

Inv. 3225

Form 11
[Rule 3.31]

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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

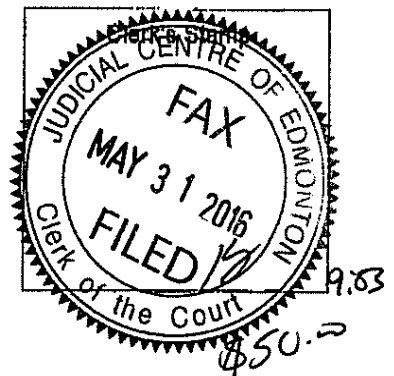
PLAINTIFF(S) BONNIE LEE BRUNO

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

DOCUMENT STATEMENT OF DEFENCE

PARTY FILING THIS DOCUMENT CHIEF and COUNCIL of the SAMSON CREE NATION and the SAMSON CREE NATION

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Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

Samson Cree Nation and the Reserve Lands of Samson Cree Nation

1. Except where hereinafter expressly admitted, the Defendants, Chief and Council of the Samson Cree Nation and the Samson Cree Nation (collectively, "Samson Nation"), deny each and every allegation made against them in the Amended Statement of Claim ("ASC") and put the Plaintiff and each member of the proposed Class Plaintiffs to the strict proof thereof.
2. Samson Nation denies that this action should be certified as a class action pursuant to the *Class Proceedings Act*, SA 2003, c C-16.5.

3. Samson Nation has no knowledge of the Plaintiff's capacity or authority to act as the representative of and on behalf of the members of the proposed Class Plaintiffs.
4. The Samson Nation is located within the borders of the Province of Alberta and had and continues to have ownership, Aboriginal title and Aboriginal rights to a large part of the area, including the natural resources, contemplated by Treaty No. 6 of 1876 ("Treaty No. 6") and is a "band" within the meaning of section 2 of the *Indian Act*, RSC 1985, c I-5, as amended (the "*Indian Act*").
5. The ancestors of the Samson Nation members and Samson Nation adhered to Treaty No. 6 on or about 1876. Samson Nation is a "band" and the members of the Samson Nation are "Indians" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended.
6. The Chief and Council of Samson Nation are the duly elected governing body of Samson Nation.
7. Samson Nation and its members, as determined by Samson Nation or the Chief and Council of Samson Nation, or either of them, are "Indians" within the meaning of section 91 (24) of the *Constitution Act*, 1867, the Imperial Order-in-Council of June 23, 1870, the *Constitution Act*, 1930 and the *Constitution Act*, 1982 and, further, are Aboriginal peoples of Canada within the meaning of section 35 of the *Constitution Act*, 1982 and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*.
8. Pursuant to the Aboriginal rights of Samson Nation and pursuant to Treaty No. 6, Indian Reserve Nos. 137 and 137A, also part of the traditional lands of Samson Nation, were set apart by Her Majesty the Queen in Right of Canada ("Her Majesty") in trust for the benefit of Samson Nation members, and, Indian Reserve No. 138A, also part of the traditional lands of Samson Nation, was set apart by Her Majesty in trust for the benefit of Samson Nation members and other "Indians of the Hobbema Agency" (collectively the "Reserve Lands"). At all relevant times Indian Reserve Nos. 137 and 137A has been held by Her Majesty for the exclusive use and benefit of and in trust for Samson Nation and Indian Reserve No. 138A has been held by Her Majesty for the exclusive use and benefit of and in trust for Samson Nation and the other "Indians of the Hobbema Agency".
9. Under reserve of their other Aboriginal and treaty rights, Samson Nation has Aboriginal and treaty rights to at least the lands and natural resources of the Reserve Lands. Further,

Samson Nation has an undivided interest to Indian Reserve No. 138A, including the natural resources thereof, with the Louis Bull and Ermineskin Bands and perhaps also with the Montana Band, which Bands are the other "Indians of the Hobbema Agency" (collectively the "Hobbema Bands" or the "Maskwacis Bands").

10. The Reserve Lands are "Lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867*.
11. At all relevant times, Samson Nation has been and is the beneficial owner of the Reserve Lands, or in the alternative, has a *sui generis* interest in the Reserve Lands. Further, Samson Nation's interest in the Reserve Lands is a communal interest that may not be alienated except by Her Majesty, with Samson Nation's consent. Neither the Plaintiff nor any member of the proposed Class Plaintiffs has or is entitled to any right or interest to any portion of the Reserve Lands, including the natural resources thereof or any royalties, moneys or payments derived from the production of the natural resources, that is superior to that of any other member of Samson Nation.
12. At all relevant times, there exists a fiduciary relationship that is trust-like in nature with the common law duties of a trustee between Samson Nation and Her Majesty in respect to the Reserve Lands and any royalties, moneys or payments therefrom, with Samson Nation as the beneficiary and Her Majesty as trustee or fiduciary. Her Majesty owes the Samson Nation duties pursuant to the *Constitution Act, 1867*, including section 91(24) and section 132, the *Constitution Act, 1930*, including section 1, the *Constitution Act, 1982*, including section 25 and the *Canadian Charter of Rights and Freedoms*, including section 35 (the "*Constitution*").

Bonnie Lee Bruno and the Proposed Class Plaintiffs

13. Samson Nation admits that on or about June 29, 1987, Her Majesty unilaterally, without prior consultation and without Samson Nation's consent or approval, purported to enter the Plaintiff's name, Bonnie Lee Bruno, onto the Samson Nation "Band List", as that term is defined by the *Indian Act*, which Band List was maintained by the Minister of Indian Affairs and Northern Development (the "Minister"), as the department was then designated. The Plaintiff's name was purported to be entered onto the Samson Nation Band List pursuant to the provisions of *An Act to Amend the Indian Act*, RSC 1985, c.32 (1st Suppl. ("Bill C-31").

14. Samson Nation admits that Samson Nation has, from time to time, through the exercise of their inherent right of self-determination and self-government and their constitutionally protected Aboriginal and treaty rights, which include Samson Nation's right to determine its own membership, maintained its own membership lists that are independent of the Samson Nation Band List created by and maintained by the Minister.
15. Pursuant to Samson Nation's inherent right to determine its own membership, citizenship and institutions and to govern itself in accordance with Samson Nation's customary laws and traditions, Samson Nation, on or about June 1, 1995, recognized and accepted the Plaintiff as a member of Samson Nation. The Plaintiff, since that time has been entitled to and continues to be entitled to exercise and receive all rights, privileges and benefits, both direct and indirect, that all members of Samson Nation may be entitled to.
16. Similar to the Plaintiff, between the period of time from June 1987 to June 1995, other individuals were also purported to have been unilaterally, and without consultation with Samson Nation or the consent of Samson Nation, added to the Samson Nation Band List maintained by the Minister.
17. Pursuant to Samson Nation's inherent right to determine its own membership, citizenship and institutions and to govern itself in accordance with Samson Nation's customary laws and traditions, Samson Nation, on or about June 1, 1995, recognized and accepted these other individuals as members of Samson Nation. All of these individuals, since that time, have been entitled to and continue to be entitled to exercise and receive all rights, privileges and benefits, both direct and indirect, that all members of Samson Nation may be entitled to.

Aboriginal and Treaty Rights

18. In answer to the ASC as a whole, Samson Nation states:
 - (a) Prior to and at the time that Samson Nation adhered to Treaty No. 6, Samson Nation existed as an organized, independent, and self-governing society and Nation.
 - (b) Samson Nation, *inter alia*, governed its membership by its own laws, within its own territory and in accordance with its own distinct social organization, cultures, customs, languages, practices and traditions, the existence of which was recognized and

affirmed by Her Majesty when Samson Nation adhered to Treaty No. 6 and in the subsequent setting aside of the Reserve Lands for Samson Nation.

- (c) Treaty No.6 was and is a sacred pact between Samson Nation and Her Majesty, with the Creator as a participant. The treaty relationship with Her Majesty was established in a particular historical context, including relationships prior to 1876 between the ancestors of Samson Nation and non-Aboriginal society. Treaty No.6 is one of the sources of Her Majesty's trust-like fiduciary obligations to Samson Nation.
- (d) In addition to the formalized written terms of Treaty No. 6, it was preceded by various negotiations, representations, commitments, and promises (the "Oral Promises") by Her Majesty's representatives. In addition to the written text of Treaty No. 6, the Oral Promises were relied upon by Samson Nation's ancestors and have been relied upon by Samson Nation to the present.
- (e) Pursuant to the Oral Promises and written terms of Treaty No. 6, Her Majesty promised, *inter alia*, to Samson Nation that its traditional way of life would not be interfered with and that it would retain its rights as a Nation, including its right to self-determination and self-government, which includes the right to determine its own membership.
- (f) Along with the written terms, the Oral Promises are legally binding and form part of the legal obligations owed by Her Majesty to Samson Nation.
- (g) In addition to the foregoing, Samson Nation's right to self-determination and self-government includes the right to determine its own membership, which is a custom, practice, or tradition that is central and integral to their distinctive culture and Samson Nation's right to self-determination or self-government. As such, it is an Aboriginal right recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- (h) Prior to and since Samson Nation adhered to Treaty No. 6, Samson Nation has retained legal jurisdiction and sovereignty over matters of concern to the life, welfare, culture and identity of Samson Nation. Samson Nation's Aboriginal and treaty right to self-determination and self-government, including the right to determine its own membership, has never been extinguished, but rather has been recognized and

affirmed by section 35(1) of the *Constitution Act, 1982* and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

- (i) Any law, statute, or regulation, including the *Indian Act*, which unjustifiably infringes upon Samson Nation's Aboriginal and treaty rights is of no force or effect.

Bill C-31

19. In response to paragraphs 11 to 12 of the ASC, paragraphs 14(a), (b) and (c) of the Response to the Demand for Particulars and in response to the ASC as a whole, Samson Nation states that Her Majesty under Bill C-31 unilaterally and in contravention of Samson Nation's Aboriginal and treaty rights imposed legislative changes regarding band membership on Aboriginal peoples, including Samson Nation.

20. Bill C-31 provided, *inter alia*, for the following:

- (a) A band list was to contain the name of every person who was a member of that band and was to be maintained by Her Majesty, as represented by the Minister;
- (b) The Minister was to have exclusive authority to determine who was and was not a member of a band;
- (c) Commencing on April 17, 1985, certain additional persons became entitled to obtain Indian status and to have their names entered in a band list maintained by the Minister who were not, prior to that date, entitled to be registered on the band list;
- (d) Commencing on June 28, 1987, further additional persons also became entitled to obtain Indian status who were not entitled to have their names entered onto band lists, prior to April 17, 1985;
- (e) Subject to the operation of the other provisions of Bill C-31, a band could assume control of its own membership, if a majority of the electors of the band consented to its so doing and consented to the band membership rules; and,
- (f) Membership rules established by a band could not disqualify for membership in a band any person who had the right to have their name entered in a band list immediately prior to the time the rules were established by reason only of a situation that existed or an action that was taken before the rules came into force.

21. Samson Nation states that Her Majesty breached Her Majesty's trust-like fiduciary obligations to Aboriginal peoples, including Samson Nation, and, *inter alia*:
- (a) Did not study and properly consider the impact of Bill C-31;
 - (b) Failed to recognize or ignored the negative impacts, chaos and turmoil that would result and did result;
 - (c) Failed to properly assist Samson Nation with the proposed transition;
 - (d) Failed to provide sufficient information, additional lands, additional housing, additional funding and additional programs and services to Samson Nation to accommodate any additional persons that the Minister unilaterally wished to add to Samson Nation's Band List;
 - (e) Failed to consider or ignored the submissions and views of First Nations, including Samson Nation;
 - (f) Misrepresented the impact of Bill C-31; and,
 - (g) Purported to add members to Samson Nation through a process that: ignored Samson Nation's customary laws, traditions, practices and culture; excluded Samson Nation from participating in or providing input into membership decisions; and, allowed the Minister to add members without the consent of Samson Nation.
22. Bill C-31 was unilaterally imposed without consulting the first nations to which the legislation would apply, ignored the adverse impacts that would result, and unjustifiably interfered with and infringed Samson Nation's Aboriginal and treaty rights to self-determination, self-government, and particularly the right to determine its own membership in accordance with its customary laws and traditions.
23. Samson Nation, in accordance with section 10 of the *Indian Act*, submitted a membership code to the Minister for the purpose of ensuring, *inter alia*, that Samson Nation would not, through the unlawful interference by Bill C-31, or otherwise, be prevented from exercising their Aboriginal and treaty rights to self-determination and self-government and otherwise to govern Samson Nation in accordance with its customary laws and practices.

24. The Minister, however, in contravention of Samson Nation's Aboriginal and treaty rights, refused to approve the aforementioned membership code.
25. In contravention of section 35(1) of the *Constitution Act, 1982* and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*, the Minister unilaterally and unlawfully asserted that it had full and exclusive control over Samson Nation's Band List.
26. Notwithstanding the impugned provisions of Bill C-31 and the actions by the Minister, it has been and remains the position of Samson Nation that it has the Aboriginal and treaty rights to self-determination and self-government, and that Samson Nation has exercised and continues to exercise its authority and inherent right to determine its own membership and to govern in accordance with Samson Nation's customary laws and traditions.
27. Her Majesty, has no authority or entitlement to make unilateral, or any, decisions regarding the membership, governance, laws, customs and traditions of Samson Nation or to otherwise interfere unlawfully with the Aboriginal and treaty rights of Samson Nation, especially Samson Nation's rights to determine its own membership, which is one of the most central of First Nation rights protected by section 35 of the *Constitution Act, 1982*.
28. Samson Nation pleads and relies upon Sections 25 of the *Charter* and Section 35 of the *Constitution Act, 1982* and state that their rights pursuant to those sections exist and are guaranteed notwithstanding the operation of any other provision within the *Charter*.
29. Samson Nation states that the provisions of Bill C-31 are of no force or effect by operation of section 52(1) of the *Constitution Act, 1982* to the extent that they unjustifiably infringe upon Samson Nation's Aboriginal and treaty right to self-determination and self-government.
30. Samson Nation was and is not obligated to consider or adhere to the impugned terms of Bill C-31.
31. In further response to paragraphs 14 (a), (b) and (c) of the Response to the Demand for Particulars, Samson Nation states that the resolution of the constitutional validity and applicability of Bill C-31 remains an extant and live issue and that the Courts in Canada, including in the decisions cited in the Response to the Demand for Particulars, have not yet had the opportunity to properly address the merits of Samson Nation's constitutional position.

32. In response to paragraphs 3 and 11 of the ASC, neither the Plaintiff nor any of the members of the proposed Class Plaintiffs may become members of Samson Nation in accordance with Samson Nation's customs and traditions solely by virtue of being added to the Minister's Band List via the impugned provisions of Bill C-31.
33. Samson Nation states and asserts that the Plaintiff and the members of the proposed Class Plaintiffs only became members of Samson Nation on or about June 1, 1995 when, in accordance with Samson Nation's inherent right to self-determination and self-government, and its customary laws and practices, Samson Nation recognized and admitted these individuals as members of Samson Nation.

Royalties Reserved for the Benefit of Samson Nation on Oil and Gas Produced From the Reserve Lands

34. Her Majesty obtained from Samson Nation and other Indians of the Hobbema Agency a surrender to Her Majesty of their rights, title and interest in respect to certain minerals located on the Reserve Lands (the "Surrenders") "in trust to grant in respect of such land the right to prospect for, mine, recover and take away any or all minerals contained therein, to such person or persons, and upon such terms and conditions as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people".
35. Her Majesty accepted the Surrenders on or about June 28, 1946 by Order in Council P.C. 2662-1946 pursuant to Treaty No. 6, the *Indian Act*, R.S.C. 1927, c. 98 s. 51 (the "*Indian Act*") and the *Regulations for the Prospecting for and the Disposal of Petroleum and Natural Gas on Indian Reserves and Indian Lands*, P.C. 5315.
36. At all relevant times, pursuant to Her Majesty's fiduciary duties and obligations that are trust-like in nature and include the common law duties of a trustee and Her Majesty's duties and obligations as agreed to in Treaty No. 6 and pursuant to the Surrenders and as legislated by the *Indian Act*, as amended, and the regulations thereunder, as amended, and the *Indian Oil and Gas Act*, R.S.C. 1985, c. 1-7, as amended, (the "*Indian Oil and Gas Act*") and the regulations thereunder, as amended, the natural resources of the Reserve Lands were under the exclusive power, authority and control of Her Majesty to administer and manage.

37. From time to time Her Majesty has purported to have granted various petroleum and natural gas leases, renewals and continuances, in the name of Her Majesty as lessor, in relation to the Reserve Lands pursuant to Treaty No. 6, the Surrenders, the *Indian Act*, as amended, the *Indian Oil and Gas Act*, as amended, and the regulations passed thereunder, as amended. Samson Nation has, *inter alia*, denied the validity and enforceability of the said leases, renewals and continuances, which claims are the subject matter of other legal proceedings. Such proceedings include Federal Court Action No. T-2022-89 and Alberta Court of Queen's Bench Action No. 9701-07434.
38. Pursuant to the terms of Treaty No. 6, the purported leases, the *Indian Act*, the *Indian Oil and Gas Act* and the regulations passed thereunder, as amended from time to time, there is reserved to Her Majesty, in trust for the benefit of Samson Nation, a royalty on all oil and gas obtained from or produced from the Reserve Lands (the "Royalties"). Samson Nation has alleged that Her Majesty has breached Her Majesty's trust-like fiduciary or equitable and other obligations and duties to Samson Nation, or in the alternative, that Her Majesty was negligent in respect to the administration, management and control of the production of oil and gas and the calculation, verification and collection of the Royalties reserved to Her Majesty on behalf of Samson Nation, which claims are the subject matter of other legal proceedings. Such proceedings include Federal Court Action No. T-2022-89 and Alberta Court of Queen's Bench Action No. 9701-07434.
39. One of the producers of oil and gas on Indian Reserve No. 138A, Chevron Canada Resources ("Chevron"), has also alleged that during the years 1991 to 1995, which years are material to this Action, Chevron overpaid the Royalties due and owing to Her Majesty on behalf of Samson Nation and the other three Maskwacis Bands. Chevron has alleged that it has overpaid Royalties by approximately \$9,700,000 during these years and seeks damages against the Maskwacis Bands and Her Majesty. Through Third Party Notices Her Majesty has also sought to be indemnified by the Maskwacis Bands for any amounts payable to Chevron by Her Majesty in relation to this claim. These proceedings are Alberta Court of Queen's Bench Action No. 9701-07434.

Samson Nation's Capital and Revenue Accounts in the Consolidated Revenue Fund

40. Pursuant to the terms of the *Indian Oil and Gas Act*, the *Indian Act*, the *Financial Administration Act*, R.S.C. 1985, c. F-11 and the regulations thereunder ("*Financial*

Administration Act), any Royalties, bonuses or other payments derived from the production of oil and gas resources from the Reserve Lands that are collected or received by Her Majesty are under the exclusive power, authority and control of Her Majesty to administer and manage.

41. Any Royalties, bonuses or other payments derived from the production of the oil and gas resources from the Reserve Lands are "Indian moneys" by virtue of sections 2 and 62 of the *Indian Act*.
42. Pursuant to the terms of the *Indian Oil and Gas Act*, the *Indian Act* and the *Financial Administration Act* these Royalties, bonuses or other payments are deposited by Her Majesty into the Consolidated Revenue Fund for the benefit of Samson Nation. However, these Royalties, bonuses or other payments are co-mingled with Her Majesty's own funds within the Consolidated Revenue Fund and are neither segregated nor deposited into separate accounts. Further, Her Majesty, borrows, uses and expends these Royalties, bonuses or other payments for Her Majesty's own use and benefit until such time that these Royalties, bonuses and other payments are transferred or paid to Samson Nation by Her Majesty.
43. Her Majesty keeps notional accounts for those first nations for whom moneys have been deposited into the Consolidated Revenue Fund, such as Samson Nation, which notional accounts identify and track amounts collected or received by Her Majesty on behalf of a specific first nation, as well as those amounts that Her Majesty has authorized to be paid or released to a first nation.
44. Her Majesty maintains a notional Capital Account and Revenue Account on behalf of the Maskwacis Bands as well as a notional Capital Account and Revenue Account on behalf of Samson Nation. Her Majesty also purports to keep a notional "suspense account" on behalf of each of the Maskwacis Bands and Samson Nation, together with any third party claimant to such account.
45. Royalties, bonuses or other payments derived from oil and gas production from Indian Reserve No. 138A that are collected and received by Her Majesty are credited, by Her Majesty, to the Maskwacis Bands Capital Account.

46. In response to paragraph 7 of the ASC, each of the four Maskwacis Bands is a separate and independent Indian band and each such band is responsible for and obliged to provide funding to its members for, including but not limited to, matters such as the provision of housing, education, health and other such programs and services. As a result, Her Majesty has historically apportioned the Royalties, bonuses and other payments collected or received from Indian Reserve No. 138A to each of the four Maskwacis Bands proportionally based on the respective population of the four Maskwacis Bands.
47. Samson Nation denies that it requested that these funds be distributed based on population. Samson Nation admits that Samson Nation and the other three Maskwacis Bands formally consented to a population based distribution, which was already the ongoing practice of Her Majesty, by a Band Council Resolution dated July 23, 1976.
48. Samson Nation also states that at all material times it was Her Majesty that was responsible for the proper determination and calculation of the populations of each of the Maskwacis Bands and for calculating and crediting the correct amount of Royalties, bonuses and other payments to Samson Nation's Capital Account. Further, Samson Nation has relied on Her Majesty's calculation of the Royalties, bonuses and other payments credited to Samson Nation's Capital Account and has made Samson Nation's financial decisions, and altered its position, in reliance of and based on Her Majesty's calculations and representation that all amounts credited to Samson Nation's Capital Accounts were not only accurate, but were also available for Samson Nation's use pursuant to the requirements of the *Indian Act* and the *Financial Administration Act*.
49. Further, Samson Nation states that the methodology used by Her Majesty to distribute funds from the Maskwacis Capital Account to Samson Nation's Capital Account was information that was generally known to all, or most, members of the Maskwacis Bands and was information that was readily available from either Her Majesty or Samson Nation if the Plaintiff, or any member of the proposed Class Plaintiffs, by exercising reasonable diligence, were to have made inquiries of either Samson Nation or Her Majesty.
50. Samson Nation specifically denies that Samson Nation concealed, let alone fraudulently concealed, the manner in which Royalties, bonuses and other payments derived from the production of oil and gas from Indian Reserve No. 138A were calculated by Her Majesty

and credited to Samson Nation's Capital Account and Samson Nation put the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.

51. Any inability on the part of the Plaintiff, or any member of the proposed Class Plaintiffs, to obtain this information arises from their own failure to make reasonable inquiries.
52. Further, two of the Maskwacis Bands, the Louis Bull First Nation and the Montana First Nation, have commenced legal proceedings against Her Majesty with respect to the manner in which Her Majesty credited the Royalties, bonuses and other payments derived from the production of oil and gas from Indian Reserve No. 138A to each of the Maskwacis Bands. In Federal Court Action Nos. T-2953-93 and T-2954-93 each of the Louis Bull First Nation and Montana First Nation allege, which allegations Samson Nation specifically deny, that the Royalties, bonuses and other payments derived from Indian Reserve No. 138A should have been apportioned and split equally between each of the four Maskwacis Bands and not proportionally on the basis of population. In those actions, Her Majesty is seeking to be indemnified by Samson Nation for any alleged errors or overpayments of Royalties, bonuses and other payments that Louis Bull First Nation and Montana Nation allege were incorrectly credited to Samson Nation's Capital Account.
53. Pursuant to the terms of the *Indian Act* and the *Financial Administration Act*, interest earned on Indian moneys held in Samson Nation's Capital Account is credited to Samson Nation's Revenue Account.
54. Samson Nation's, and the members of Samson Nation, interest in the Indian moneys credited to Samson Nation's Capital Account and Revenue Account is a communal interest.

Expenditures of Capital and Revenue Moneys

55. Pursuant to the requirements of the *Indian Act* and the *Financial Administration Act*, and the regulations passed under each of these acts, Samson Nation is entitled to access, expend and use Indian moneys credited to Samson Nation's Capital Account and Revenue Account.
56. Pursuant to section 64(1) of the *Indian Act*, Her Majesty, with the consent of Samson Nation may authorize and direct the expenditure of money credited to Samson Nation's Capital Account for those purposes enumerated in section 64(1).

57. Her Majesty had and has the exclusive authority and discretion to determine whether any such expenditure of money credited to Samson Nation's Capital Account was for the use and benefit of Samson Nation and the members of Samson Nation.
58. Any requests by Samson Nation to expend money from the Capital Account had to be authorized by a Band Council Resolution and Samson Nation was also required to provide any further and additional supporting documents, such as proposed budgets, which Her Majesty may request or demand from time to time. Her Majesty assessed the requests and if Her Majesty determined that the expenditures were for the use and benefit of Samson Nation and the members of Samson Nation, then Her Majesty would exercise Her Majesty's discretion and approve the expenditures.
59. Samson Nation had a continuing obligation to expend such Indian money's only for those purposes approved by Her Majesty and to further provide to Her Majesty and to the members of Samson Nation audited financial statements, which financial statements Her Majesty reviewed and approved.
60. Samson Nation states that during the material times, Her Majesty approved and exercised Her Majesty's discretion to consent to all expenditures from Samson Nation's Capital Account. Samson Nation has relied and altered its position based on such consents and approvals with respect to all money's that Samson Nation has expended from Samson Nation's Capital Account.
61. Consequently, and in answer to the whole of the ASC, any expenditures of moneys credited to Samson Nation's Capital Account, during the material times, were lawfully authorized expenditures.
62. Further, Her Majesty's review of whether any such expenditures was for the use and benefit of Samson Nation and the members of Samson Nation would have included those members of Samson Nation that Her Majesty unilaterally added to the Samson Band List. Consequently, any loss, injury, deprivation or damage, all of which is expressly denied, that may have resulted to the Plaintiff, and members of the proposed Class Plaintiffs, through Samson Nation's expenditure of money credited to the Capital Account is a result of Her Majesty's breach of any obligations owed by Her Majesty to the Plaintiff, and members of the proposed Class Plaintiffs, and not a result of any breach of Samson Nation's obligations.

63. Pursuant to section 69 of the *Indian Act*, in recognition of Samson Nation's inherent Aboriginal and treaty right to self-determination and self-government, Her Majesty authorized Samson Nation to control, manage and expend money credited to Samson Nation's Revenue Account.
64. Pursuant to section 69, Samson Nation had a greater discretion to determine how and for what purposes money credited to the Revenue Account would be expended and whether such expenditures would further the progress and welfare of Samson Nation and the members of Samson Nation.
65. However, during the material times, Her Majesty retained and continued to exercise Her Majesty's discretion to approve and authorize all proposed expenditures from Samson Nation's Revenue Account under section 69 of the *Indian Act*.
66. Any requests by Samson Nation to expend money from the Revenue Account had to be authorized by a Band Council Resolution and any further and additional supporting documents, including proposed budgets, which Her Majesty may request or demand. Her Majesty assessed the request, and if it was determined that the proposed expenditure would further the progress and welfare of Samson Nation and the members of Samson Nation, then Her Majesty would exercise Her Majesty's discretion to approve the expenditure.
67. Further, Her Majesty retained the discretion to require that any expenditure under section 69 be approved by way of a referendum of the members of Samson Nation.
68. If Her Majesty determined that Samson Nation was not exercising its authority properly and for the progress and welfare of Samson Nation and the members of Samson Nation, then Her Majesty had the authority to revoke Samson Nation's section 69 authority.
69. Samson Nation had a continuing obligation to expend such Indian money's only for those purposes approved by Her Majesty and to provide Her Majesty, and to the members of Samson Nation, audited financial statements, which financial statements Her Majesty reviewed and approved.
70. Samson Nation states that during the material times, Her Majesty approved and exercised Her Majesty's discretion to consent to all expenditures from Samson Nation's Revenue Account. Samson Nation has relied and altered its position based on such consents and

approvals with respect to all money's that Samson Nation has expended from Samson Nation's Revenue Account.

71. Consequently, and in answer to the whole of the ASC, any expenditures of moneys credited to Samson Nation' Revenue Account during the material times were all lawfully authorized expenditures.
72. Further, Her Majesty's assessment of whether any such expenditures would further the progress and welfare of Samson Nation and the members of Samson Nation, would have included those members of Samson Nation that Her Majesty unilaterally added to the Samson Band List. As a result, any loss, injury, deprivation or damage, all of which is expressly denied, that may have resulted to the Plaintiff, and members of the proposed Class Plaintiffs, through Samson Nation's expenditure of money credited to the Revenue Account is a result of Her Majesty's breach of any obligations owed by Her Majesty to the Plaintiff, and members of the proposed Class Plaintiffs, and not the result of any breach of Samson Nation's obligations.

Samson Nation's Expenditure of Capital and Revenue Moneys During the Material Times

73. Samson Nation denies the allegations in paragraph 16 of the ASC and states that on or about 1988 Samson Nation determined that it was prudent and in the best interests of the then current members of Samson Nation and all future generations and members of Samson Nation, which subsequently included the Plaintiff and members of the proposed Class Plaintiffs who were recognized as members of Samson Nation on or about June 1, 1995, to preserve the moneys that were then credited to Samson Nation's Capital Account, and, if possible, to increase the value of the moneys credited to Samson Nation's Capital Account.
74. Since that time Samson Nation attempted to restrict its annual expenditures to the value of the money credited to Samson Nation's Revenue Account for that particular year. Further, any expenditure of money credited to Samson Nation's Capital Account, if such expenditure became necessary or desirable, would be limited to any additions to the Capital Account without encroaching on the existing moneys already credited to Samson Nation's Capital Account.

75. Samson Nation further states that this was also the policy of Her Majesty with respect to approvals of expenditures from the capital and revenue accounts of Samson Nation and other oil and gas producing First Nations located within the province of Alberta.
76. During the material years in question, 1988 to 1995, Samson Nation's budgetary decisions and budgetary expenditures, including any payments made by Samson Cree Nation to any recognized members of Samson Nation, were based on and dependent upon actual or estimated amounts that were credited or were anticipated to be credited to Samson Nation's Revenue Account and were neither dependent upon nor related to any additions to Samson Nation's Capital Account
77. Any loss, injury, deprivation or damage, all of which is expressly denied, that may have resulted to the Plaintiff, or any member of the proposed Class Plaintiffs, as a consequence of payments made by Samson Cree Nation to any recognized members of Samson Nation, were neither related, connected nor dependent upon any additional Royalties, bonuses or other payments credited to Samson Nation's Capital Account, and, the Plaintiff, and members of the proposed Class Plaintiffs, have suffered no losses, injuries, deprivation or damages as a result of any such amounts having been credited to Samson Nation's Capital Account.
78. In answer to the ASC as a whole, Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has any claim, whether in law or in equity, to any portion or amount of Samson Nation's Capital Account, or any portion or amount of the funds held in trust on behalf of Samson Nation in the Kisoniyaminaw Heritage Trust, that is either superior to or in priority to the communal property interest of all other members of Samson Nation.
79. Further, or in the alternative, pursuant to section 64 of the *Indian Act*, during the material time in question, through the exercise of Her Majesty's discretion, Samson Nation was specifically authorized to, and did, expend all or almost all of the Royalties, bonuses and other payments derived from oil and gas production from Indian Reserve No. 138A that was credited to Samson Nation's Capital Account, by Her Majesty, during the years 1988 to 1995.
80. Her Majesty approved all such expenditures on the basis that such expenditures were for the use and benefit of Samson Nation and the members of Samson Nation.

81. Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has suffered any alleged loss, injury, deprivation or damage, all of which is expressly denied, with respect to approved expenditures by Samson Nation pursuant to section 64 of the *Indian Act* during the material times.
82. Samson Nation states that the Plaintiff, and other members of the proposed Class Plaintiffs, have benefited, since at least June 1, 1995, if not earlier, and up to the present, whether such benefits are direct or indirect, from the expenditure of moneys from Samson Nation's Capital Account during the years 1988 to 1995.
83. Examples of expenditures made pursuant to section 64(1) of the *Indian Act*, include but are not limited to:
- (a) In or about 1990, \$3,500,000 was contributed to Samson Nation's Education Trust Fund, which trust fund has grown and continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
 - (b) In or about 1991, \$2,700,000 was contributed to the Maskwachees Cultural College Trust Fund, which trust fund has grown and continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
 - (c) In or about 1992, \$2,510,275.38 was expended to construct housing for members of Samson Cree Nation which housing continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
 - (d) In or about 1992, \$5,000,000 was contributed to Samson Nation's Education Trust Fund, which trust fund has grown and continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
 - (e) In or about 1992, \$5,784,500 was expended on the construction of a school for members of Samson Nation which school continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs; and,

- (f) In or about 1994, \$4,350,483 was expended on the Fire Department, housing, public works, the Cultural Centre, the Trades Centre and community buildings, which assets and programs continue to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs.
84. In answer to the whole of the ASC, Samson Nation states that the Plaintiff, and members of the proposed Class Plaintiffs, have either directly or indirectly, benefited, and continue to benefit, from expenditures in relation to Royalties, bonuses and other payments derived from oil and gas production from Indian Reserve No. 138A during the years 1988 to 1995 and Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has any claim, whether in law or in equity, to any portion or amount of Samson Nation's Capital Account, or any portion or amount of the funds held in trust on behalf of Samson Nation in the Kisoniyaminaw Heritage Trust, that is either superior to or in priority to the communal property interest of all other members of Samson Nation.
85. Further, or in the further alternative, if Samson Nation's Capital Account or the Kisoniyaminaw Heritage Trust has increased in value as a consequence of Her Majesty including the Plaintiff, or any members of the proposed Class Plaintiffs, in Her Majesty's calculation of the Royalties, bonuses and other payments derived from oil and gas production from Indian Reserve No. 138A during the years 1988 to 1995, then the Plaintiff, and members of the proposed Class Plaintiffs, have benefited and continue to benefit, directly or indirectly, from any such increase in value and Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has any claim, whether in law or in equity, to any portion or amount of Samson Nation's Capital Account, or any portion or amount of the funds held in trust on behalf of Samson Nation in the Kisoniyaminaw Heritage Trust, that is either superior to or in priority to the communal property interest of all other members of Samson Nation.
86. The amounts and nature of any expenditures by Samson Nation of money's credited to Samson Nation's Capital Account or Revenue Account was information that was readily available in the audited financial statements of Samson Nation, that were available from either Samson Nation or Her Majesty if the Plaintiff, or any member of the proposed Class Plaintiffs, by exercising reasonable diligence, made inquiries of either Samson Nation or Her Majesty

87. Samson Nation specifically denies that Samson Nation at any time concealed, let alone fraudulently concealed, the amounts, nature and purpose of any expenditures by Samson Nation of moneys credited to Samson Nation's Capital Account or Revenue Account and Samson Nation put the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.
88. Further, Samson Nation specifically denies that it was unjustly enriched as alleged, or in any other manner, and states that:
- (a) The Plaintiff and the members of the proposed Class Plaintiffs have not been deprived of any benefits, either direct or indirect, or suffered any loss, injury or damage as a result of any Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995;
 - (b) The Plaintiff and the members of the proposed Class Plaintiffs have benefitted, either directly or indirectly, since at least June 1, 1995 up to and including the present, as a result of expenditures from Samson Nation's Capital Account during the years 1988 to 1995;
 - (c) Samson Nation has not been enriched at the expense of the Plaintiff and the members of the proposed Class Plaintiffs, as a result of any Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995;
 - (d) All such Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995 have been expended for the use and benefit of Samson Nation and the members of Samson Nation, including the Plaintiff and the members of the proposed Class Plaintiffs;
 - (e) Or, if any such Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995 that have increased the value of Samson Nation's Capital Account and Samson Nation, then the members of Samson Nation, including the Plaintiff and the members of the proposed Class Plaintiffs have

benefitted, either directly or indirectly, as a result of the increase in value of Samson Nation's Capital Account; and,

- (f) All amounts credited to Samson Nation's Capital Account during the years 1988 to 1995 were lawfully credited by Her Majesty pursuant to the applicable statutory provisions and the exercise of Her Majesty's discretionary powers and all amounts expended by Samson Nation from Samson Nation's Capital Account during the years 1988 to 1995 were lawfully expended and consented to by Her Majesty pursuant to the applicable statutory provisions and the exercise of Her Majesty's discretionary powers;

and with respect to any allegations in relation to any unjust enrichment of Samson Nation, Samson Nation put the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.

Fiduciary Obligations

89. In addition, or in the alternative, Samson Nation denies that it has breached any fiduciary obligations owed to the Plaintiff or any member of the proposed Class Plaintiffs as alleged, or at all and puts the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.
90. In response to paragraphs 10, 22, 25, and 36 of the ASC, and the whole of the ASC, Samson Nation admits that the Chief and Council of Samson Nation owe fiduciary obligations to the members of Samson Nation in specific contexts and circumstances, however, Samson Nation disagrees with and disputes that the fiduciary obligations owed are as characterized in paragraph 10 of the ASC.
91. Further, Samson Nation owes fiduciary obligations only to members of Samson Nation as recognized in accordance with Samson Nation's Aboriginal and treaty rights to self-determination, self-government and, in particular, the right to determine its own membership in accordance with its customary laws and traditions.
92. Samson Nation did not owe any fiduciary obligations whatsoever to the Plaintiff, or any member of the proposed Class Plaintiffs, until they were recognized as members of Samson Nation in accordance with Samson Nation's customary laws and traditions.

93. Likewise, the Plaintiff, or any member of the proposed Class Plaintiffs, were not entitled to any benefits accruing to members of Samson Nation, including but not limited to any payments made to members of Samson Nation by Samson Nation such as *per capita* distributions pursuant to section 64(1)(a) of the *Indian Act* or other payments made to members of Samson Nation until such time as they were recognized as members of Samson Nation in accordance with Samson Nation's customary laws and traditions.
94. Samson Nation's fiduciary obligations include an ongoing obligation to continue to assert and to protect Samson Nation's Aboriginal and treaty rights to self-determination, self-government and, in particular, the right to determine its own membership in accordance with its customary laws and traditions.
95. The assertion and protection of these Aboriginal and treaty rights from any unjustified infringement is of critical importance to the current members of Samson Nation and future members of Samson Nation.
96. Any steps taken by Samson Nation to assert and protect Samson Nation's Aboriginal and treaty rights to self-determination, self-government and, in particular, the right to determine its own membership in accordance with its customary laws and traditions was in accordance with Samson Nation's fiduciary obligations and was done honestly and in good faith.
97. Further, Samson Nation has an ongoing fiduciary obligation to protect and preserve Samson Nation's property, funds and resources from exploitation by third parties, which includes individuals that are not recognized members of Samson Nation. Consequently, Samson Nation was fulfilling its fiduciary obligations by not distributing payments from Samson Nation's Revenue Account, to the Plaintiff, and members of the proposed Plaintiff Class, until June 1, 1995 when such individuals were recognized as members of Samson Nation in accordance with Samson Nations customary laws and traditions.
98. The protection and preservation of Samson Nation's property, funds and resources from exploitation by third parties is of critical importance to the current members of Samson Nation and future members of Samson Nation.
99. Any steps taken by Samson Nation to protect and preserve Samson Nation's property, funds and resources from exploitation by individuals that were not recognized members of

Samson Nation was in accordance with Samson Nation's fiduciary obligations and were done honestly and in good faith.

100. In the alternative, if Samson Nation did owe the Plaintiff, or any member of the proposed Class Plaintiffs, fiduciary obligations, Samson Nation fulfilled all fiduciary obligations owed to the Plaintiffs, or any members of the proposed Class Plaintiffs.
101. A fiduciary that acts in accordance with legislation cannot be said to be breaching its fiduciary duty.
102. As the Plaintiff admits in paragraphs 8 and 13 in the ASC, moneys credited to either of Samson Nation's Capital Account or Revenue Account could only be expended by Samson Nation when Her Majesty exercised Her Majesty's discretion to authorize the expenditure in accordance with the provisions of the *Indian Act* and the *Financial Administration Act*. Her Majesty reviewed all proposed expenditures of Samson Nation and concluded that such expenditures were for the benefit of Samson Nation and the members of Samson Nation, and promoted the general progress and welfare of Samson Nation and the members of Samson Nation, including those individuals that the Minister unilaterally added to Samson's Band List pursuant to the impugned provisions of Bill C-31.
103. Samson Nation states that during the material times it lawfully, in accordance with the authorizations of Her Majesty, expended moneys credited to Samson Nation's Capital Account and Revenue Account. Further, Samson Nation relied and altered its financial position based on Her Majesty's authorizations with respect to expenditures during the material times. If Her Majesty failed to properly exercise Her Majesty's discretion to authorize the expenditures, then any claim that the Plaintiff, or member of the proposed Class Plaintiff's, may have lies against Her Majesty and not Samson Nation.
104. Any steps taken by Samson Nation, pursuant to Her Majesty's authorization to expend any moneys from Samson Nation's Capital Account and Revenue Account at the material times was done lawfully, honestly and in good faith.
105. Further, or in the alternative, all discretionary decisions respecting the use, expenditure, and distribution of property, monies, lands, and other resources are matters falling within the sole and exclusive jurisdiction of Samson Nation. The said jurisdiction is protected by section 35(1) of the *Constitution Act, 1982* and is exercised in accordance with Samson

Nation's customary laws and traditions, including customary laws and traditions respecting membership. Decisions rendered in accordance with Samson Nation's customary laws and traditions are not arbitrary, unfair, or unlawful, and are not in violation of a fiduciary duty.

Membership Agreements

106. In response to paragraphs 17 to 19 and 23 to 26 of the ASC, and the entirety of the ASC, the Plaintiff, and members of the proposed Class of Plaintiffs, or individuals authorized to do so on their behalf, executed agreements with Samson Nation whereby the Plaintiff, and members of the proposed Class of Plaintiffs, fully and finally released Samson Nation of any and all liability for any possible claims with respect to any distribution of money to members of Samson Nation during the material times. The Plaintiff, and members of the proposed Class Plaintiffs, in return received a payment of \$1,000 and were added to Samson Nation's membership in accordance with Samson Nation's customary laws and practices (the "Membership Agreements"). Samson Nation pleads and relies on these Membership Agreements.
107. Samson Nation executed the Membership Agreements honestly and in good faith and pursuant to its Aboriginal and treaty rights to self-determination and self-government and Samson Nation specifically denies that it concealed, let alone fraudulently concealed any information from the Plaintiff or members of the proposed Class Plaintiffs at the time of execution of the Membership Agreements and the Plaintiff and members of the proposed Class Plaintiffs are put to the strict proof thereof.
108. The Membership Agreements provide, *inter alia*:
- (a) The applicant recognizes that Samson Nation has the right to determine its membership;
 - (b) The applicant has waived any claim against Samson Nation for any past distributions of moneys payable to members of Samson Nation;
 - (c) The applicant acknowledged that they have been fully advised and informed of their legal rights; and,
 - (d) The applicant has agreed to maintain or change to a surname that is a traditional Samson Cree Nation surname in which he or she is a descendant of.

109. Samson Nation has relied on the Membership Agreements and continues to recognize the Plaintiff, and members of the proposed Class Plaintiffs, as members of Samson Nation, in accordance with Samson Nation's customary laws and practices, since the time they entered into the Membership Agreements in or around June 1, 1995. Since that time the Plaintiff, and members of the proposed Class Plaintiffs have received distributions of moneys from Samson Nation and have enjoyed all other rights and benefits, both direct and indirect, associated with being a member of Samson Nation.
110. Samson Nation states that pursuant to the Membership Agreements, the Plaintiff, and the other members of the proposed Class Plaintiffs, do not have standing or are barred from bringing the claims alleged in the ASC.
111. In response to paragraphs 26 and 27 of the ASC, the Federal Court in *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)*, 2002 FCT 1299 held that the Plaintiff, and other members of the proposed Class Plaintiffs, were entitled to specific funds held by Her Majesty in a purported Suspense Account because:
- (a) Her Majesty was not a party to the Membership Agreements;
 - (b) The moneys held in suspense were set aside by Her Majesty on behalf of the Plaintiff, and other members of the proposed Class Plaintiffs; and,
 - (c) The money's held in suspense were in relation to per capita distributions pursuant to section 64(1)(a) of the *Indian Act*, as opposed to distributions of moneys from Samson Nation's Revenue Account.
112. The reasons by Hugessen J. quoted in the ASC at paragraph 26 are *obiter dictum*, and did not consider or address the merits of Samson Nation's constitutional arguments with respect to the validity and applicability of Bill C-31.
113. Samson Nation, however, has and always had control of its own membership pursuant to its unextinguished Aboriginal and treaty rights to self-determination and self-government.
114. Further, the Plaintiff, and the members of the proposed Class Plaintiffs, have been aware of, or were reasonably able to inform themselves of Hugessen J.'s comments with respect to the Membership Agreements since on or about December 11, 2002.

Kisoniyaminaw Heritage Trust

115. On or about February 1, 2006, all moneys that were then credited to Samson Nation's Capital Account and Revenue Account were transferred by Her Majesty to the Kisoniyaminaw Heritage Trust which is a private trust and whose Trustee's are independent of the Chief and Council of Samson Nation.
116. Since February 1, 2006 Her Majesty has also transferred any additional moneys that have been credited to Samson Nation's Capital Account and Revenue Account to the Kisoniyaminaw Heritage Trust.
117. By way of a referendum, the members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs, had the opportunity to vote for and did in fact approve the transfer of moneys credited to Samson Nation's Capital Account and Revenue Account to the Kisoniyaminaw Heritage Trust.
118. The Federal Court, in Federal Court Action No. T-2022-89, considered whether the proposed transfer to the Kisoniyaminaw Heritage Trust was in the best interests for Samson Nation and the members of Samson Nation, which included the Plaintiff and members of the proposed Class Plaintiffs, and approved the proposed transfer of moneys credited to Samson Nation's Capital Account and Revenue Account to the Kisoniyaminaw Heritage Trust.
119. Finally, Her Majesty also reviewed the proposed transfer to the Kisoniyaminaw Heritage Trust and pursuant to section 64(1)(k) of the *Indian Act*. Her Majesty assessed whether the said expenditure from Samson Nation's Capital Account and Revenue Account to establish the Kisoniyaminaw Heritage Trust was for the use and benefit of Samson Nation and the members of Samson Nation, which members included the Plaintiff and the members of the proposed Class Plaintiffs, and Her Majesty exercised Her Majesty's discretion and approved the expenditure and the establishment of the Kisoniyaminaw Heritage Trust.
120. The Plaintiff and the members of the proposed Class Plaintiffs acquiesced to the creation and establishment of the Kisoniyaminaw Heritage Trust and did not object to the creation and establishment of the Kisoniyaminaw Heritage Trust before either the Federal Court or Her Majesty.

121. The provisions of the Trust Deed that govern the Kisoniyaminaw Heritage Trust are conservative and are intended to preserve and grow the Trust with very limited powers of encroachment on the capital held in the Trust. Further the Trust Deed requires that the Trustees consider only the best interests of Samson Nation and the members of Samson Nation as a whole and does not provide the Trustees any discretion to treat any sub group of members of the Samson Nation in preference to any other member of Samson Nation.
122. Further, the Trust Deed does not provide for or allow for any distributions to individual members of Samson Nation.

Constructive Trust and Federal Court Proceeding T-2022-89

123. Based on all of the foregoing, Samson Nation denies that the Plaintiff and the members of the proposed Class Plaintiffs have established any basis on which they may be entitled to a constructive trust with respect to any portion of the Kisoniyaminaw Heritage Trust, whether capital or revenue.
124. The Plaintiff and the members of the proposed Class Plaintiffs have a communal interest in the assets of the Kisoniyaminaw Heritage Trust which interest can be no greater or superior to the communal interests of any other member of Samson Nation.
125. Further, the creation of a constructive trust in favour of the Plaintiff and members of the proposed Class Plaintiffs as demanded would be inequitable, unjust and unfair to all other members of Samson Nation and would cause undue hardship and irreparable harm to Samson Nation and the remaining members of Samson Nation.
126. Samson Nation further denies that the Plaintiff and the members of the proposed Class Plaintiffs have any claim in law or in equity to any damages that may be recovered by Samson Nation in Federal Court Action No. T-2022-89.
127. The recovery of any damages by Samson Nation, on behalf of Samson Nation and the members of Samson Nation, with respect to any underpaid royalties that may be due and owing to Samson Nation are unrelated to the Plaintiff and the members of the proposed Class Plaintiffs alleged injuries, loss, deprivation or damages, all of which are expressly denied, and upon recovery of any damages the Plaintiff and the members of the proposed Class Plaintiffs will benefit, either directly or indirectly, from the recovery of such damages along in step with all other members of Samson Nation.

Suitability as a Class Proceeding

128. Samson Nations states that this ASC is not suitable for a class proceedings as:

- (a) The Plaintiff and the members of the proposed Class Plaintiffs do not disclose any valid claims or causes of action whether in law or in equity;
- (b) It is unknown to Samson Nation whether the Plaintiff is an appropriate representative;
- (c) There are no common issues that are material ingredients of the claim; and,
- (d) A class proceeding is not the preferable procedure as any claims will inevitably break down into complex individual assessments turning on, *inter alia*:
 - i. Whether or not Samson Nation has immunity from the alleged claims with respect to all or some of the members of the proposed Class Plaintiffs; and,
 - ii. The specific knowledge of the individual members of the proposed Class Plaintiffs with respect to the matters plead in the ASC.

Limitations/Laches and Estoppel

129. In response to the ASC as a whole, Samson Nation states that all claims pled in the ASC are remedial and statute barred. Samson Nation pleads and relies on, *inter alia*, the following:

- (a) *Limitations of Actions Act*, RSA 1980, c L-15, including sections 4, 5 and 51;
- (b) *Limitations Act*, SA 1999, c L.15.1, including sections 2 and 3; and
- (c) *Limitations Act*, RSA 2000, c L-12, including section 3 and 10,

all as amended from time to time, and any such predecessor legislation as may have been in force from time to time.

130. The Plaintiff, and members of the proposed Class Plaintiffs, knew at all material times or ought too have known of the facts relating to the allegations contained in the ASC and the injuries, deprivation, losses or damages claimed in the ASC. To the extent that remedial relief is claimed in respect of events and injuries, deprivation, losses or damages which occurred more than two years prior to the filing of the ASC, any cause of action which the

Plaintiff, or members of the proposed Class Plaintiffs may have had against Samson Nation is statute barred pursuant to the *Limitations Act*, including section 3(1)(a).

131. To the extent that remedial relief is claimed in respect of events and injuries, deprivation, losses or damages which occurred more than ten years prior to the filing of the ASC, any cause of action which the Plaintiff, or members of the proposed Class Plaintiffs may have had against Samson Nation is statute barred pursuant to the *Limitations Act*, including section 3(1)(b).

132. Further, and in response to the ASC as a whole, Samson Nation states that the Plaintiff and members of the proposed Class Plaintiffs or at least some of them have had legal counsel and received legal advice from time to time with respect to the matters plead in this ASC or, at a minimum, the Plaintiff and members of the proposed Class Plaintiffs have also been plaintiffs or members of classes of plaintiffs that have advanced claims in the courts in relation to the subject matters pled in this ASC and the Plaintiff and members of the proposed Class Plaintiffs are estopped from bringing this claim based on *res judicata*, issue estoppel, waiver and acquiescence. The Plaintiff and the members of the proposed Class Plaintiffs knew at all materials times that:
 - (a) Samson Nation did not recognize the Plaintiff and members of the proposed Class Plaintiffs as members of Samson Nation until June, 1, 1995;
 - (b) Samson Nation did not distribute to the Plaintiff and members of the Class Plaintiffs any payments from Samson Nation's Revenue Account between 1988 and June 1, 1995;
 - (c) The Plaintiff and members of the proposed Class Plaintiffs were members of the class of plaintiffs in Federal Court Action No. T-430-01, which dealt with funds held in the Suspense Account by Her Majesty on behalf of the Plaintiff and the members of the proposed Class of Plaintiffs; and,
 - (d) The Plaintiff and members of the proposed Class of Plaintiffs were members of the proposed class of plaintiffs, in Federal Court Action No. T-880-06 in which action the plaintiff raised the same or similar allegations as in the present ASC. The Federal Court and Federal Court of Appeal refused to certify the proposed class of plaintiffs

and that claim was abandoned and the same claim has now been resurrected in these proceedings.

133. In further, response to the ASC as a whole, Samson Nation pleads and relies on the equitable doctrines of laches, acquiescence, delay, waiver, and equitable estoppel and state that the Plaintiff and the members of the proposed Class Plaintiffs were aware of or were reasonably able to inform themselves of the facts in relation to the allegations and claims contained in the ASC and there has been a prolonged, inordinate and inexcusable delay in bringing this ASC and seeking the relief claimed therein, which has resulted in significant prejudice to Samson Nation and it would be unjust and inequitable to grant the Plaintiff and the members of the proposed Class Plaintiffs the requested relief or any relief.
134. Further, or in the alternative, the Plaintiff and the members of the proposed Class Plaintiffs, or some of them, by accepting, entering and benefiting from the Membership Agreements caused or permitted Samson Nation to believe that the Plaintiff and the members of the proposed Class Plaintiffs waived any further claims with respect to the matters raised in this ASC against Samson Nation. As a result, Samson Nation materially changed its position, acted to its prejudice, and has otherwise been prejudiced.
135. Further, any declarations sought in the ASC that are not in substance remedial will have no practical utility and should not be granted.
136. Further, Samson Nation states that any claims raised in this ASC, by the Plaintiff and the members of the proposed Class Plaintiffs, are claims that should have properly been raised against Her Majesty and not Samson Nation.
137. Further, Samson Nation states that in the event that Samson Nation is held to be liable for any alleged claims or damages within these proceedings then Samson Nation is entitled to be indemnified, in whole or in part, by Her Majesty.

Remedy sought:

138. Samson Nation requests that the action of the Plaintiff and the proposed members of the Class Plaintiffs be dismissed with costs.
139. Such further and other relief as this Honourable Court deems just.

Dated at the City of Calgary, in the Province of Alberta, this 30th day of May, 2016.