

B E T W E E N:-

ASERTIS LIMITED

Claimant

-and-

(1) MARK DAMIAN CLARKSON
(2) PAGEFIELD DEVELOPMENTS LIMITED
(3) GLENN THOMAS
(4) JOHN UNSWORTH
(5) RICHARD LUXMORE
(6) COLIN HOWARD BOSWELL
(7) MDSC (LIVERPOOL) LIMITED
(8) TAYCO 002 LIMITED

Defendants

**DEFENCE OF RICHARD LUXMORE
THE FIFTH DEFENDANT**

Headings, definitions, abbreviations and references

1. A number of the headings and definitions used in the Particulars of Claim are pejorative and therefore have not been adopted for use in this Defence. Otherwise, headings used in the Particulars of Claim (hereafter the "PoC") are also used in this Defence.
2. Save as stated otherwise, the abbreviations used in this Defence are those used in the PoC.
3. References to numbers are to paragraph and sub-paragraph numbers in the PoC, save as stated otherwise.

Defence generally

4. The Claimant's PoC make wide-ranging allegations against RL, including allegations of fraud. RL denies all allegations against him.
5. The PoC also make wide-ranging allegations against other Defendants. RL makes no admissions in relation to allegations against other Defendants save where it is necessary for him to respond to those allegations at this stage.
6. If and to the extent that RL fails to deal with an allegation in the remainder of this Defence such a failure should be considered as an inadvertent omission and not as an admission or deliberate omission.
7. Annex 2 the Claimant's Particulars of Claim lists a number of loans which are the subject of its claims. That Annex contains a large number of inaccuracies.
8. **Schedule 1** to this Defence lists the loan advances referred to in Annex 1 and then provides detailed particulars in relation to those advances. It sets out, amongst other things, the details of the borrowers and the security which RL arranged over those loans
9. RL denies that he conspired with any of the other Defendants to injure the Former Claimant. At no point did RL and other Defendants agree (explicitly or implicitly) to use unlawful means against the Former Claimant with the intention of causing injury/harm to the Claimant. RL denies that he acted in breach of any of the statutory duties imposed by the Companies Act 2006 on him as a Director. At all material times:
 - a. RL was a Director and a shareholder of the Former Claimant who wanted the Claimant's business to succeed. Nigel Hackett ("**NH**") was also a Director and a shareholder of the Former Claimant who wanted the Former Claimant's business to succeed.

- b. RL had no prior relationship or association with any of the Defendants and had no interest in their financial affairs.
 - c. RL's dealings with other Defendants were arms-length commercial dealings on behalf of the Former Claimant.
 - d. RL received no financial inducements or payments from any of the Defendants nor any other personal benefit from arranging lending to them.
 - e. RL's judgment was that arranging the advances that are the subject of the Claimant's claims were in the best interests of the Former Claimant and were most likely to lead to and/or secure repayment of the relevant lending by the borrowers of those loans.
 - f. RL considered that he was acting in good faith in exercising judgments which led to making arrangements, both on-platform and off-platform, for the lending which is the subject of the Claimant's claims and details of which are particularised in **Schedule 1** to this Defence. RL's judgments were in accordance with the established practices of the Former Claimant, established by both NH and RL and as set out in this Defence and which were intended to have the effect of promoting the success of the company.
10. Annex 1 to the Claimant's PoC is the Luxmore Spreadsheet which was maintained by RL and stored on the Former Claimant's server with open access to all of the Former Claimant's personnel at the material time and which was not a secret document as alleged by the Claimant.
11. At no time has there been concealment by RL of his conduct that is the subject of this case. RL communicated with MC, JU and GT and others concerning relevant lending, including using the Former Claimant's email system, the Former Claimant's fixed-line telephone and the Former Claimant's mobile phone which RL used and maintained the Luxmore Spreadsheet on the Former Claimant's server with open access to that document.

12. As set out at paragraphs 36 to 44 below, the Claimant is barred from claiming against the Defendant by reason of the fact that the Former Claimant agreed to compromise the Claimant's claims and/or is estopped from bringing its Claims against RL. Further, as set out in paragraphs 45 to 51 below, RL is entitled to equitable set-offs as set out at

Parties

13. Paragraph 1 is admitted.
14. Paragraph 1A is not admitted and RL reserves the right to provide further particulars after the Claimant has provided full unredacted disclosure of the "Asset Sale Agreement" dated 15 January 2020.
15. As to paragraphs 2 to 5 and 7 to 9, it is:
 - a. Admitted that the parties exist;
 - b. Denied that RL was or is an associate of MC or any of the other Defendants;
 - c. Admitted that MC was associated with the Second to Fourth and Sixth to Eighth Defendants.

The Former Claimant, its business and internal operations

16. As to paragraph 10 and its sub-paragraphs:
 - a. It is admitted that the Claimant did as part of its business model, at material times, run a peer-to-peer lending platform (the "**platform**")

through which Property Loans and Pawn Loans were made by lenders to borrowers. The Claimant acted as an agent for those lenders.

- b. Sub-paragraphs 10.1 to 10.3 are admitted.
 - c. Paragraph 10.4 is admitted, save that it is denied that the purpose of loans was ordinarily shown on the platform prior to a date in 2017.
 - d. Paragraph 10.5 to 10.7 are admitted.
 - e. Paragraph 10.8 is admitted, save that in a number of instances, including but not limited to instances which are directly relevant to loans that are the subject of the Claimant's claims in these proceedings, the Claimant's established practice was that it did advance some loans to borrowers using client account funds prior to that borrowing being matched to lenders. This established practice was also routinely practised by NH.
17. As to paragraph 11:
- a. It is admitted that when the Claimant became regulated by the FCA for the purposes of CASS then the Claimant was obligated to comply with obligations set out in CASS (the version in force at any given time) with respect to lenders' money as provided to the Claimant (which the Claimant refers to as 'client money');
 - b. It is not admitted when the Claimant became regulated by the FCA for the purposes of CASS as this date is not now known to RL;
 - c. It is denied that the CASS-stipulated obligations applied to money provided to and held by the Claimant prior to the date on which the Claimant became regulated by the FCA.
18. Paragraph 12 is admitted, save that in a number of instances, including but not limited to instances which are directly relevant to lending that is the subject of

the Claimant's claims in these proceedings, the Claimant's established practice was that it did repay monies to lenders using client account funds prior to the new Loan Entry being fully funded on the platform and then subsequently advanced loans to borrowers using client account funds prior to the lending being matched to lenders on the platform. This was practiced by both NH and RL.

19. Paragraph 13 and sub-paragraphs 13.1 to 13.3 are admitted save that some Payment Requests were also sent to Daniel Whittaker another employee of the Claimant.

RL's duties to the Former Claimant

20. Paragraph 14 and its sub-paragraphs 14.1 to 14.6 are admitted.
21. Paragraph 15 is denied. Section 170(3) of the Companies Act 2006 stipulates that the statutory duties set out in sections 171, 172, 174, 175, 176 and 177 have effect in place of common law rules and equitable principals as regards the duties owed to a company by a director.

The Defendants' Conduct

22. Paragraph 16 is denied, albeit there is no apparent allegation in this paragraph. MC and other Defendants were introduced to RL by a broker. The broker was acting on behalf of MC. RL was not and is not affiliated to MC and/or the other Defendants. Further, the circumstances in which MC and other Defendants were introduced to RL will be apparent from emails to and from RL all of which were on the Former Claimant's server. NH was aware of these circumstances. Further, prior to ceasing to become a Director, RL informed the Former Claimant about the circumstances in which the Former Claimant arranged loans to the certain of the Defendants and so the Former Claimant was and is

aware of relevant facts concerning the nature of the Claimant's and RL's dealings with those Defendants.

23. Paragraph 17 is denied. RL did not take money from either the Claimant's client account or the Claimant's company account. Nor did he pay them to MC and/or MC's associates. Rather, RL arranged for advances to be made by the Claimant using money from the Claimant's client accounts which are set out in **Schedule 1** to this Defence.
24. Paragraph 18 is denied. RL created and maintained the Luxmore Spreadsheet which was then stored on a shared drive of the Claimant's computer system under the folder Loans>Active>Clarkson and which was available for all personnel in the Claimant to view, including NH. The Luxmore Spreadsheet was an appropriate and convenient method of tracking the loans which are the subject of these proceedings. This was in line with an established practice of RL who created and maintained a number of spreadsheets for borrowers, including borrowers who are not the subject of the Claimant's claims, with multiple loan advances as this made it easier to track the advances on a spreadsheet than on the platform. In a similar way, NH kept his own spreadsheets in respect of some borrowers which are not the subject of the Claimant's claims.
25. Paragraph 19 is denied. RL maintained the Luxmore Spreadsheet as an exhaustive list of all the relevant lending. RL regularly reconciled the Luxmore Spreadsheet with the Claimant's accounts and emailed that Spreadsheet to MC using the Claimant's email system. The claimant's internal investigation alleges that £8,155,552.25 as being paid out to MC and/or MC's associates which is particularised in Annex 2A. This figure is denied as it includes, inter alia, loan payments to a Mr A Pickles. **Schedule 1** to this Defence contains detailed particulars of:
 - a. The relevant lending which in aggregate value totalled £7,475,951 excluding interest but including repayments received;

- b. The identity of the borrower in question;
 - c. The nature of security obtained in support of the advance;
 - d. Which advances were matched to lenders on the Claimant's platform; and
 - e. Which advances were made by the Claimant itself (using client account monies)
26. Paragraph 20 is denied. No sums were 'wrongfully paid' by whoever that allegation is directed at. It is accepted that lending which is the subject of the Claimant's claims falls into 3 categories (as set out below) but the Claimant's descriptions of the lending in those categories is erroneous.

Category 1 Advances

27. As to paragraph 21 and its sub-paragraphs:
- a. The Claimant's allegations therein are denied, save as admitted below.
 - b. "**Category 1 Advances**" (as defined in this sub-paragraph) were loans by the Former Claimant to borrowers where the loan referred to in the Payment Request prepared by RL and/or instruction he gave had not been presented on the platform to lender-investors for funding ("**Off-Platform Advances**"). Although, in some cases, a loan agreement may not have been prepared, terms and conditions to be applied were understood by the parties and to which, if any, security it related. Payments for the Category 1 Advances were made from the Former Claimant's client account. At any point in time the former Claimant had a number of Category 1 Advances outstanding in relation to a number of loans. This was an established practice of the business, practiced by both RL and NH. Paragraphs 10, 11, 16(e) and 18 above are repeated.

- c. At no time did RL make 'falsified' Payment Requests as alleged or in any other way.
- d. **Schedule 1** to this Defence sets out which of the advances to borrowers were Category 1 Advances (as defined in sub-paragraph (b) above), the identities of the relevant borrowers and the amounts and values of such advances, which are different to the particulars provided by the Claimant in sub-paragraph 21.3 and in its Annex 2A to the PoC.
- e. The aggregate total of all Category 1 Advances (as defined in sub-paragraph 24(b) above) was £2,216,752 and therefore the figure of £2,548,067.70 and the particulars set out in sub-paragraph 21.3 are incorrect.

Category 2 Advances

28. As to Paragraph 22 and its sub-paragraphs:

- a. The Claimant's allegations therein are denied, save as admitted below.
- b. "**Category 2 Advances**" (as defined in this sub-paragraph) were loans by lenders on the Former Claimant's platform to borrowers. These Advances were made by payments from the Former Claimant's client account. The loan agreement to which the Payment Request prepared by RL referred did exist but, at the time of making the payment, the loan had not been presented on the platform to potential lenders for funding. In these instances, RL subsequently presented the loan on the Former Claimant's loan platform in order for potential lenders to decide whether they wished to lend. Where they did so lend, the Former Claimant recorded the loan as having been made by the lender on the platform. The practice of advancing some loans prior to matching those loans to lenders on the platform was an established practice of the Former Claimant. Paragraphs 10, 11, 16(e) and 18 above are repeated.

- c. **Schedule 1** to this Defence sets out which of the advances to borrowers were Category 2 Advances (as defined in sub-paragraph (b) above), the identities of the relevant borrowers and the amounts and values of such advances, which are different to the particulars provided by the Claimant in sub-paragraph 21.3 and in its Annex 2A to the PoC.
- d. The aggregate total of all Category 2 Advances (as defined in sub-paragraph 25(b) above) was £1,459,400 and therefore the figure of £4,369,484.48 and the particulars set out in sub-paragraph 22.4 are incorrect.
- e. The Category 2 Advances that were matched to lenders remained as on-platform loans at all material times.

Category 3 Advances

29. As to Paragraph 23 and its sub-paragraphs:

- a. The Claimant's allegations therein are denied, save as admitted below.
- b. "**Category 3 Advances**" (as defined here) were payments from the Former Claimant's client account where the loan agreement to which the Payment Request prepared by RL referred did exist and which, at the time of making the payment, had been matched to lenders on the platform.
- c. **Schedule 1** to this Defence sets out which of the advances to borrowers were Category 3 Advances (as defined in sub-paragraph (b) above), the identities of the relevant borrowers and the amounts and values of such advances, which are different to the particulars provided by the Claimant in its Annex 2A to the PoC.
- d. The Claimant was, by its Directors NH and RL, fully aware of the lending practises of the Former Claimant and the use of its client and company

accounts at all material times, including the established lending and repayment practices. Paragraphs 10, 11, 16(e) and 18 above are repeated. Further, the Claimant's assertion that the Former Claimant would not have permitted the Category 3 Advances had it known about the Category 1 Advances and/or Category 2 Advances, cannot apply to Category 3 Advances which preceded any Category 1 Advances and/or 2 Advances. The aggregate total value of Category 3 Advances made before any Category 2 Advances, which are detailed in **Schedule 1** to this Defence, was £1,035,000. The aggregate total value of Category 3 Advances made before any Category 1 Advances, which includes the previously quoted advances of £1,035,000, which are detailed in **Schedule 1** to this Defence, was £1,345,000.

- e. The aggregate total of all Category 3 Advances (as defined in sub-paragraph 26(b) above) that were made was £3,799,799 and therefore the figure of £1,678,000 and the particulars set out in sub-paragraph 23.3 are incorrect.

The Claimant's Claims

30. Paragraph 25 is denied for all the reasons set out in this Defence.
31. As to paragraph 26 and sub-paragraphs 26(1) and 26(2):
 - a. The Claimant has failed to provide adequate particularisation of what is meant by the allegation that RL 'abused' his position as a Director or how RL's conduct was contrary to 'Investors' including under CASS.
 - b. The Claimant has failed to particularise which of the statutory duties he owed to the Former Claimant were engaged by his alleged conduct or how it is said that the conduct was in breach of those duties by reference to the ingredients of those duties.

- c. It is denied that RL owed any duties to the Former Claimant other than the statutory duties imposed by the Companies Act 2006 and referred to in paragraph 14 of the PoC and paragraph 21 above is repeated.
 - d. Paragraph 26 and sub-paragraph 26(1) is denied for all the reasons set out in this Defence, including that RL exercised his powers as a Director of the Former Claimant for the purposes for which they were conferred (for the purposes of Section 171 Companies Act 2006) and RL considered that he was acting in good faith at all times in a way that would most likely promote the success of the Former Claimant (for the purposes of Section 172 of the Companies Act 2006).
32. As to paragraph 26 and sub-paragraph 26(3):
- a. The Claimant has failed to particularise how it is that RL is said to have failed to exercise reasonable care, skill and diligence in the discharge of his duties.
 - b. It is denied that RL owed any duties to the Former Claimant other than the statutory duties imposed by the Companies Act 2006 and referred to in paragraph 14 of the PoC and paragraph 21 above is repeated.
 - c. Paragraph 26 and sub-paragraph 26(3) is denied for all the reasons set out in this Defence.
33. Paragraph 27 is denied for all the reasons set out in this Defence.
34. As to paragraph 28:
- a. Paragraph 28 is denied for all the reasons set out in this Defence.
 - b. As to sub-paragraph 28(1) and 28(2), it is not fair to expect RL to be able to respond to the small and selective number of emails and communications with other persons which are referred to in circumstances

where these were and are a small sample of the extensive communications to which RL was privy and which have not yet been disclosed by the Claimant. The sample of communications which are particularised by the Claimant will be the subject of evidence and submissions in due course.

- c. Further as to paragraph 28(1), what can be said in general terms is that none of the communications which have been selected and presented by the Claimant were out of the ordinary unusual in the circumstances of the borrowing in question or indeed with regards to the usual practices of the Former Claimant.
- d. Further as to paragraph 28(2)(a), it is denied that there was any improper use of nominal borrowers. The names of borrowers was not normally revealed on the platform. The practices which were employed with respect to the identification and securing of loans to borrowers as regards the lending which is the subject of the Claimant's case was in line with the practices of the Former Claimant with regards to lending to other borrowers which are not the subject of claims. With regards to the lending which is the subject of the Claimant's claims the lending was to borrowers who were at all times known to the Former Claimant and who provided security for loans as set out in **Schedule 1**.
- e. Further as to sub-paragraph 28(2)(b), it is denied that there was an targeting of smaller investors to avoid due diligence as alleged or at all. The breaking up of loans to attract more lenders was an established practice in the Former Claimant's business, established and practised by both NH and RL.
- f. Sub-paragraph 28(3) is denied for all the reasons set out in this Defence.
- g. Sub-paragraph 28(4) is denied for all the reasons set out in this Defence.

Loss and damage / account sought by the Claimant

35. As to paragraph 35:

- a. It is denied that RL is liable to the Claimant, for all the reasons set out in this Defence.
- b. The Claimant has failed to provide adequate particularisation of the following in order to enable the Defendant to fully respond to the Claimant's assertions concerning loss and damage:
 - i. The sums of money the Former Claimant is liable to repay to 'investors'.
 - ii. The reasons why it says it (the Former Claimant) is theoretically liable to those investors.
 - iii. Whether the Former Claimant has received any claims from such investors claiming that the Former Claimant is so liable.
 - iv. Whether the Former Claimant has been found liable to such investors or accepted liability to any such investors or made repayments to such investors.
 - v. The sums which are said to have been 'wrongfully' paid from the Former Claimant's client account and why.
 - vi. The amount of the alleged 'shortfall' in the client account and how this was attributable to the conduct of RL and caused by his conduct complained of in the claims made against RL in these proceedings rather than the Former Claimant's established practices set out in paragraphs 16(e) and 18 above in relation to lenders and lending which is not the subject of these claims.

- vii. When and how the alleged shortfalls were 'remedied by capital injections from the Former Claimant'.
 - viii. Whether such capital injections have been reimbursed to the Former Claimant from the Former Claimant's client account.
 - ix. All steps which the Former Claimant has taken to mitigate its losses in accordance with its duty to do so.
- c. Even if (which is denied) Mr Luxmore has conspired against the Claimant or breached his duties as a director as alleged against him, it is denied that the Former Claimant suffered any losses as a result or that Mr Luxmore should be responsible for those losses by reason of the following:
- i. The Former Claimant failed to mitigate those losses in accordance with its duties to do so. In particular, it failed to take timely and appropriate action to recover debts due from the relevant borrowers (identified in **Schedule 1** to this Defence), including making recoveries pursuant to the securities obtained in respect of those loans, but instead wasted time and resources in pursuing serious and complex unjustified allegations against RL and the other Defendants in these proceedings.
 - ii. To the extent that the Former Claimant and/or the Claimant make recoveries from other Defendants of the debts due to the Claimant from borrowers in respect of advances which are the subject of the Claimant's claims (identified in **Schedule 1** to this Defence) the Former Claimant would have suffered no losses, alternatively its losses would have been reduced by those recoveries.
 - iii. To the extent that the lenders on the Former Claimant's platform make recoveries from other Defendants or persons of the debts due to those lenders from borrowers in respect of advances which

are the subject of the Claimant's claims (identified in **Schedule 1** to this Defence) they will have suffered no losses, alternatively their losses will have been reduced by those recoveries, the effect of which is that the Former Claimant is not liable to those lenders as alleged by the Claimant.

Compromise Agreement and Estoppel

36. On about 4 October 2018, Rajinder Kumar ("**RK**") began lending money to the Former Claimant, lending an initial £1,400,000 to the Former Claimant.
37. As at 12 October 2018, RL was a Director of the Former Claimant holding 4,315 shares in the Former Claimant, which represented 41.9% of the issued shares in the Former Claimant. Each share in the Former Claimant had a nominal value of £0.10. RL had in 2013 and 2014 invested a total of £100,000 in the Former Claimant and the Former Claimant's balance sheet as at 31 March 2018 recorded that RL's shares had a book value of £100,000, being RL's portion of the share capital and share premium account combined.
38. On 12 October 2018:
 - a. Mr Rajinder Kumar ("**RK**") became a Director of the Former Claimant.
 - b. RK became a shareholder of the Former Claimant holding 26,553 shares.
 - c. Carl Davies ("**CD**") became a Director of the Former Claimant.
39. An effect of the issue of shares to RK on 12 October 2018 was that:
 - a. RK became a majority shareholder, holding 75.3% of the issued shares in the Former Claimant;

- b. RL's shareholding then represented 12.2% of the issued shares in the Former Claimant.
 - c. NH's shareholding then represented 11.9% of the issued shares in the Former Claimant.
40. In December 2018, meetings between RK and RL and others took place at the Former Claimant's offices in Stokenchurch, Buckinghamshire at which, amongst other things:
- a. RK proposed that a Mr Vijay Gandhi ("**VG**") should invest in the Former Claimant, stating that VG had won a previous case against MC.
 - b. RK stated that VG's lawyers were confident that they could make recoveries from MC.
 - c. Mr Luxmore made it known that he wished to resign his active involvement in the Former Claimant because of ill-health.
41. Although RL was a Director of the Former Claimant, RL was excluded from a number of meetings between the other Directors.
42. On 2 January 2019, a board meeting of the Directors took place, at which, amongst other things:
- a. RK opened the meeting saying that he had not heard from VG with regards to VG's proposed investment in the business.
 - b. RK apparently took a call from VG and left the Directors' meeting and then returned to the meeting and reported to the meeting that VG was willing to invest (via a loan) £1,500,000 to the Former Claimant on condition that RL leave the Former Claimant with "zero compensation".

- c. RK proposed that RL give up his shares to the Former Claimant on the basis that this would be RL's "punishment".
 - d. RK's statements, set out in sub-paragraphs (a), (b) and (c) above, were attributable to and made on behalf of the Former Claimant and were intended to include and did include an express representation, alternatively an implied representation, to RL that If RL relinquished his shareholdings in the Former Claimant to the Former Claimant for no compensation to RL, then no legal proceedings would be taken against him by the Former Claimant in respect of the past conduct of RL in relation to the Former Claimant, in particular RL's conduct which is now the subject of the Claimant's claims, (the "**Representation**").
 - e. The Former Claimant intended RL to rely on the Representation in order to induce him to relinquish his shares to the Former Claimant for no compensation to RL.
 - f. In reliance on the Representation, RL agreed to relinquish his shares to the Former Claimant for the nominal value of the shares, notwithstanding that the "paid up" value (share capital plus share premium) on the balance sheet was £100,000. If the Representation had not been made to RL, he would not have agreed to sell his shares in the Former Claimant to the Former Claimant at nominal value or sell those shares in the Former Claimant at all.
43. In continued reliance on the Representation, which was at no time corrected by the Former Claimant, Mr Luxmore sold his shares in the Former Claimant to the Former Claimant under a written *Off-market purchase agreement* entered into by Mr Luxmore and the Claimant on 6 February 2019 (the "**Buy Back Agreement**"). Under the Buy Back Agreement, Mr Luxmore agreed to sell his holding of 4,315 shares in the Former Claimant to the Former Claimant for a total price of £431.50 which was the nominal value of the shares. At the same meeting RL resigned his directorship of the Former Claimant. RL transferred

his shares to the Former Claimant on or shortly after that date and received £431.50 from the Former Claimant.

44. In the premises:

- a. There was a compromise agreement between the Former Claimant and RL that if RL transferred his shares to the Former Claimant that the Former Claimant would not bring legal proceedings against him in relation to his past conduct as regards the Former Claimant, in particular RL's conduct which is now the subject of the Claimant's claims, and the Claimant is prevented by that agreement from bringing and continuing its claims and obtaining judgment on those claims against RL (the "**Compromise Agreement**").
- b. The Claimant is estopped from being able to make its Claims against RL by reason of the Former Claimant's Representation that it would not bring proceedings against RL, which RL has relied on to his detriment in selling his shares to the Former Claimant at nominal value.
- c. The Claimant's claims should be dismissed; alternatively the Claimant's claims be stayed indefinitely.

Defences of Equitable Set-Off

45. The particulars set out above are repeated here and relied on in defences of equitable set-off against and up to the value of all of the Claimant's claims against RL as set out below.

Set-Off in Relation to Breaches of the Compromise Agreement

46. The Former Claimant brought its claims in these proceedings in breach of the Compromise Agreement. The Claimant has continued those claims in breach of the Compromise Agreement. Accordingly, RL is entitled to set-off the losses

he has suffered as a result of the Former Claimant bringing these proceedings and the Claimant continuing these proceedings in breach of the Compromise Agreement, which shall include all legal costs of defending these proceedings as well as well as his lost earnings by reason of the fact that he has been and remains unable to seek work and take employment or self employment whilst he has instead to engage in dealing with all aspects of these proceedings. Further particulars of losses will be provided in due course and at the time of the trial of these proceedings and judgment thereafter.

Set-Off in Relation to Breaches of the Misrepresentation Act 1967 and Deceit

47. Further, RL is entitled to set-off losses he has suffered as a result of the following. The Representation was false as at 2 January 2019 and/or 6 February 2019 by reason of the following:
- a. The Former Claimant had begun its investigations which culminated in the Claimant's claims as early as November 2018 and had involving their lawyers, TWM Solicitors LLP, in those investigations by no later than December 2018.
 - b. CD has stated in his Affidavit sworn on 31 May 2019 in support of the Former Claimant's application for a freezing injunction against RL and others that the existence of the Claimant's investigations were '*kept from*' RL; from which it can be inferred that the existence of the Former Claimant's investigations against RL for the purpose of these proceedings were kept from RL whilst he was a Director and shareholder of the Former Claimant, i.e. before 6 February 2019.
 - c. Accordingly, as at 2 January 2019 and/or 6 February 2019, the Former Claimant had formed an intention to bring claims against RL or alternatively had formed the intention that it might bring claims against RL.

48. The Former Claimant knew that the Representation was false, had no honest belief that the Representation was true or was reckless as to whether or not the Representation was true or not. Paragraphs 36 to 44 and paragraph 47 above are repeated.
49. RL was induced by the Representation to sell his 4,315 shares in the Former Claimant to the Former Claimant at nominal value.
50. Accordingly, RL is entitled to set-off all losses he suffered and which he would be entitled to claim against the Former Claimant under the Misrepresentation Act 1967 and under the tort of deceit; being his losses suffered as a result of selling his 4,315 shares to the Former Claimant at nominal value rather than their true value at the time of the sale of those shares and/or the value of those 4,315 shares as at the date of judgment, to be the subject of disclosure, expert evidence and an inquiry as to the amount of his losses. Further particulars of losses will be provided in due course and at the time of the trial of these proceedings and judgment thereafter.
51. RL is entitled to set-off the interest on all sums which are the subject of his defences of set-off, including compound interest, pursuant to Section 35A of the Senior Courts Act 1981 and equity and at common law.

IAN SMITH

STATEMENT OF TRUTH

I believe that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



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Richard Luxmore

Dated: 19 May 2020