

AMENDED THIS 15 DAY OF Oct A.D. 2019 Form 10
PURSUANT TO RULE _____ UNDER ORDER-CONSENT DATE [Rule 3.25]
8 DAY OF Nov A.D. 2018

Clerk's Stamp



COURT FILE NUMBER 1403 17729

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) BONNIE LEE BRUNO

DEFENDANT(S) CHIEF and COUNCIL of the SAMSON CREE NATION and the SAMSON CREE NATION

THIRD PARTY DEFENDANT THE ATTORNEY GENERAL OF CANADA

DOCUMENT **THIRD AMENDED AMENDED STATEMENT OF CLAIM**

Brought under the *Class proceedings Act*, S.A. 2003, c C-16.5

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

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Statement of facts relied on:

PARTIES

1. The Samson Cree Nation is an Indian "band" pursuant to the provisions of the *Indian Act*, RSC 1985, s. I-5, as amended (the "*Indian Act*").
2. The Chief and Council of the Samson Cree Nation are the "council of the band" within the meaning of that term in the *Indian Act* and constitute the duly elected governing body of the Samson Cree Nation. (The Chief and Council of the Samson Cree Nation and the Samson Cree Nation, including the members thereof from time to time, are hereinafter collectively referred to as "Samson".)
3. The Plaintiff, Bonnie Lee Bruno, is a member of the Samson Cree Nation. At all times relevant to this action, the Minister of Indian Affairs and Northern Development (hereinafter referred to as the "Minister") maintained Samson's "Band List", as that term is defined by the *Indian Act*, pursuant to sections 8 and 9 of the *Indian Act*. The Plaintiff had her name entered onto Samson's Band List pursuant to the provisions of *An Act to Amend the Indian Act*, RSC 1985, c.32 (1st Suppl. ("Bill C-31") on or about June 29, 1987.

FACTUAL BACKGROUND

4. Samson occupies reserve lands in the vicinity of Maskwacis (formerly known as Hobbema), Alberta, which lands are more particularly known as Indian Reserve Nos. 137 and 137A. Samson also has an undivided interest, together with the Louis Bull, Montana and Ermineskin bands (collectively, the "Hobbema Bands"), in Pigeon Lake Indian Reserve No. 138A. (Reserves 137, 137A and 138 are hereinafter collectively referred to as "Reserve Lands".)
5. By way of a Surrender of Minerals dated May 30, 1946, Samson surrendered its rights, title and interest in respect of certain minerals underlying the surface of the Reserve Lands to the Crown in trust for the use and benefit of Samson. On that same date the other Hobbema Bands also executed Surrenders of Minerals with identical terms with respect to their respective interests in Pigeon Lake Indian Reserve No. 138A.
6. From time to time, and in accordance with the *Indian Oil and Gas Act*, RSC 1985 Ch. I-7 (the "*IOGA*") and the *Indian Oil and Gas Regulations*, 1995, SOR / 94-753 made thereunder, the Crown has negotiated leases and received royalties, bonuses, rents and surface use payments for oil and gas production from the Reserve Lands, has directed these Indian moneys to the capital account for

Samson held and administered by the Crown in the Consolidated Revenue Fund in accordance with the requirements of subsection 4(1) of the *IOGA*, sections 2 and 61-69 of the *Indian Act*, and sections 2, 17(1) and 21(1) of the *Financial Administration Act*, RSC 1985, c. F-11) and has paid interest upon the said moneys, for the benefit of Samson.

7. At Samson's request made pursuant to a joint Band Council Resolution executed by the Hobbema Bands, the royalties, bonuses, rents and surface use payments derived from Pigeon Lake Indian Reserve No. 138A (hereinafter referred to collectively as the "Royalties") are divided among the four Hobbema Bands on a per capita basis, the allocation being proportional to their relative population counts. In the case of Samson, the per capita distributed and credited to Samson's capital account is based on the number of members recorded on Samson's Band List maintained by the Minister.
8. From the Royalties as well as funds related to them Samson paid, at all times relevant to this action, per capita distributions (hereinafter referred to as "PCDs") and Special Pays to members of Samson from time to time. PCDs are monthly or annual payments, authorized by Band Council Resolution, from the capital or revenue moneys of a band as defined in sections 61-69 of the *Indian Act*. Their name derives from the fact that the payments are made to all the members of a band on a per capita basis. Special Pays are amounts paid to all members of Samson from time to time in addition to PCDs, most notably at Christmas, but historically at other times of the year.

THE CLASS

9. This action is brought on behalf of all members of a class consisting of the Plaintiff, Bonnie Lee Bruno, and all persons whose names were recorded on Samson's Band List maintained by the Minister at any time on or after June 29, 1987 and from whom Samson withheld payment of PCDs and Special Pays at any point after the person's name was added to the Band List maintained by the Minister (hereinafter referred to as the "Class Plaintiffs").
10. At all material times relevant to this action Samson has had a fiduciary relationship with all members of Samson, including the Class Plaintiffs, and arising therefrom Samson has owed fiduciary obligations to all members of the Samson Cree Nation, including the Class Plaintiffs, in relation to the distribution of PCDs and Special Pays paid to members of Samson. In particular, Samson's fiduciary obligations include the duties:

- (a) of undivided loyalty toward them in the distribution of PCDs and Special Pays to members of Samson,
- (b) of good faith and full disclosure appropriate to the subject matter at issue between them,
- (c) to deal with them equitably and even-handedly as between different members of Samson, as well as
- (d) to act with due regard to their best interests and, in relation to PCDs and Special Pays paid to the members of Samson, to protect and preserve their interests from exploitation by third parties, including the Band itself through its Chief and Council.

THE CONDUCT AT ISSUE

11. The Class Plaintiffs became members of Samson effective on or after June 29, 1987 as a result of the coming into force of what is commonly known as Bill C-31, *An Act to Amend the Indian Act*, S.C. 1985, c. 27.
12. After the Bill C-31 amendments came into force, Samson was of the view that the 1985 amendments to the *Indian Act* interfered with Samson's aboriginal and treaty rights of self-determination and self-government, as well as Samson's right to control its own membership. As a consequence, there were delays within Samson in recognizing the membership of the Class Plaintiffs.
13. At the time the Class Plaintiffs became members of Samson, Samson was paying, to members of Samson and to persons who became members of Samson in the relevant fiscal period, PCDs and Special Pays from Samson's capital account. The payments were authorized by the Minister in accordance with section 64(1) of the *Indian Act* with the consent of Samson's Band Council and expended by the Crown directly to the members of the band.
14. When Samson took issue with making payments of PCDs and Special Pays to the Class Plaintiffs, or some of them, the Minister transferred the amounts to be paid to a separate interest-bearing account (the "Suspense Account") to protect the financial interest of those individuals. The said PCDs and Special Pays were for the period June 29, 1987 to May 1, 1988. The claim of the Class Plaintiffs, or of some of them, to the said Suspense Account moneys was successfully concluded by order of the Federal Court of Canada. No further claim against the PCDs and Special Pays paid or payable for the period June 29, 1987 to May 1, 1988 is made in this action.

15. In or about April 1988 Samson submitted a Band Council Resolution to the Minister authorizing 12 monthly distributions of \$500.00 and 4 quarterly distributions of \$600.00 to be paid to each member of Samson from Samson's revenue account. In accordance with section 69 of the *Indian Act*, payments from that account were administered by Samson alone. To the knowledge of the Plaintiff, all PCDs and Special Pays Samson has paid to its band members since that time have been made from moneys released from Samson's revenue account.
16. One of the purposes in changing the source from which PCDs and Special Pays were paid from Samson's capital account to Samson's revenue account was to avoid making PCD payments and Special Pays to persons, including the Class Plaintiffs, who Samson did not recognize as members, notwithstanding the provisions of the *Indian Act*. To that end, and for a period known only to Samson, Samson maintained for its own purposes 2 band lists, referred to as band list "A" and band list "B". Band list "A" identified those persons whom the Minister listed as members, which included persons that Samson refused to recognize as members and from whom Samson withheld payment of PCDs and Special Pays. Band list "B" identified only those persons Samson recognized as members.
17. The Plaintiff's mother, Nancy Rowan, acting on behalf of the Plaintiff, Bonnie Lee Bruno, executed a written agreement with Samson on June 1, 1995 whereby Samson purported to recognize the Plaintiff, Bonnie Lee Bruno, as a member of Samson in exchange for her release of all liability on the part of Samson for any claims she may have against Samson in respect of any past PCDs. From that date forward the Plaintiff, Bonnie Lee Bruno, has received and continues to receive PCDs and Special Pays paid to members of Samson.
18. From time to time up to June 1, 1995 and from June 1, 1995 to the present others among the Class Plaintiffs, or persons authorized to act on their behalf, executed the same or similar types of agreements (hereinafter referred to as the "Membership Agreements").
19. The Plaintiff, Bonnie Lee Bruno, did not receive any PCDs or Special Pays paid to members of Samson during the period May 1, 1988 to June 1, 1995, and others among the Class Plaintiffs did not receive any PCDs or Special Pays paid to members of Samson for the same or a lesser or greater period.
20. During the period May 1, 1988 to June 1, 1995, and from June 1, 1995 to the present (collectively, the "Claim Period"), Samson has received and retained distributions of Royalties credited to Samson's capital account, together with

interest paid thereon, knowing that the per capita share of the Royalties Samson received was calculated based on the number of members recorded on Samson's Band List maintained by the Minister, which included the Class Plaintiffs. The amounts credited to Samson's capital account during the Claim Period representing the proportion Samson received on account of the Class Plaintiffs' contribution as members of Samson, together with interest paid thereon, are hereinafter referred to as the "Capital Contributions".

21. From those same Royalties and interest as well as funds related to them Samson has, during the Claim Period, or parts thereof, paid PCDs and Special Pays to members of Samson but excluded the Class Plaintiffs from distributions of PCDs and Special Pays.
22. By reason of Samson's conduct as alleged in paragraphs 15 – 21 herein, Samson, through its Chief and Council, breached the fiduciary obligations set out in paragraph 10 herein that Samson owes to the Class Plaintiffs in relation to the distribution of PCDs and Special Pays paid from May 1, 1988 onwards to the members of Samson.
23. The Membership Agreements were illegal, void, should be set aside or are otherwise unenforceable, at least to the extent they provide for Samson's enrichment at the expense of the Class Plaintiffs.
24. Samson's conduct in entering into the Membership Agreements was an unconscionable thing for Samson to do to the Class Plaintiffs to whom the said agreements relate. The said agreements concealed from the said Class Plaintiffs the fact that Samson had wrongfully:
 - (a) denied them their share of PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson, ~~and~~
 - (b) ~~enriched itself at their expense by reason of Samson's receipt and retention of the Capital Contributions and funds or assets related to them,~~
and
 - (c) enriched itself at their expense by reason of Samson's retention of their share of PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.
25. By reason of the fiduciary relationship Samson has with its members, including the Class Plaintiffs, and the fiduciary obligations arising therefrom that Samson has owed to the Class Plaintiffs in relation to PCDs and Special Pays paid to

members of Samson as set out in paragraph 10 herein, from at least the time Samson entered into the Membership Agreements to the present date Samson was obliged to:

- (a) inform the Class Plaintiffs of Samson's wrongdoing in withholding payment of their share of PCDs and Special Pays distributed from May 1, 1988 onwards to the members of Samson, and to
- (b) account to the Class Plaintiffs for their entitlement to the PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson, together with accumulated interest, and / or for Samson's enrichment at their expense by reason of Samson's receipt and retention of the Capital Contributions and funds or assets related to them, and by reason of Samson's retention of their share of PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.

which obligation Samson has breached and continues to breach.

26. On December 11, 2002 the Federal Court of Canada ruled in *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)*, 2002 FCT 1299, an action in which Samson claimed the moneys held in the Suspense Account, that the Membership Agreements were ineffective and had been obtained in breach of the fiduciary obligations Samson owed to the persons to whom the said agreements relate, including the Class Plaintiffs or some of them. In Reasons for Order delivered from the bench on that date Hugessen J stated:

[8] Briefly, the agreement which I have before me, the one entered into by Andrew Mark Buffalo, is one in which he releases the Band from all claims that he may have in respect of per capita distributions, waives his right to claim per capita distributions from the Band and agrees to indemnify and hold the Band harmless from such claims. (...)

[10] (...) It is clear to me from the recitals in the agreement that at least one of the major important considerations recited in the agreement is the Band's contention that it had the control of its own membership and the clear implication that having such control, it was prepared to admit Mr. Buffalo into the membership in return for his entering into this agreement. But as we now know, the Band did not have the control of its own membership and that consideration, which is in fact the only consideration expressed in the agreement, has clearly failed.

[11] There is yet a third reason. The Band and the Band Council are under an obligation which has sometimes been characterized as being a

fiduciary obligation towards Band members to deal with them fairly. In the matter of things like per capita distributions, the Band Council simply must deal equitably with each of the Band members. It could not, to take a simple silly example, direct that all members whose names began with the letters from A to L should receive per capita distributions and those whose names began with letters from M to Z should not. It must deal equally, fairly and in accordance with normal fiduciary principles with its members.

The Federal Court of Canada's decision became final when Samson abandoned its appeal from Hugessen J.'s Order on May 3, 2004.

27. Despite the Federal Court of Canada ruling in *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)*, 2002 FCT 1299 made some 12 years ago, which fixed Samson with the knowledge that its failure to pay to the Class Plaintiffs all PCDs and Special Pays distributed from May 1, 1988 onwards to the members of Samson was wrongful, Samson has failed to disclose to the Class Plaintiffs Samson's said wrongdoing and has failed to account to them in relation to either
 - (a) their entitlement to PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson, together with accumulated interest, or
 - ~~(b) Samson's enrichment at their expense by reason of Samson's receipt and retention of the Capital Contributions and funds or assets related to them,~~
or
 - (c) Samson's enrichment at their expense by reason of Samson's retention of their share of PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.
28. From the time Samson submitted a Band Council Resolution to the Minister in or about April 1988 authorizing the payment of PCDs to members of Samson from Samson's revenue account, Samson has accumulated royalty moneys, including the Royalties and the Capital Contributions, in its capital account.
29. The said royalty moneys can be traced. Section 33(3) of the *Indian Oil and Gas Regulations* requires compulsory reporting by the lessee of the royalty payments to the band council and the Executive Director of Indian Oil and Gas Canada, Department of Indian Affairs and Northern Development.
30. Further to a request of Samson, and pursuant to Orders of the Federal Court of Canada dated January 27, October 17, October 31 and December 22, 2005 in

Federal Court Action T-2022-89, all moneys in Samson's capital account, including the Royalties, the Capital Contributions and funds or assets related to them, were transferred on February 1, 2006 to the Kisoniyaminaw Heritage Trust ("the Trust") for the benefit of the Samson Nation. The Trust is a private trust, established by a deed of trust made as of November 25, 2005 between Samson and the initial trustees of the Trust. The objects of the Trust are that the trustees manage and invest these moneys on behalf of Samson.

31. Since February 1, 2006, pursuant to the Orders referred to in paragraph 30, and pursuant to an Authorization and Direction to Pay provided by the Trust Board of Trustees, all moneys received into Samson's capital account, including Royalties, Capital Contributions, and funds related to them, have been transferred by direct deposit monthly to the Trust.
32. The trustees of the Trust have, since February 1, 2006, held the legal title to the said Royalties, the said Capital Contributions, and funds related to them and, in accordance with the Trust Deed, have managed them and have made various and ongoing income earning investments using them on behalf of and for the benefit of Samson and its members, including the Class Plaintiffs, or some of them.
33. ~~The current Trustees of the Trust are Allan Markin, Alan R. Marchment, Heather Gore Hickman, J. Wilton Littlechild, Q.C. and Michael Mills (hereinafter referred to as the "Trustees").~~ The Trustees have power, possession or control over the Royalties, the Capital Contributions, and funds or assets related to them into which the Royalties, Capital Contributions and funds related to them have been converted. The Trustees have been made aware of the within claim.
34. The Royalties, Capital Contributions and funds or assets related to them referred to in paragraph 32 and 33 can be traced. The Trust Deed requires that the Trustees see that all necessary books and records of the Trust required by the Deed or by any applicable statute or law be regularly and properly kept, in Canada, as the Trustees direct, including proper books of account with respect to all sums of money received and expended by the Trust, all sales and purchases of securities and other property by the Trust, the assets and liabilities of the Trust, and distributions by the Trust. The Trustees must also publish or cause to be published annually a report of the activities of the Trust including an annual audited report.
35. ~~In Federal Court of Canada Court File No. T-2022-89, Samson claims substitutional damages or other compensation from the Crown in respect of various alleged breaches of obligations the Crown owed Samson in respect of~~

~~the Crown's control, administration, management of and discretion in regard to the royalties, bonuses, rents and surface use payments the Crown obtained from oil and gas production in relation to the Reserve Lands. Samson claims, *inter alia*, that the Crown breached Her duties in respect to:~~

- ~~(a) — the negotiation, establishment, imposition and prescription of the terms and conditions of oil and gas leases relating to the Reserve Lands, particularly in regard to the royalty rates;~~
- ~~(b) — the administration, management and supervision of the oil and gas leases relating to the Reserve Lands;~~
- ~~(c) — ensuring receipt of royalties to which Samson was entitled, monitoring oil and gas production, and properly applying the *Indian Act*, the *IOGA* and Regulations thereunder; and~~
- ~~(d) — protecting and preserving Samson's capital moneys by failing to obtain suitable returns for the trust moneys commensurate with an appropriate level of risk.~~

~~Samson claims a quantum of damages or compensation representing the difference between the amounts which the Crown credited to Samson's capital account, together with interest paid thereon, and the amounts which the Crown ought to have credited to Samson's capital account, including the amounts that ought to have been received on account of the Class Plaintiffs' contribution as members of Samson during the Claim Period, together with the returns on those capital moneys that ought to have been realized had the Crown properly discharged Her duties.~~

CAUSES OF ACTION

36. Samson has breached its fiduciary relationship with, and Samson's fiduciary, equitable or other obligations towards, the Class Plaintiffs, particulars of which breaches include:
- (a) failing to act toward the Class Plaintiffs with undivided loyalty in the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
 - (b) failing to deal with the Class Plaintiffs in good faith and with full disclosure appropriate to the matter of their entitlement to PCDs and Special Pays distributed from June 29, 1987 onwards to members of Samson;

- (c) failing to deal with the Class Plaintiffs equitably and even-handedly in comparison to other members of Samson in relation to the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
- (d) failing to act with due regard to the Class Plaintiffs' best interests in relation to the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson and exploiting the Class Plaintiffs;
- (e) denying and depriving the Class Plaintiffs of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
- (f) unjustly enriching itself by receiving and retaining Royalties calculated on the basis of the per capita contributions of the Class Plaintiffs during the Claim Period while denying them the financial benefits, by way of PCDs and Special Pays, of Band membership during the same period;
- (g) committing equitable fraud;
- (h) entering into the Membership Agreements obtained from some or all of the Class Plaintiffs, or persons acting on their behalf;
- (i) failing to disclose to the Class Plaintiffs, or some of them, Samson's wrongdoing in denying them their share of PCDs and Special Pays distributed from June 29, 1987 onwards to members of Samson; and
- (j) failing to account to the Class Plaintiffs in relation to
 - (i) their entitlement to PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson together with accumulated interest, and
 - (ii) Samson's enrichment at their expense by reason of Samson's receipt and retention of their Capital Contributions and all funds, assets, benefits or other gains related to them, and by reason of Samson's retention of their share of PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.

37. In the alternative, the Class Plaintiffs waive the tort and plead that they are entitled to recover under restitutionary principles.

38. Samson and the Trustees, subject to the terms of the Trust Deed, are constituted as constructive trustees in favour of the Class Plaintiffs because, among other reasons,
- (a) ~~Samson has been enriched by the receipt and the retention of the Capital Contributions, at least in an amount equal to the PCDs and Special Pays paid from May 1, 1988 onwards to members of Samson that Samson withheld from the Class Plaintiffs, and all funds, assets, benefits or other gains related to them.~~
 - (b) ~~Samson's enrichment has been at the expense of the Class Plaintiffs who have suffered a corresponding deprivation of such Capital Contributions and funds, assets, benefits or other gains related to them.~~
 - (c) Samson has also been enriched by its retention of their share of PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.
 - (d) Samson's enrichment has been at the expense of the Class Plaintiffs who have suffered a corresponding deprivation of such PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.
 - (e) There is no reason in law or justice for the retention of these benefits by Samson.
 - (f) Samson engaged in the wrongful acts as described in this claim and since Samson's enrichment resulted from Samson's wrongful acts, there is and there can be no juridical reason justifying Samson's retention of any part of the enrichment.
 - (g) ~~Samson could not in good conscience retain the Capital Contributions it received while at the same time depriving the Class Plaintiffs of PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson out of the revenues generated from the same capital moneys.~~
 - (h) Samson could not in good conscience retain the Class Plaintiffs' share of the PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.
 - (i) Justice and good conscience requires the imposition of a constructive trust in the Class Plaintiffs' favour on the Capital Contributions moneys of the Band, at least in an amount equal to the PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson that

Samson withheld from the Class Plaintiffs, and all funds, assets, benefits or other gains related to them.

- (j) The integrity of similar relationships would be undermined if the court did not impose a constructive trust. A constructive trust will:
- (i) serve the prophylactic purpose of appropriating for the benefit of the Class Plaintiffs, to whom Samson owed the fiduciary duties, any benefit or gain obtained or received by Samson in circumstances where there existed a conflict between Samson's fiduciary duty to the Class Plaintiffs and Samson's personal interest in the receipt and retention of the Capital Contributions and its retention of their share of the PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson, and funds, assets, benefits or other gains related to them;
 - (ii) fulfill the objective of precluding Samson, and or other fiduciaries in other cases, from being swayed by considerations of personal interest, advancing equity's policy to deter fiduciary faithlessness and preserve the integrity of the fiduciary relationship; and also
 - (iii) serve the necessary restitutionary purpose of ensuring that Samson does not benefit from its wrongdoing.
- (k) A constructive trust should be imposed because it is just to grant the Class Plaintiffs the benefits which flow from the recognition of a right of property, including the fact that no distribution made by the Trustees to beneficiaries of the Trust shall be subject to taxation in the hands of the recipients. The imposition of a constructive trust on the ~~Capital Contributions and funds, assets, benefits or other gains related to them~~ Capital moneys of the Band referred to in (i) above will recognize the Class Plaintiffs' right as the property holders to have changes in the value of the ~~Capital Contributions~~ moneys and funds, assets or benefits related to them accrue to their account rather than to the account of Samson, whose unjust, or unjustified, enrichment would otherwise remain unredressed.
- (l) Samson, through the Trustees, has the capability of tracing the said Capital Contributions moneys and funds, assets, benefits or other gains related to them.

- (m) There are no factors that would, in respect of the said Capital Contributions moneys and funds, assets, benefits or other gains related to them, render the imposition of a constructive trust unjust.
39. The plaintiff pleads that equity and good conscience requires the Defendants to hold the said Capital Contributions moneys and funds, assets or property related to them in trust for the Class Plaintiffs and to disgorge same to the Class Plaintiffs.

VENUE

40. The plaintiff proposes that this action be tried at the Law Courts in the city of Edmonton in the Province of Alberta and estimates that the trial will take less than twenty-five (25) days.

REMEDY SOUGHT

41. The Plaintiff claims the following relief:
- (a) An Order pursuant to the *Class proceedings Act*, S.A. 2003, c C-16.5 certifying this action as a class proceeding and appointing her as the representative plaintiff of the Class;
 - (b) A Declaration that Samson breached its fiduciary, equitable or other obligations to the Class Plaintiffs by:
 - (i) failing to act toward the Class Plaintiffs with undivided loyalty in the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
 - (ii) failing to deal with the Class Plaintiffs in good faith and with full disclosure appropriate to the matter of their entitlement to PCDs and Special Pays distributed from June 29, 1987 onwards to members of Samson;
 - (iii) failing to deal with the Class Plaintiffs equitably and even-handedly in comparison to other members of Samson in relation to the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
 - (iv) failing to act with due regard to the Class Plaintiffs' best interests in relation to the distribution of PCDs and Special Pays paid from

June 29, 1987 onwards to members of Samson and exploiting the Class Plaintiffs;

- (v) denying and depriving the Class Plaintiffs of PCDs and Special Pays paid to other members of Samson from June 29, 1987 onwards together with accumulated interest thereon;
 - (vi) unjustly enriching itself by receiving and retaining Royalties calculated on the basis of the per capita contributions of the Class Plaintiffs during the Claim Period while denying them the financial benefits, by way of PCDs and Special Pays, of Band membership during the same period;
 - (vii) committing equitable fraud;
 - (viii) entering into the Membership Agreements obtained from some or all of the Class Plaintiffs, or persons acting on their behalf;
 - (ix) failing to disclose to the Class Plaintiffs, or some of them, Samson's wrongdoing towards them in relation to the distribution of PCDs and Special Pays from June 29, 1987 onwards; and
 - (x) failing to account to the Class Plaintiffs in relation to
 - A. their entitlement to PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson together with accumulated interest, and
 - ~~B. Samson's enrichment at their expense by reason of Samson's receipt and retention of their Capital Contributions and all funds, assets, benefits or other gains related to them.~~
 - C. Samson's enrichment at their expense by reason of Samson's retention of their share of PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson.
- (c) A declaration that, insofar as a Membership Agreement purports to release and / or indemnify and save harmless the defendants from any liability by them, or either of them, relating to a claim by a Class Plaintiff to whom the Membership Agreement relates in respect of PCDs or Special Pays paid from June 29, 1987 onwards to members of Samson, the Membership Agreement is illegal, void, set aside or is otherwise

unenforceable, at least to the extent the agreement provides for Samson's enrichment at the expense of the Class Plaintiff to whom the Membership Agreement relates;

- (d) An accounting for all ~~Royalties credited and interest paid to Samson on account of the Class Plaintiffs' membership in Samson during the Claim Period as well as all funds, assets, benefits or other gains Samson obtained that are related to them and an accounting of the extent of Samson's unjust enrichment related to the Capital Contributions; and related to Samson's retention of their share of PCDs and Special Pays paid or payable from May 1, 1988 onwards to members of Samson;~~
- (e) An award of damages or compensation in the amount of \$100,000,000.00 or such further or other amount which may be disclosed by an accounting at trial or which responds to the breach of fiduciary, equitable or other obligations of Samson;
- (f) A tracing of all Royalties credited and interest paid to Samson or to any third party for Samson's benefit, or by Samson to any third party, including the Trustees in accordance with the Trust Deed, on account of the Class Plaintiffs' membership in Samson during the Claim Period;
- (g) Further, or in the alternative, a Declaration that the Capital moneys of the Band in an amount equal to the withheld PCDs and Special Pays distributed from May 1, 1988 onwards, ~~all Royalties credited and interest paid to Samson's capital account attributable to the membership of the Class Plaintiffs in Samson during the Claim Period as well as and~~ all funds, assets, benefits or other gains Samson obtained that are related to them, are subject to and held on a constructive trust and / or equitable lien for the benefit of the Class Plaintiffs and are subject to immediate disgorgement by Samson and restitution to the Class Plaintiffs;
- (h) Further, a Declaration that the said Capital moneys of the Band ~~Royalties and interest paid thereon, and any funds, assets, benefits and other gains Samson obtained that are related to them~~ held by the Trustees of the Kisoniyaminaw Heritage Trust are held in trust by the Trustees of the Kisoniyaminaw Heritage Trust for the Class Plaintiffs' benefit and use;
- (i) Punitive damages against Samson for breach of its trust, fiduciary, equitable and other obligations, particularly its equitable fraud;

- (j) Compound interest at the rate of return applied by the Minister to Samson Minors' Trust accounts on all of the Royalties credited and interest paid to Samson's capital account attributable to the membership of the Class Plaintiffs in Samson during the Claim Period or, in the alternative, if a higher rate, that obtained by Samson on its investments of the said Royalties and interest paid thereon;
- ~~(k) A declaration that, subject to the terms of the Trust Deed, all funds, assets, benefits and other gains Samson receives or that any third party receives for Samson's benefit in consideration of Samson's claims in Federal Court of Canada Court File No. T-2022-89 alleging impairment of the value of the Capital Contributions are subject to and held on a constructive trust and / or equitable lien for the benefit of the Class Plaintiffs and are subject to immediate disgorgement by Samson and restitution to the Class Plaintiffs;~~
- (l) An order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (m) Costs of this action on as substantial indemnity basis or in an amount that provides full indemnity plus the costs of distribution of an award under s. 33(6) of the *Class Proceedings Act*, S.A. 2003, c C-16.5 including the costs of notice associated with the distribution and the fees payable to a person administering the distribution, plus applicable taxes; and
- (n) Such further and other relief as may be requested and as this Honourable Court deems to be just.

NOTICE TO THE DEFENDANT(S)

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 Edmonton, Alberta, AND serving your

statement of defence or a demand for notice on the plaintiff's(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(s) against you.

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