trust Arrangement, when the Directors & Officers already knew that Assistive was advancing funds to the CSF Enterprise which were not governed and protected by the Broker Agreements and/or by the Trust Arrangement, but failed to disclose such fact to the Debentureholders; alternatively they recklessly induced the Debentureholders to advance funds to Assistive when the Directors & Officers knew or ought to have known that such funds would not enjoy the protection of the Broker Agreement and/or the Trust Arrangement; and
  - (oo) They failed to ensure that the Assistive Companies complied strictly with the Debenture Agreements.
41. As a result of the breach by the Directors & Officers of their aforesaid duties:
- (a) Funds advanced by Assistive to the CSF Enterprise were not held subject to the Trust Arrangement by the CSF Enterprise;
  - (b) Effect was not given to the terms of the Broker Agreements;
  - (c) Funds were advanced by Assistive to the CSF Enterprise which were not governed by the Broker Agreements;
  - (d) Funds were advanced by Assistive to the CSF Enterprise which were not segregated and kept by the CSF Enterprise in a separate bank account or bank accounts, but were instead comingled with the CSF Enterprises' own funds and funds from other third party lenders, and were used by CSF Enterprise for operating expenses;
  - (e) Funds advanced by Assistive to the CSF Enterprise were used for purposes other than to make Loans;
  - (f) Funds repaid by customers to the CSF Enterprise were not held in trust for Assistive by the CSF Enterprise;
  - (g) Funds advanced by Assistive to the CSF Enterprise were not held in trust by the CSF Enterprise until the money was loaned to a customer pursuant to a direct loan agreement;
  - (h) Assistive's rights under the Broker Agreements were not strictly enforced;
  - (i) The CSF Enterprise did not comply with the provisions and requirements of the Broker Agreements;
  - (j) Funds advanced by Assistive to the CSF Enterprise were used by members of the CSF Enterprise which were not subject to the contractual obligations imposed by the Broker Agreements;

- (k) Compliance by the CSF Enterprise with the provisions of the Broker Agreements were not properly monitored by or on behalf of Assistive;
  - (l) Assistive did not take timely steps to protect the Trust Arrangement and to recover the funds it had advanced to the CSF Enterprise;
  - (m) Assistive lost control over its funds advanced to the CSF Enterprise;
  - (n) Assistive failed to keep proper books and records;
  - (o) Assistive's ability to assert a valid trust claim over the funds it had advanced to the CSF Enterprise was compromised;
  - (p) Assistive became unable to recover the funds advanced by Assistive to the CSF Enterprise, except for some relatively minor recoveries;
  - (q) Assistive breached the Subscription Agreements by allowing the funds of the Debentureholders to be applied for purposes not authorized by the Subscription Agreements;
  - (r) Assistive became unable to honour its obligations under the Subscription Agreements and the Debentures, which obligations amount to no less than \$107,640,430;
  - (s) Assistive breached the duties and trust it owed the Debentureholders;
  - (t) The Assistive Companies became insolvent; and
  - (u) Assistive was petitioned into bankruptcy on February 3, 2014.
42. The Directors & Officers were aware at all times that the funds the Debentureholders advanced to Assistive were impressed with a trust and were only to be advanced by Assistive to the CSF Enterprise in accordance with the express terms of the Broker Agreements and the Trust Arrangement. The Directors & Officers had direct knowledge of the breach by Assistive and the CSF Enterprise of the Trust Arrangement, including the breaches of trust identified at paragraphs 40 and 41 above. In the alternative, if the Directors & Officers did not have direct knowledge, they were reckless or wilfully blind to such breaches of trust. The Directors & Officers are accordingly personally liable for knowingly assisting and directly participating in the numerous breaches of trust committed against Assistive.

### ***Damages***

43. Of the amount of \$109,227,126.97 advanced by Assistive to the CSF Enterprise as at the end of August 2013, only an amount of \$570,004 was recovered from CSF, \$805,156.29 was recovered from CSA and CSA Pty, and no recoveries have been made to date from RTF.

44. As a result of the breaches by the Directors & Officers of the duties they owed to Assistive, Assistive has suffered damages in an amount of not less than \$107,851,966.66.

***Reviewable Transactions***

45. By no later than January 2010 and at all relevant times up to the Bankruptcy Order, Assistive was and remained insolvent.
46. Despite this, the books and records of Assistive indicate that Assistive made the following payments at a time when it was insolvent:
- (a) Salary payments to Randy Schiffner for the period January 2010 to date of bankruptcy totalling \$2,178,908;
  - (b) Salary payments to Slade Schiffner for the period January 2010 to date of bankruptcy totalling \$1,049,500;
  - (c) Salary payments to Elayne Schiffner for the period January 2010 to date of bankruptcy totalling \$543,500;
  - (d) Salary payments to Brandon Schiffner for the period January 2010 to date of bankruptcy totalling \$374,500;
  - (e) Salary payments to Brandi Schiffner for the period January 2010 to date of bankruptcy totalling \$336,236;
  - (f) Cash payments purportedly as dividends to the Assistive Shareholders from January 2010 to date of bankruptcy in the following total amounts:
    - (i) Randy Schiffner: \$1,312,500
    - (ii) Slade Schiffner: \$122,000
    - (iii) Elayne Schiffner: \$538,500
    - (iv) Brandon Schiffner: \$97,000
  - (g) On January 31, 2012, a payment of \$200,000 was made to Slade Schiffner in respect of the redemption of a Debenture (the "**Redemption**");
  - (h) Brandon Schiffner was paid \$107,425 from 2010 through to the date of bankruptcy on account of interest on a \$75,000 Debenture providing for an interest rate of 40% per annum;
  - (i) During the years 2009 through 2013 Assistive made payments totaling \$226,420 to London Life on account of a life insurance policy (the "**Insurance Policy**") in the name of Randy Schiffner with Elayne Schiffner designated as the beneficiary of the policy. As

of May 26, 2013, the Insurance Policy provided for a benefit of \$1,225,528.93 with an account value of \$274,484.39;

- (j) Such further and other transfers that may be shown at the trial of this Action to have been made at a time when Assistive was insolvent;

(collectively referred to as the “**Transfers**”).

47. The amounts of the Transfers, or any portion thereof, have not been repaid to Assistive.

48. The Transfers:

- (a) were made to the Defendants who were not dealing at arms-length with Assistive;
- (b) had the effect of giving the Defendants a preference over other creditors of Assistive, including the Debentureholders;
- (c) which were made during the period beginning on the day that is 12 months before the date of the filing of the application for the Bankruptcy Order, and ending on the date of the bankruptcy, are void as against the Trustee;
- (d) had the effect of giving the Defendants a preference or were made with the intent to give the Defendants a preference over the other creditors of Assistive or over any one or more of them;
- (e) were made when Assistive was insolvent or Assistive was rendered insolvent by some or all of the Transfers, or were made when Assistive was unable to pay its debts in full, or when Assistive knew that it was on the eve of insolvency;
- (f) were made with the intention to defraud, defeat or delay creditors of Assistive;
- (g) which purported to be for salaries, the Insurance Policy, and the Redemption were transfers at undervalue as Assistive received no or not full value for such payments, while, in the Trustee’s opinion, the Defendants received the full value of the actual payments made to them in respect of salaries;
- (h) which purported to be for dividend payments to the Assistive Shareholders, were transfers at undervalue as the Assistive Shareholders had no entitlement to receive dividends from Assistive after January 2010 while Assistive was insolvent, but nevertheless received, in the opinion of the Trustee, full value of the actual payments made to them in respect of dividends; and
- (i) which purported to be dividend payments, were made at a time when the Directors & Officers had reasonable grounds to believe that those transfers were occurring at a time when Assistive was insolvent, or at a time when such payments would render Assistive insolvent, and the Trustee is entitled to judgment against the Directors & Officers and the Assistive Shareholders, which shareholders are related to one or more of such Directors & Officers.

49. The Trustee expressly pleads and relies on the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), particularly sections 95, 96, 98 and 101, the *Fraudulent Preferences Act* (Alberta), R.S.A. 20000, c. F-24 and the Statute of Elizabeth (13 Eliz. c. 5, 1571).

### ***The Expense Claims***

50. The Directors & Officers caused Assistive to reimburse them for alleged expenses incurred by the Directors & Officers on behalf of Assistive for which the Directors & Officers were not entitled to be reimbursed (the “**Expense Claims**”).
51. The Expense Claims by Randy Schiffner total at least \$333,145.37, and those by Slade Schiffner total at least \$48,771.65.
52. The Expense Claims were not incurred on behalf of Assistive, and were not incurred for the benefit of Assistive. The Expense Claims include claims for trips by the Schiffner family to Phoenix, San Francisco, Pebble Beach, Australia, the United Kingdom, Europe and Scandinavia.
53. The Expense Claims represented personal expenses of the Directors & Offices which they were not entitled to claim against Assistive, alternatively were excessive claims not fully reimbursable by Assistive.
54. The Trustee is entitled to repayment by the Directors & Officers of the Expense Claims.

### ***Unjust Enrichment***

55. The Defendants have received the benefit of Assistive’s capital and profits to the detriment of the Plaintiff in the absence of any juristic reason. The Defendants have therefore been unjustly enriched. The Plaintiffs claim a constructive trust over any and all benefits received by the Defendants as a result of their unjust enrichment.

### ***Tracing, Freezing and Accounting of Assets & Disgorgement***

56. As a result of the Defendants’ wrongful conduct as set out above, the Trustee is entitled to trace all amounts received or disbursed by the Defendants in connection with their involvement with Assistive as either a director & officer, or a shareholder, or a volunteer, and to recover same through freezing of assets or otherwise. The Trustee is also entitled to an accounting of the monies belonging to Assistive that have come into the possession of the Defendants and to an

accounting of any benefit received by the Defendants as a result of same. The Defendants are liable to make restitution to the Trustee and to disgorge any benefits the Defendants have received from their unjust enrichment.

57. The Trustee is entitled to interlocutory and permanent injunctions restraining the Defendants from disposing of any of their assets wheresoever located and an accounting of all of their assets, effects or property, including any trust account or jointly held assets, any improper disposition thereof, and all money had or received by them or anyone on their behalf.
58. The Trustee claims an interest in any lands in respect of which any of the Defendants have an interest, including any lands acquired or paid for (in whole or in part) with funds belonging directly or indirectly to Assistive. Any interest of the Defendants in such lands should be transferred to the Trustee or ordered sold by the Court.
59. The Defendants are liable to make restitution to the Trustee and disgorge any benefits or amounts they have received from using Assistive's money.

***Return of Assistive's Computers***

60. Assistive is the owner of certain computers which were used by Assistive and by the Directors & Officers (the "Computers").
61. The Trustee demanded delivery of the Computers to the Trustee by the Directors & Officers shortly after the Trustee was appointed as such.
62. The Directors & Officers refused to deliver the Computers to the Trustee, and instead delivered the Computers to Assistive's then counsel, Burnet Duckworth & Palmer LLP ("BDP").
63. Pursuant to a Consent Order dated February 13, 2014 granted in the Bankruptcy Action, BDP was directed to retain the Computers until the Bankruptcy Action has been completed or until further order of the Court.
64. The Trustee is entitled to have possession of the Computers, and seeks immediate delivery thereof to the Trustee.



**General**

65. The Plaintiff proposes that the trial of this Action be heard at the Calgary Courts Centre in Calgary, Alberta, and believes this Action can be heard in less than 25 days.

**Remedy Sought**

66. The Plaintiff seeks damages, judgment and restitution against the Directors & Officers, jointly and severally, for payment of an amount of not less than \$107,851,966.66.

67. The Plaintiff seeks an order against all of the Defendants, jointly and severally,

- (a) for restoration to Assistive pursuant to section 101 of the BIA and 118(6) of the ABCA of all money or property improperly paid or distributed;
- (b) setting aside any fraudulent or reviewable conveyances, all transactions at under value, perpetrated by the Defendants or on their behalf;
- (c) compelling the Defendants to account to the Plaintiff for all monies belonging to Assistive and for any benefit received by the Defendants in connection with such monies;
- (d) permitting the Plaintiff to trace those monies that the Defendants have fraudulently or negligently retained or used, into and through any financial institution accounts or deposit facilities in the name of any of the Defendants and into or through any assets purchased by the Defendants with Assistive's monies;
- (e) requiring the disgorgement of profits improperly obtained by the Defendants or a waiver of tort;
- (f) declaring that any real property owned in whole or in part by the Defendants may be sold in order to deliver up to the Plaintiffs the funds which can be traced to those lands;
- (g) granting interlocutory and permanent injunctions attaching to the assets of the Defendants and injunctions preventing such defendants from disposing of any of their assets, including those held by another person on their behalf, wheresoever located, pending the outcome of the trial of this Action.

68. The Plaintiff seeks an order directing the Directors & Officers to forthwith deliver the Computers to the Trustee.

69. The Plaintiff seeks an order against the Directors & Officers for repayment of the Expense Claims.

70. The Plaintiff seeks pre-judgment and post-judgment interest on all amounts awarded to the Plaintiff pursuant to the *Judgment Interest Act*, RSA 2000, c J-1, as amended.

71. The Plaintiff claims costs of this Action on a solicitor and his own client basis or, in the alternative, on such other basis as this Honourable Court may order.

**NOTICE TO THE DEFENDANT**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.