



S-143180

NO.....

VANCOUVER REGISTRY

*IN THE SUPREME COURT OF BRITISH COLUMBIA*

BETWEEN:

F. PHILIP WILHELMSSEN

PLAINTIFF

AND:

**ASIA PACKAGING GROUP INC., ROBERT WILSON, BRIAN  
BIRMINGHAM, JIN KUANG, MICHAEL E.D. RAYMONT, GEORGE  
DORIN, AND MANNING ELLIOTT LLP**

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

**THIS ACTION HAS BEEN STARTED BY THE PLAINTIFF(S) FOR THE RELIEF SET OUT IN PART 2  
BELOW.**

**IF YOU INTEND TO RESPOND TO THIS ACTION, YOU OR YOUR LAWYER MUST**

- (a) File a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) Serve a copy of the filed response to civil claim on the plaintiff.

**IF YOU INTEND TO MAKE A COUNTERCLAIM, YOU OR YOUR LAWYER MUST**

- (a) File a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-noted registry of this court within the time frame for response to civil claim described below, and,
- (b) Serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL TO FILE THE RESPONSE TO CIVIL CLAIM WITHIN THE TIME FOR RESPONSE TO CIVIL CLAIM DESCRIBED BELOW.**



***Time for response to civil claim***

A RESPONSE TO CIVIL CLAIM MUST BE FILED AND SERVED ON THE PLAINTIFF(S).

- (a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) If you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) If you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served upon you, or
- (d) If the time for response to civil claim has been set by order of the court, within that time.

**CLAIM OF THE PLAINTIFF*****Part 1: STATEMENT OF FACTS*****DEFINED TERMS**

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
  - (a) “APX” means the defendant, Asia Packaging Group Inc.
  - (b) “APX Disclosure Documents” means all documents, other than the Impugned Documents, that were issued by APX during the Class Period.
  - (c) “Audited Statements” means, collectively, the July 27, 2011 Manning Opinion, the July 27, 2012 Manning Opinion, the July 25, 2013 Manning Opinion, and the March 31, 2013 Qualified Manning Opinion, and in each case, the various balance sheets, statements and reports to which they apply.
  - (d) “Birmingham” means the Defendant, Brian Birmingham.
  - (e) “Board” means the Board of Directors of APX.
  - (f) “BCBCA” means the British Columbia *Business Corporations Act*, SBC 2002, c 57, as amended.
  - (g) “BCSA” means the British Columbia *Securities Act*, RSBC 1996, c 418, as amended, and the British Columbia *Securities Act*, SBC 2004, c 43, as amended, should it come into force.



- (h) **"Class" and "Class Members"** mean all persons and entities resident or domiciled in the Province of British Columbia who purchased or otherwise acquired **APX Securities**, whether in a primary offering or in the secondary market, from and including April 26, 2011 to and including November 6, 2013, other than the **Excluded Persons**.
- (i) **"Class Period"** means the period from and including April 26, 2011 to and including November 6, 2013.
- (j) **"CPA"** means the British Columbia *Class Proceedings Act*, RSBC 1996, c 50, as amended;
- (k) **"CPC"** means a Capital Pool Company.
- (l) **"Defendants"** means **APX, Manning**, and the **Individual Defendants**.
- (m) **"Dorin"** means the Defendant, George Dorin.
- (n) **"EBITDA"** means Earnings before Interest, Taxes, Depreciation and Amortization.
- (o) **"Exchange Manual"** means the Corporate Finance Manual of the TSX-V and all orders, policies, rules, regulations, bulletins, staff notices and bylaws of the TSX-V as amended.
- (p) **"Excluded Persons"** means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an **Individual Defendant**;
- (q) **"Filing Statement"** means the APX Filing Statement Concerning the Acquisition by Asia Packaging Group Inc. of the issued and outstanding securities of **Jiayuan** dated as at March 31, 2013.
- (r) **"GAAP"** means Canadian generally accepted accounting principles.
- (s) **"GAAS"** means Canadian generally accepted auditing standards.
- (t) **"Hong Brothers"** means, collectively, Wenge Hong and Qilin Hong.
- (u) **"HT"** means HT Capital Inc., a **CPC** and the precursor in name to **APX**.
- (v) **"IFRS"** means International Financial Reporting Standards. **APX** adopted IFRS on January 1, 2008.
- (w) **"IIROC"** means the Investment Industry Regulatory Organization of Canada.



- (x) **"Impugned Documents"** (each being an **Impugned Document**) means, collectively, and together with the **Filing Statement**, the management's discussion and analysis, audited annual financial statements, unaudited interim financial statements and the **Audited Statements** issued by **APX** during the **Class Period**.
- (y) **"Individual Defendants"** means Wilson, Birmingham, Kuang, Raymont, and Dorin, collectively.
- (z) **"Independent Committee"** means the committee that **APX** announced on November 6, 2013, which was established to "consider strategic alternatives".
- (aa) **"Jiayuan"** means Jiayuan Investment Limited, a company incorporated under the laws of the British Virgin Islands, and a 100% owned subsidiary of **APX**.
- (bb) **"July 27, 2011 Manning Opinion"** means the July 27, 2012 Opinion of Manning regarding the financial statements of HT Capital Inc. as at March 31, 2011, and the results of its operations and its cash flows for the year ended March 31, 2011, and the various balance sheets, statements and reports to which it applies.
- (cc) **"July 27, 2012 Manning Opinion"** means the July 27, 2012 Opinion of Manning regarding the consolidated financial statements of **APX** as at March 31, 2012 and 2011 and its financial performance and cash flows for the years ended March 31, 2012 and 2011, and the various balance sheets, statements and reports to which it applies.
- (dd) **"July 25, 2013 Manning Opinion"** means the July 25, 2013 Opinion of Manning regarding the consolidated financial statements of **APX** as at March 31, 2013 and 2012, and its financial performance and cash flows for the years ended March 31, 2013 and 2012, and the various balance sheets, statements and reports to which it applies.
- (ee) **"Kuang"** means the Defendant, Jin Kuang.
- (ff) **"Manning"** means the Defendant, Manning Elliott LLP.
- (gg) **"March 31, 2013 Manning Qualified Opinion"** means the March 31, 2013 Opinion of Manning regarding the consolidated statements of financial position as at December 31, 2011, 2010 and 2009 and the consolidated statements of comprehensive income, changes in equity, and cash flows for the years ended December 31, 2011, 2010 and 2009, and the various balance sheets, statements and reports to which it applies.
- (hh) **"Mei Tak"** means Mei Tak (HK) Group Limited, a Hong Kong corporation and 100% owned subsidiary of **APX**.



- (ii) **"MD&A"** means Management's Discussion and Analysis.
- (jj) **"PRC"** means the People's Republic of China.
- (kk) **"Plaintiff"** means the plaintiff, Paul Carter.
- (ll) **"Qualifying Transaction"** means the April 26, 2011 acquisition by APX of all issued and outstanding shares of Mei Tak.
- (mm) **"Qingfeng"** means Qingfeng (Jiangxi) Packing Material Technology Co., Ltd., a PRC corporation and 100% owned subsidiary of Mei Tak.
- (nn) **"Qilin"** means Qilin Hong.
- (oo) **"Raymont"** means the Defendant, Michael E.D. Raymont.
- (pp) **"Representation"** means statements that APX's financial statements, including the Audited Statements, and the APX Disclosure Documents, were prepared in accordance with IFRS.
- (qq) **"Securities"** means APX's common shares, notes or other securities, as that term is defined in the *BCSA*.
- (rr) **"SEDAR"** means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators.
- (ss) **"TSX-V"** means the TSX Venture Exchange.
- (tt) **"Wenge"** means Wenge Hong.
- (uu) **"Wilson"** means the Defendant, Robert Wilson.
- (vv) **"Yuanxing China"** means Yuanxing Package (China) Co., Ltd., a PRC corporation and 100% owned subsidiary of Yuanxing HK.
- (ww) **"Yuanxing HK"** means Yuanxing Holdings (Hong Kong) Limited, a Hong Kong corporation and 100% owned subsidiary of Jiayuan.

## OVERVIEW

2. This claim is a proposed class action on behalf of the current and former shareholders of APX, a Canadian public company now subject to cease trade orders in Alberta and British Columbia, as well as a trading halt by IROC. The Defendants are APX, the former Canadian directors of APX (who are the Individual Defendants), and the auditors of APX.
3. The sole material assets of APX were separately incorporated foreign subsidiaries which owned or controlled further separately incorporated operating subsidiaries in China.



4. APX and its directors failed to secure any, or any effective control over its subsidiaries and their operating entities, including their boards of directors, corporate seals and records, and bank accounts. In the end result, APX completely lost control of all of its material assets, and eventually became unable to meet its various Canadian corporate obligations. This led to APX being cease traded, with the result that Class Members have lost the entire value of their investment.
5. This claim alleges that the defendants acted in breach of their duties, and that they made misrepresentations regarding the true state of affairs of APX. The claim is advanced pursuant to the common law, and is also founded upon statutory claims for misrepresentation arising under Securities Legislation. Finally, it is alleged that APX and the Individual Defendants are liable for failing to act in the face of trading by insiders prior to the investing public being informed of APX's dire circumstances.

### **THE PARTIES**

#### ***The Defendants***

6. APX is a company formed pursuant to the BCBCA, initially under the name HT Capital Inc. ("HT") on January 25, 2010 and was a CPC established in accordance with the Exchange Manual.
7. On April 26, 2011, HT completed its Qualifying Transaction, and as at the opening of the market on May 2, 2011, HT commenced trading as a Tier 2 technology/industrial issuer on the TSX-V under the trading symbol of "HKT".
8. On July 13, 2011, HT changed its name to Asia Packing Group Inc., and its trading symbol was changed to "APX".
9. At all material times, APX was a reporting issuer in British Columbia and Alberta. At all material times, APX's shares were listed for trading on the TSX-V under the trading symbol "APX". As such, APX shares could be bought and sold through the TSX-V in British Columbia.
10. Birmingham was the Vice President ("VP") and a Director of APX from May 2, 2012 until July 25, 2013. Birmingham was previously Chief Executive Officer of PAKIT Inc., a developer of clean technology solutions for the packaging industry, from April 2004 to June 2011 and President of PAKIT Inc. from March 1, 2011 to June 2011. As far as is known to the Plaintiff, Birmingham resides in North Vancouver, British Columbia.
11. At all material times, Kuang was the Chief Financial Officer ("CFO"), Secretary and a Director of APX. Kuang obtained her MA in Business Administration in 1995 from Northeastern University in China, and obtained her Certified General Accountant designation in BC in 2006, as well as her Certified Public Accountant designation in Washington State in 2006. Kuang resigned as APX's CFO and Director on or about



November 27, 2013. As far as is known to the Plaintiff, Kuang resides in Vancouver, British Columbia.

12. Raymont was an Independent Director of APX beginning on or about July 12, 2011. In addition, Raymont was the Chairman of the Compensation and Corporate Governance committee of APX. Raymont resigned as an Independent Director and Chairman of Compensation on or about November 27, 2013. As far as is known to the Plaintiff, Raymont resides in Calgary, Alberta.
13. Wilson was Vice President, Corporate Finance of APX beginning July 19, 2011 and a Director of APX beginning on or about July 5, 2011. Wilson resigned on or about November 27, 2013. As far as is known to the Plaintiff, Wilson resides in Toronto, Ontario.
14. Dorin was a non-executive Director of APX beginning on or about May 4, 2012. Dorin was also Chairman of APX's Audit Committee. Dorin resigned as Director and Chairman of the Audit Committee on or about November 27, 2013. As far as is known to the Plaintiff, Dorin resides in Surrey, British Columbia.
15. Manning is a limited liability partnership accounting firm located in Vancouver, British Columbia.

### ***The Plaintiff***

16. F. Philip Wilhelmsen is an individual residing in North Vancouver, British Columbia, who purchased APX shares before November 6, 2013.

## **FACTUAL BACKGROUND AND ALLEGATIONS**

### ***Initial Public Offering and Qualifying Transaction***

17. On September 8, 2010, HT completed its initial public offering of 2,000,000 shares at a price of \$.10 per share, for gross proceeds of \$200,000.
18. On September 16, 2010, the HT shares were listed for trading on the TSX-V as a CPC under the trading symbol "HKT".
19. On April 26, 2011, APX completed its Qualifying Transaction by acquiring, through a reverse-takeover, all of the issued and outstanding common shares of Mei Tak, a private company incorporated under the Companies Ordinance of Hong Kong. APX issued 80,000,000 APX shares from treasury to Wenge, Mei Tak's majority shareholder, and other shareholders of Mei Tak on a pro-rata basis. Mei Tak, in turn, owns 100% of the registered capital of Qingfeng, a wholly foreign owned enterprise incorporated under the laws of the PRC.

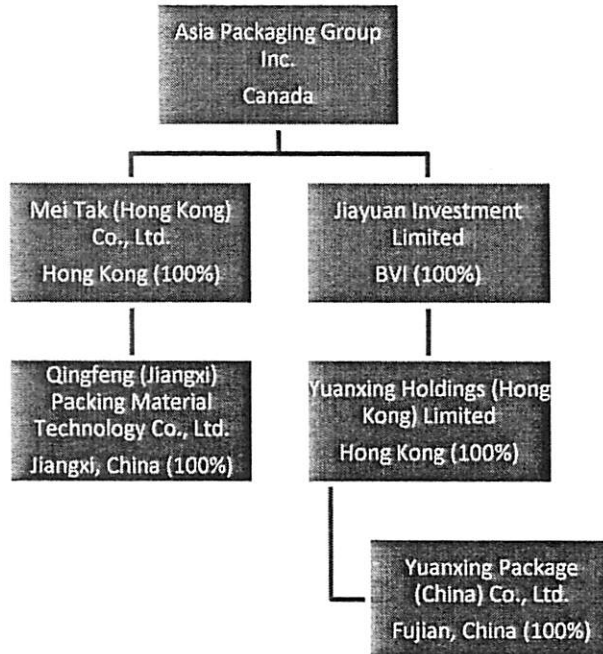


20. The acquisition of Mei Tak (the “RTO”) was accomplished through a share exchange and a private placement, which resulted in Wenge becoming the majority shareholder of APX.
21. Concurrent with the RTO, APX completed a non-brokered private placement financing by issuing 20,288,800 units for aggregate gross proceeds of \$8,115,520 (the “Private Placement”).
22. On May 2, 2011, APX (then still called HT) commenced trading as a Tier 2 technology industrial issuer on the TSX-V under the trading symbol of HKT. On July 13, 2011, HT changed its name to APX and its trading symbol was changed to APX.
23. After completing the RTO, according to APX’s disclosure, it operated a manufacturing facility in the packaging industry through Qingfeng, and was in the business of providing packaging products and services to the food, pharmaceutical and retail industries in the PRC.

#### ***Acquisition of Jiayuan***

24. On June 5, 2012, APX entered into a Letter of Intent (“LOI”) with the shareholders of Yuanxing HK for APX to acquire all of the issued and outstanding share capital of Yuanxing HK. At that time, Yuanxing HK had two wholly owned subsidiaries, Yuanxing China and Yuanxing Package (Suzhou) Co. Ltd. (“Yuanxing Package”).
25. On November 5, 2012, APX renegotiated with the shareholders of Yuanxing HK and entered into a Share Purchase Agreement to replace and supersede the LOI. APX determined that it would purchase only the business of Yuanxing China and not Yuanxing Package.
26. To accomplish this acquisition, the shareholders of Yuanxing HK sold their shares to Jiayuan, and in payment received shares of Jiayuan and other consideration. The former Yuanxing HK shareholders thus became the shareholders of Jiayuan. APX agreed to purchase all of the issued and outstanding shares of Jiayuan (the “Acquisition”).
27. The following is a chart setting out the relationships between APX and its subsidiaries following the Acquisition:





28. Qilin, the majority shareholder of Jiayuan until the Acquisition, is Wenge's brother.
29. On or about April 10, 2013 APX released a Filing Statement concerning the Acquisition, dated as at March 31, 2013. The Filing Statement was posted to SEDAR on April 10, 2013.
30. Upon conclusion of the Acquisition, APX had 178,252,900 issued and outstanding shares.
31. According to the Filing Statement, following the closing of the Acquisition, APX estimated having working capital of approximately CAD\$40,000,000. The working capital was for the stated purposes of enabling APX to expand into another aspect of the packaging industry.
32. The Filing Statement incorporated various documents by reference, all of which are Impugned Documents, including:
  - (a) July 27, 2012 Manning Opinion and the associated financial statements;
  - (b) MD&A of APX as at March 31, 2012 and for the year ended March 31, 2012;
  - (c) Unaudited Interim Consolidated Financial Statements of APX as at December 31, 2012 and for the nine months ended December 31, 2012;
  - (d) MD&A of APX as at December 31, 2012 and for the nine months ended December 31, 2012;



- (e) March 31, 2013 Manning Qualified Opinion and the associated financial statements of Jiayuan;
- (f) Pro Forma Consolidated Financial Statements of APX as at December 31, 2012 and for the 9 months interim period ended December 31, 2012 and the year ended March 31, 2012.

***Subsequent SEDAR Filings***

- 33. On July 25, 2013, APX issued a press release (filed on SEDAR and published through various online financial media services) announcing the acquisition of a "land use right and buildings" for Yuanxing in Fujian Province, PRC, indicating:
  - (a) During the fourth quarter ended March 31, 2013, APX entered into a land acquisition agreement with Fujian Xinshidai Industry Trade Development Company in the amount of RMB 120 million (\$19.6 million);
  - (b) The transaction involves the purchase of the land use right and associated buildings in Fujian Province relating to the manufacturing operation of Yuanxing;
  - (c) Close of this acquisition and transfers of the land use right was completed subsequent to APX's fiscal year end on March 31, 2013;
  - (d) Given that APX entered into the land acquisition agreement before the filing of the third quarter statements on February 27, 2013, APX will refile its third quarter statements, MD&A and certificates with inclusion of the signing of this land acquisition agreement as a subsequent event.
- 34. Also on July 25, 2013, APX issued a press release (filed on SEDAR and published through various online financial media services) indicating that Birmingham had resigned as VP and a Director of APX.
- 35. On July 31, 2013, APX issued a press release (filed on SEDAR and published through various online financial media services) announcing its annual financial statements for the fiscal year ending March 31, 2013, indicating to the investing public among other things:
  - (a) APX achieved revenues of \$47 million for the year ended March 31, 2013, representing 10.0% growth over the corresponding year ended March 31, 2012;
  - (b) Higher margin product sales contributed to an increase in gross profit margin during the year to 26.9% from 26.2% of the year ended March 31, 2012;
  - (c) APX achieved EBITDA before share based compensation and listing expenses of \$11.6 million during the year ended March 31, 2013, representing a 10.1% improvement over the year ended March 31, 2012;



- (d) Net income increased 36.3% for the year ended March 31, 2013 to \$9.0 million compared with \$6.6 million during the year ended March 31, 2012;
  - (e) As at March 31, 2013, APX had \$5.9 million in cash and no debt;
  - (f) Subsequent to the year-end APX successfully closed its acquisition of Yuanxing as well as acquiring the land right use and buildings associating with the Yuanxing operation.
36. On September 6, 2013, APX issued a press release (filed on SEDAR and published through various online financial media services) announcing its interim financial statements for the three-month period ending June 30, 2013, and indicating to the investing public, among other things:
- (a) Through the successful closing of the Acquisition, APX had doubled the size of its business;
  - (b) With just over one month contribution from the Acquisition, revenues increased by 48.3% during the first quarter, compared with the same period of the previous year;
  - (c) APX achieved EBITDA before share-based compensation of \$5.2 million during the first quarter, representing a 64.2% improvement over the first quarter of the previous year;
  - (d) Net income increased 35.8% for the three months ended June 30, 2013 to \$3.5 million (\$0.024 per share) compared with \$2.6 million (\$0.020 per share) during the three months ended June 30, 2012;
  - (e) As at June 30, 2013, APX had \$8.8 million in cash and no bank debt.
37. On September 10, 2013, APX issued a press release (filed on SEDAR and published through various online financial media services) indicating that it had taken steps to file its amended and restated December 31, 2012 interim financial statements to reflect a subsequent event disclosure:
- (a) On January 10, 2013, APX entered into a land and buildings acquisition agreement with an unrelated party. The agreement consisted of \$19,656,000 made to acquire land and buildings and this agreement was not disclosed in APX's December 31, 2012 interim financial statements as a subsequent event, as originally filed; and
  - (b) The December 31, 2012 interim financial statements had been amended and restated to include Note 19 Subsequent Event, to describe the nature of the deposits made subsequent to December 31, 2012.



***Share Activity***

38. After the Acquisition, APX had a public float of 178,252,900 issued and outstanding shares.
39. Shares in APX peaked at \$.45 per share on May 11, 2011.
40. In general, APX's share price in absolute dollar terms fluctuated gradually on low volume.
41. However, between September 20, 2013 and November 4, 2013, the APX share price plummeted, falling from \$.25 per share to \$.10 per share. APX trading volume reached record highs during this period. As discussed below, this is highly indicative of illegal insider trading or tipping by one or more APX insiders during this time period.

***APX Discloses the Truth***

42. On November 6, 2013, APX issued a press release (filed on SEDAR and published through various online financial media services) which revealed to outside investors for the first time that:
  - (a) The Hong brothers, who at the time were the principal shareholders, as well as directors and officers of APX, could no longer be counted on to discharge their duties and obligations towards APX;
  - (b) APX's situation was such that it had established an Independent Committee, which included Dorin and Raymont, to consider "strategic alternatives" for APX;
  - (c) The Independent Committee had come to the conclusion that there would not be funds available to satisfy APX's obligations due to suppliers or to finance the ongoing public company expenses;
  - (d) The previously disclosed APX consolidated cash position of \$8.8 million was effectively illusory, as the bulk of the cash was held in bank accounts in China controlled not by APX but by the Hong Brothers;
  - (e) The Hong Brothers had provided limited funding to the Canadian public company bank account, which, as at November 6, 2013, held only approximately \$50,000;
  - (f) APX was not in compliance with its obligations under Parts 4 and 5 of National Instrument 51-102 - Continuous Disclosure Obligations and National Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings.
43. Trading in the common shares of APX was halted by IIROC on November 6, 2013. This halt order has to date never been lifted.



44. On November 27, 2013, APX issued a further press release (filed on SEDAR and published through various online financial media services), that provided an update from its announcement of November 6, 2013, and announced the resignation of its Canadian directors and management team, indicating among other things:
- (a) The Canadian-based managers and directors of APX had failed to obtain the cooperation of APX's Chinese-based management and accounting staff. They also failed to secure the necessary funds for the continued operation of the Canadian publicly traded parent company;
  - (b) The CFO and VP had to travel to China to attempt to determine the status of APX and its financial position, being apparently unable to do so from Canada;
  - (c) During the trip to China, the CFO and the VP ascertained that the Qingfeng plant appeared to remain operational, while the Yuanxing plant had been recently closed;
  - (d) The CFO and VP also visited the three local bank branches where Qingfeng and Yuanxing, the subsidiaries that hold virtually all of the APX assets, maintain accounts, in an effort to confirm account balances; however, the corporate seals, or "chops" needed to access the APX subsidiary accounts were not in the possession or control of APX, and as such the VP and CFO of APX were unable to determine any specific bank account information regarding APX's assets;
  - (e) APX would not be in a position to satisfy its Canadian creditors or to report its quarterly financial statements for the period ending September 30, 2013;
  - (f) The management and directors of APX were unable to perform their duties in reporting and monitoring APX's operations. All Canadian directors and management resigned, leaving APX's Board in the sole control of the Hong Brothers, with Qilin as President and CEO, and Wenge as Chairman.
45. On December 6, 2013, a Cease Trade Order was issued by the British Columbia Securities Commission ("BCSC") in respect of all trading in APX's shares, which is still in effect.
46. On March 7, 2014, a Cease Trade Order was issued by the Alberta Securities Commission ("ASC") in respect of all trading in APX's securities, which is still in effect.
47. The entire outside investor equity in APX was wiped out following the revelation that APX's Board was not in control of the APX assets and that APX's financial statements presented significant issues and concerns.
48. To date, all trading in APX's securities remains forbidden. The last price at which APX's common shares traded on the TSX-V was \$0.095. However, as a result of the various



cease trade orders in place, and the fact that control of the company lies solely with Hong Brothers, the true value of any outsider's investment in APX is now zero.

***Class Members' Reasonable Expectations***

49. The Plaintiff and the Class Members had reasonable expectations about the manner by which the business and affairs of APX would be conducted, including that:
- (a) The business and affairs of APX would be undertaken by its officers and directors in a manner which complied with the laws of British Columbia;
  - (b) APX would have corporate governance structures and financial controls, as required by the laws British Columbia, and consistent with accepted business practise in British Columbia for a public company, including but not limited to:
    - (i) Complete and effective accountability by management of APX and its subsidiaries, to the Board;
    - (ii) Safeguards in place to protect the assets of the company, including cash on hand in the bank accounts of APX and its subsidiaries, wherever they may be located;
    - (iii) Maintenance of complete, accurate and truthful transactional documentation relating to the business of APX and its subsidiaries with their customers and suppliers, wherever they may be located;
    - (iv) APX, its subsidiaries, and its and their officers and directors would fully cooperate with:
      - (A) All regulatory authorities British Columbia, including the BCSC, as well as IIROC and the TSX-V, at all times;
      - (B) Its auditors, Manning, in the course of Manning carrying out its audit function; and
      - (C) Any Special Committee of the Board, including any professionals retained to assist any such special committee.
50. More particularly, the reasonable expectations of the Plaintiff and Class Members included the following:
- (a) That, in accordance with s. 142 of the BCBCA, every director and officer of APX would, in the course of carrying out his or her duties:
    - (i) Act honestly and in good faith with a view to the best interests of the corporation of which they were a director and/or officer; and



- (ii) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (b) That, in accordance with National Instrument 51-102, the officers and directors of APX would establish and maintain, or cause to be established and maintained, disclosure controls and procedures to ensure that information required to be disclosed in corporate filings was recorded, processed, summarized and reported within the Canadian Securities Administrators ("CSA") rules and forms and in accordance with applicable securities legislation.
- (c) That, in accordance with Parts 6 and 7 of the BCBCA and National Instrument 51-102, the directors and officers of APX would cause APX's financial statements to be prepared in accordance with IFRS and to accurately reflect their operations and financial position for the period to which they related;
- (d) That, in accordance with National Instrument 52-102, APX would regularly update its mandated disclosure by issuing interim financial statements, quarterly and annual MD&A and audited annual financial statements, which would accurately describe their businesses, financial results and financial position as at the time that each such disclosure was made;
- (e) That, in accordance with National Instruments 52-110 and 52-102, APX would:
  - (i) Maintain an Audit Committee and ensure that the Audit Committee would discharge its functions fully and properly; and
  - (ii) File audited annual financial statements on or before the 120th day after the end of its financial year;
- (f) That, in fulfilling their duties under s. 142 of the BCBCA, the officers and directors of APX would:
  - (i) Ensure that the business and affairs of APX would be undertaken in a manner which complied with the laws of British Columbia;
  - (ii) Establish and maintain adequate internal control over financial reporting to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS;
  - (iii) Obtain, or cause to be obtained on APX's behalf, the necessary advice and expertise in order to ensure that APX accurately recorded their operations and the results thereof;
  - (iv) Take all necessary steps to secure the assets and protect the interests of APX, including but not limited to steps such as requiring director fidelity



bonds, in circumstances where substantially all assets and operations were located in the PRC, the Hong Brothers had the Yuanxing and Qingfeng chops, and certain of the Directors and majority shareholders of APX were residents of the PRC;

- (v) Take all reasonably necessary steps, including cooperating with committees of the Board and securities regulatory authorities, to ensure the continued eligibility of APX's common shares to trade freely on the TSX-V and to ensure that Class Members who acquired those common shares were able to dispose of them in the event they chose to do so.

51. Moreover, the reasonable expectations of the Plaintiff and Class Members entitled them to rely on the trading price of APX's common shares during the Class Period as an accurate reflection of the true market value of those common shares.

#### ***The Impact of the Disclosure Generally***

52. As was known to the Defendants at all material times, the purpose of preparing the Impugned Documents and APX Disclosure Documents was to attract investment in APX's securities.
53. The Impugned Documents and APX Disclosure Documents had an immediate and direct impact on the trading price of APX's securities, without regard to whether any particular investor relied on those documents directly in making a decision to invest in APX's securities. All material information relating to the price of APX's securities was incorporated into the trading price of APX's shares upon its release by APX.
54. As such, the Defendants knew and, in fact, intended that each investor who purchased APX's securities during the Class Period would rely on the statements made in the Impugned Documents and APX Disclosure Documents, whether directly or indirectly.

#### ***Manning's Obligations***

55. Manning was retained by APX to audit both its Financial Statements and, prior to the Acquisition, the Financial Statements of Jiayuan, to verify their accuracy, including the actual amount and location of cash assets and receivables paid.
56. Manning was, by its own election, a public auditor and an "expert" of APX for the purposes of the BCSA. The BCSA and National Instruments 52-107 and 52-109 imposed specific obligations on Manning in the preparation of its Opinions, and in the audit of APX's annual financial statements for the years ended March 31, 2013, 2012 and 2011.
57. Manning accepted those obligations in accepting its appointment as APX's auditor.
58. More particularly, in order to certify the accuracy of APX's and Jiayuan's financial statements:



- (a) The BCSA and National Instrument 52-07 required Manning to conduct its audits of APX's consolidated financial statements in accordance with GAAS;
- (b) GAAS required Manning to:
  - (i) Design and execute appropriate accepted external audit confirmatory procedures for the verification of cash assets, receivables paid; and
  - (ii) Maintain an attitude of professional scepticism when conducting its audits.
- (c) National Instrument 52-107 and Canadian Accounting Standards required Manning to provide a professional, properly determined opinion on whether the Audited Financial Statements, presented fairly, in all material respects, the financial position of APX and Jiayuan as at the relevant dates in accordance with IFRS.

### ***The Individual Defendants' Obligations***

- 59. The BCSA, and certain National Instruments promulgated thereunder imposed specific obligations on the Individual Defendants in the preparation of the Impugned Documents and APX's Disclosure Documents.
- 60. Each Individual Defendant accepted those obligations in assuming his or her position as a director or officer, or both, of APX.
- 61. More particularly, in order to ensure the accuracy of the Impugned Documents and APX's Disclosure Documents:
  - (a) National Instrument 52-109 required the Chief Executive Officer and Chief Financial Officer of APX to review and certify the accuracy of each of APX's quarterly and annual financial statements and MD&A;
  - (b) National Instrument 51-102 required APX's directors to approve the release of APX's audited annual financial statements and MD&A; and
  - (c) National Instrument 52-110 required the Audit Committee to review the issuer's financial statements, MD&A and annual and interim earnings press releases before APX publicly disclosed them.

### ***The Representation***

- 62. During the Class Period, APX issued the Filing Statement, as well as annual and interim financial statements, MD&A and certifications filed under National Instrument 52-109, all of which are Impugned Documents. Specifically:



- (a) Mei Tak (HK) Group Limited, Consolidated Financial Statements March 31, 2011;
- (b) Mei Tak (HK) Group Limited, Consolidated Interim Financial Statements, three and nine month period ended December 31, 2010 (Unaudited, Prepared by Management);
- (c) Asia Packaging Group Inc., Condensed Interim Consolidated Financial Statements for the three months ended June 30, 2013 and 2012;
- (d) Asia Packaging Group Inc., Condensed Interim Consolidated Financial Statements for the nine months ended December 31, 2012 and 2011;
- (e) Asia Packaging Group Inc., Condensed Interim Consolidated Financial Statements for the six months ended September 30, 2012 and 2011;
- (f) Asia Packaging Group Inc. (formerly HT Capital Inc.), Condensed Interim Consolidated Financial Statements for the three months ended June 30, 2012 and 2011;
- (g) Asia Packaging Group Inc. (formerly HT Capital Inc.), Consolidated Interim Financial Statements for the nine months ended December 31, 2011 and 2010, Prepared by Management;
- (h) Asia Packaging Group Inc. (formerly HT Capital Inc.), Consolidated Interim Financial Statements for the six months ended September 30, 2011 and 2010, Prepared by Management;
- (i) Asia Packaging Group Inc. (formerly HT Capital Inc.), Consolidated Interim Financial Statements for the three months ended June 30, 2011 and 2010, Prepared by Management;
- (j) Asia Packaging Group Inc., Condensed Interim Consolidated Financial Statements (Amended and Restated) for the nine months ended December 31, 2012 and 2011;
- (k) Asia Packaging Group Inc., Management Discussion and Analysis for the three months ended June 3, 2013, Prepared by Management;
- (l) Asia Packaging Group Inc., Management Discussion and Analysis for the year ended March 31, 2013, Prepared by Management;
- (m) Asia Packaging Group Inc., Management Discussion and Analysis, Third Quarter, Fiscal 2013, for the three and nine months ended December 31, 2012, Prepared by Management;



- (n) Asia Packaging Group Inc., Management Discussion and Analysis, Second Quarter, Fiscal 2013, for the three and six months ended September 30, 2012, Prepared by Management;
  - (o) Asia Packaging Group Inc., Management Discussion and Analysis for the three months ended June 30, 2012, Prepared by Management;
  - (p) Asia Packaging Group Inc., Management Discussion and Analysis for the year ended March 31, 2012, Prepared by Management;
  - (q) Asia Packaging Group Inc., Management Discussion and Analysis for the Third Quarter ended December 31, 2011, Prepared by Management (Unaudited) February 29, 2012; and
  - (r) Asia Packaging Group Inc., Management Discussion and Analysis for the Second Quarter ended September 30, 2011, Prepared by Management (Unaudited) November 29, 2011.
  - (s) Asia Packaging Group Inc., Management Discussion and Analysis for the First Quarter ended June 30, 2011, Prepared by Management (Unaudited) September 29, 2011.
63. The unaudited Interim Financial Statements, Financial Statements and MD&A all contained the Representation, which is to say assurances they were prepared in accordance with IFRS.
64. In some instances these documents, and the APX Disclosure Documents, also contained related material misrepresentations, as discussed below.
65. In each case where the Representation was made, it was false, in that:
- (a) APX's consolidated financial statements were not prepared in accordance with IFRS. A fundamental requirement of IFRS is that financial statements should fairly present the financial position, results of operations and cash flows of an entity in accordance with IFRS, as of the stated reporting date. APX's consolidated financial statements did not fairly state the financial position, results of operations and cash flows of the business throughout the Class Period; and
  - (b) APX's consolidated financial statements were neither accurate nor reliable.
66. The Representation was:
- (a) Unqualified in all material respects relating to the accuracy of APX's financial results and financial position as at the time the disclosure was made; and



- (b) Materially false and/or materially misleading for the reasons particularized above.

***Manning's Representation***

67. Manning prepared the July 25, 2013 Manning Opinion, which included the statement:

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Asia Packaging Group Inc. as at March 31, 2013 and 2012, and its financial performance and cash flows for the years ended March 31, 2013 and 2012 in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

68. Manning prepared the July 27, 2012 Manning Opinion, which included the statement:

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Asia Packaging Group Inc. (formerly HT Capital Inc.) as at March 31, 2012 and 2011, and its financial performance and cash flows for the years ended March 31, 2012 and 2011 in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

69. Manning also provided the July 27, 2011 Manning Opinion, which included the statement:

In our opinion, the financial statements present fairly, in all material respects, the financial position of HT Capital Inc. as at March 31, 2011, and the results of its operations and its cash flows for the year ended March 31, 2011 in accordance with Canadian generally accepted accounting principles.

70. In addition, Manning prepared the March 31, 2013 Manning Qualified Opinion regarding Jiayuan.

The Filing Statement contained an "Auditors' Consent" signed by Manning, dated March 31, 2012, which stated, among other things, that it had read the Filing Statement, that it complied with Canadian GAAS for an auditors' involvement with offering documents and consented to the use in the Filing Statement of the March 31, 2013 Manning Qualified Opinion and the July 27, 2012 Manning Opinion (and the attached documents).



71. The March 31, 2013 Manning Qualified Opinion indicated that Manning had audited the Jiayuan statements of financial position as at December 31, 2011, 2010 and 2009, and the consolidated statements of comprehensive income, changes in equity and cash flows for the years ended December 31, 2011, 2010 and 2009 and the related notes comprising a summary of the significant accounting policies and other explanatory information and certified that, except subject to the possible effects of the matter described in the "Basis for Qualified Opinion" paragraph:

...the consolidated financial statements presented fairly, in all material respects, the financial position of Jiayuan Investment Limited...and its Predecessor as December 31, 2011, 2010 and 2009 the results of its operations and its cash flows for the years ended December 31, 2011, 2010 and 2009 in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

72. In fact, the consolidated financial statements of Jiayuan for the years ended December 31, 2011, 2010 and 2009 were not fairly presented and were materially misstated.
73. Both the March 31, 2013 Manning Qualified Opinion and July 27, 2012 Manning Opinion (and the documents included therein) contained a representation that Manning conducted its audits of various statements and balance sheets covered by such reports in accordance with Canadian GAAS. These were misrepresentations, because Manning's audits referred to in the March 31, 2013 Manning Qualified Opinion and July 27, 2012 Manning Opinion, were not carried out in accordance with Canadian GAAS.

***Statements that APX should have made in the Impugned Documents and APX Disclosure Documents to make them not misleading***

74. The Filing Statement, Impugned Documents and APX Disclosure Documents failed and omitted to state certain material facts that were required to be stated, or were necessary to be stated in order to make them not misleading. In particular, the Impugned Documents and APX Disclosure Documents failed to disclose that:
- (a) In spite of APX being a British Columbia Corporation issuing securities pursuant to the BCSA, with the implied representation that APX would be operated in accordance with the laws of British Columbia, having basic corporate governance structures and financial controls required by the laws of British Columbia and consistent with expected and accepted business practices in British Columbia for a public company, in fact, APX was operated in a manner that:
    - (i) Was not in accordance with the laws of British Columbia;
    - (ii) Did not have basic corporate governance structures and financial controls required by the laws of British Columbia; and



- (iii) Was not consistent with expected and accepted business practices in British Columbia for a public company.
  - (b) Funds raised through the issuance of APX securities as well as generated through business operations were remitted to Yuanxing and Qingfeng and deposited in Yuanxing's and Qingfeng's bank accounts in the PRC. Those accounts could only be dealt with by a person or entity in possession of Yuanxing's and Qingfeng's "chops", a form of corporate seal. At all material times the chops, and by extension the funds, were not under the power or control of APX, but rather were under the sole direction and control of the Hong Brothers.
  - (c) As such, the vast majority of APX's assets were, for all practical purposes, given to two men, the Hong Brothers, residents of the PRC, without any safeguards or controls, and the APX Board had no factual or legal control over anyone in the PRC who held the chops for Yuanxing's or Qingfeng's bank accounts and hence no control over the most substantial assets of APX.
  - (d) Because of Jiayuan's banking arrangements in the PRC, APX's auditor, Manning, was never able to verify, to the standards required by IFRS, or at all, Jiayuan's cash position was during the periods of time covered by APX's audited financial statements prepared by them before the Filing Statement and throughout the Class Period.
  - (e) The financial statements presented in the Filing Statement and APX's financial statements issued during the Class Period, and the financial results compiled therein, were not reported in accordance with IFRS, and were materially inaccurate and unreliable, despite APX and Manning (falsely) certifying that APX's financial statements complied with IFRS.
75. The recitation of risk factors contained in the Filing Statement contained generic warnings about the enforceability of shareholder rights in the PRC and the risks associated with doing business in the PRC. The Filing Statement should have included the foregoing statements in order to make the Filing Statement not misleading, and to allow the Plaintiff and the Class Members to properly assess the risk of investing in APX and the true value of APX securities.

***The Relationship between the Representation and the Price of APX's Securities***

76. The disclosure documents referenced above were issued to the public, or issued to the public and filed with SEDAR, and thereby became immediately available to and were reproduced for inspection by Class Members, the public, financial analysts, professional investors, and the financial press through the internet and other media.
77. APX routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of APX securities.



78. APX regularly communicated with public investors and financial analysts via established market-communication mechanisms, including through regular disseminations of press releases on newswire services in Canada.
79. APX's securities were traded in an efficient and automated market. As a result, the price at which APX's securities traded on the TSX-V throughout the Class Period incorporated material information about APX, including the Representation, which was disseminated to the public through the documents referred to above, as well as by other means.

## **Part 2: RELIEF SOUGHT**

### **80. The Plaintiff Claims:**

- (a) Leave to amend this pleading to assert the causes of action set out in Part 16.1 of the BCSA on a nunc pro tunc basis and as of April 25, 2014, being the date that the Notice of Civil Claim was issued;
- (b) An Order pursuant to the CPA certifying this action as a class proceeding and appointing the Plaintiff as the representative of the class;
- (c) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Misrepresentations, and that, when made, each of the Misrepresentations were a misrepresentation, both at law and within the meaning of the BCSA;
- (d) A declaration that the Audited Statements contained a misrepresentation;
- (e) A declaration that APX is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;
- (f) A declaration that Manning is vicariously liable for the acts and omissions of its respective officers, directors, partners and employees;
- (g) On behalf of all of the Class Members who purchased APX's common shares in the open market:
  - (i) rescission; or
  - (ii) in the alternative, and as against all of the Defendants, general damages;
- (h) An order, pursuant to s. 29 of the CPA directing an aggregate monetary award;
- (i) An order, pursuant to s. 32 of the CPA allowing for the use of standard claim forms or other documentary evidence or such other procedure as is warranted under the circumstances;



- (j) An order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- (k) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (l) Prejudgment and post judgment interest;
- (m) Costs of this action plus, pursuant to s 33(6) of the CPA, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (n) Such further and other relief as to this Honourable Court may seem just.

### **Part 3: LEGAL BASIS**

#### **COMMON LAW CLAIMS**

##### ***Misrepresentation***

- 81. On behalf of all Class Members who purchased APX shares in the secondary market, the Plaintiff pleads misrepresentation.
- 82. In support of the Plaintiff's claim in misrepresentation, the Plaintiff pleads and relies on the Representation and the other material misrepresentations and omissions in the Impugned Documents particularized herein (collectively the "**Misrepresentations**").
- 83. APX and the Individual Defendants made the Misrepresentations knowingly or alternatively recklessly, without belief in their truth, in the Impugned Documents.
- 84. In the alternative, APX and the Individual Defendants made the Misrepresentations when they ought to have known in all the circumstances that the Misrepresentations were false or misleading.
- 85. The Individual Defendants, as directors and officers of APX, also authorized, permitted or acquiesced in the making of the Misrepresentations.
- 86. Manning made the Misrepresentations in the Audited Statements by explicitly stating that in Manning's opinion those Audited Statements presented fairly, in all material respects, the financial position of APX as at March 31, 2013, 2012 and 2011 and Jiayuan as at December 31, 2011, 2010 and 2009, and the results of their operations and cash flows for the reporting periods then ended in accordance with Canadian IFRS, when they did not.



87. The Defendants knew that the information contained in the Impugned Documents would be incorporated into the price of APX's publicly traded common shares such that the trading price of those common shares would at all times reflect the information contained in APX's Class Period disclosure documents.
88. The Defendants owed a duty of care at common law, informed by the BCSCA and the BCBCA, as applicable, to exercise due care and diligence to ensure that APX's Class Period disclosure documents were accurate and not misleading.
89. The Defendants breached their duty by failing to:
  - (a) Exercise due care and attention in the creation and dissemination of the aforementioned disclosure documents to ensure that the statements made therein were fair and accurate;
  - (b) Take all reasonable steps to verify the veracity of the data and statements underlying the Representation and the other impugned representations referred to herein; and
  - (c) Take all reasonable steps to ensure the completeness of the impugned representations referred to herein to ensure they did not contain a material omission.
90. The Plaintiff and the other Class Members relied upon the Misrepresentations to their detriment in purchasing APX Securities, both directly and by the act of purchasing the securities of APX in an efficient market that promptly incorporated into the price of those Securities all public and material information regarding the Securities of APX, including the Misrepresentations.

### ***Oppression***

91. On behalf of the Plaintiff and all of the other Class Members, and as against APX and the Individual Defendants, the Plaintiff pleads oppression under s. 227 of the BCBCA.
92. The reasonable expectations of the Plaintiff and the Class Members were defeated by APX and its directors in a manner that was and continues to be abusive, oppressive, unfairly prejudicial to, and unfairly disregarding of the interests of the Plaintiff and Class Members:
  - (a) APX and the Individual Defendants failed to publish accurate financial statements compiled in accordance with IFRS and otherwise accurately report the results of APX's operations;
  - (b) the Individual Defendants, as officers of APX during the Class Period, with primary responsibility for ensuring that APX had in place adequate internal and disclosure controls to ensure that its financial statements and disclosure



documents were accurate and complete, failed to implement such controls and failed to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

- (c) the Individual Defendants, who were at various times during the Class Period directors of APX, failed to exercise the degree of oversight that a reasonably prudent person in comparable circumstances would exercise in the management of APX to ensure that it compiled and published accurate and complete disclosure documents about the business and affairs of APX;
  - (d) the Individual Defendants failed to implement corporate governance structures and/or oversight as was necessary to ensure that there was complete and effective accountability by management of APX and its subsidiaries to the Board, and control by the Board over the management of APX and its subsidiaries;
  - (e) the Individual Defendants failed to implement adequate internal controls, safeguards and/or oversight as was necessary to ensure that the assets of the company were and are protected and accounted for;
  - (f) the Individual Defendants failed to implement adequate internal controls, systems and/or oversight as was necessary to ensure that maintenance of complete, accurate and truthful transactional documentation relating to the business of APX and its subsidiaries;
  - (g) the Individual Defendants failed to take any, or all reasonable measures to protect APX from the acts and omissions of the Hong Brothers, including through the requirement of director fidelity bonds, in circumstances where substantially all assets and operations of APX are located in the PRC, the Hong Brothers have control of the Yuanxing and Qingfeng chops, and the Hong Brothers are residents of the PRC;
  - (h) the Individual Defendants have failed to take any, or all reasonable steps to ensure that APX's securities continued to be eligible for trading on the TSX-V.
93. The foregoing acts and omissions effected a result, and caused the affairs of APX to be conducted in a manner that was abusive, oppressive, unfairly prejudicial to, or that unfairly disregarded the interests of the Plaintiff and Class Members.

As a result of the foregoing acts of oppression, the Plaintiff and the Class Members have been harmed and/or continue to be harmed, and are entitled to the requested relief from oppression.



***Negligence Simpliciter***

94. As against the Individual Defendants, and on behalf of those Class Members who purchased APX shares during the Class Period, the Plaintiff asserts negligence simpliciter.
95. Each of the Individual Defendants owed the Plaintiff and other Class Members a duty to reasonably ensure that the Filing Statement, other Impugned Documents and APX Disclosure Documents made timely, full, true and plain disclosure of all material facts relating to the APX Securities addressed therein.
96. Each of the Individual Defendants also owed the Plaintiff and other Class Members a duty to ensure that APX maintained complete, proper and effective control over its assets, including safeguards in place to protect those assets.
97. The Individual Defendants were negligent, and breached their duties to the Plaintiff and the Class Members by failing to reasonably ensure, in all the circumstances, that APX's disclosure documents were materially accurate and complete, and issued in a timely manner.
98. The Individual Defendants were also negligent and further breached the duty of care owed to the Plaintiff and the other Class Members by failing to reasonably maintain, in all the circumstances, complete, proper and effective control over APX's assets, including safeguards in place to protect those assets.
99. The Plaintiff and the Class Members were damaged by the negligence of the Individual Defendants. But for the negligence of the Individual Defendants the Plaintiff and Class Members would not have purchased APX securities, or alternatively would have purchased them at a far reduced price to properly reflect the inherent risks therein.
100. In addition, but the for the negligence of the Individual Defendants the Plaintiff and Class Members' APX Securities would not be subject to the cease trade orders and halts described herein.
101. The harm suffered by the Plaintiff and the Class Members as a result of the Individual Defendants' negligence was proximate, direct and reasonably foreseeable at all material times.

***Trading by Insiders***

102. The Plaintiff alleges that each of the Individual Defendants and APX breached their duties to the Plaintiff and the Class Members to ensure the trading of APX shares was at all times compliant with the "insider trading" provisions of the BCSA.
103. Specifically, between September 20, 2013 and November 4, 2013 numerous APX insiders, including the Individual Defendants and the Hong Brothers, knew the true



nature of APX's dire state of affairs (the "**Material Facts**"), before this information was generally disclosed to the public on November 6, 2013.

104. Between September 20, 2013 and November 4, 2013, APX and the Individual Defendants also knew, or ought to have known, that record numbers of APX shares were being traded, and the APX share price was under significant downward pressure.
105. Despite this knowledge, APX and the Individual Defendants failed to take any, or any reasonable, steps to ensure APX shares were not being sold by persons in a special relationship with APX with knowledge of the undisclosed Material Facts. APX and the Individual Defendants took no, or no reasonable, steps to notify any of IIROC, the British Columbia Securities Commission, the TSX-V or the investing public that such illegal insider trading of APX Securities may be taking place.
106. In addition, prior to November 6, 2013 APX and the Individual Defendants breached their obligation to the Plaintiff and the Class Members to ensure that non-insider investors of APX were not trading at an unfair informational disadvantage to insiders, or to those "tipped" by insiders, of APX.
107. Any Class Member who purchased APX shares being dumped by APX insiders, or others tipped by APX insiders, between September 20 and November 6, 2013 was directly harmed as a result of the Defendants' failure to act. This harm was direct, proximate and reasonably foreseeable.

#### ***Common Law Claims against Manning***

108. Manning was engaged as APX's auditor commencing on or about June 17, 2011. Manning is, and was for the duration of the Class Period, an expert of APX within the meaning of the BCSA.
109. Manning prepared all of the Audited Statements.
110. Manning consented to the inclusion in the Filing Statement of the March 31, 2013 Manning Qualified Opinion and July 27, 2012 Manning Opinion, and the documents attached thereto.
111. Manning, in providing what it purported to be "audit" services to APX, made statements, in the Audited Statements, that it knowingly intended to be, and which were, disseminated to APX's current and prospective shareholders including the Plaintiff and the Class Members.
112. At all material times, Manning intended that APX's current and prospective shareholders, including the Plaintiff and the Class Members, would rely on the Audited Statements, which they did to their detriment.



113. In fact, Manning explicitly represented that it conducted its audits for the Audited Statements in accordance with Canadian GAAS, when it did not.
114. Each of the Audited Statements contained a misrepresentation that Manning conducted its audits of the various statements and balance sheets covered by such opinions in accordance with Canadian GAAS. These were misrepresentations because Manning's audits as referred to in the Audited Statements were not carried out in accordance with Canadian GAAS.
115. Manning, as the auditor of APX owed a duty of care to the Plaintiff and the other Class Members to ensure that their audits were carried out in a manner which complied with Canadian GAAS.
116. Manning failed to discharge this duty of care, and was negligent, and the Plaintiff and other Class Members were harmed as a result.
117. Particulars of Manning's negligence include:
  - (a) Manning failed to appropriately design, execute and maintain adequate control over external audit confirmatory procedures and as a result failed to obtain sufficient support and appropriate audit evidence in order for them to render the Audited Statements;
  - (b) Manning failed to follow GAAS in the design and execution of accepted confirmatory procedures to verify cash assets and the reliability of bank confirmations received in respect of the accounts of Jiayuan as reported in the March 31, 2013 Manning Qualified Opinion;
  - (c) Manning failed to follow GAAS in the design and execution of accepted confirmatory procedures to verify the authenticity of bank advices and bank statements, in order to identify erroneous bank numbers and transit codes in Jiayuan receivables records reviewed during the audit periods to which the March 31, 2013 Manning Qualified Opinion applied; and
  - (d) Manning failed to follow GAAS by failing to maintain an attitude of professional scepticism when conducting its audits during the audit periods to which the Audited Statements relate.
118. The Plaintiff and the Class Members detrimentally relied on the misrepresentations contained in the Audited Statements and were damaged thereby.
119. As a result of the foregoing negligence by Manning, and contradictory to all of the Audited Statements, the state of APX's business and affairs was not fairly presented and was materially misstated. In fact, the Audited Statements could not be relied upon.



**SECURITIES ACT CLAIMS*****Statutory Liability for Misrepresentations Pursuant to Part 16.1 of the BCSA***

120. On behalf of all of the Class Members who purchased APX shares in the secondary market, and as against all of the Defendants, the Plaintiff pleads the claim found in Part 16.1 of the BCSA against all Defendants.
121. For the purposes of the claims under Part 16.1 of the BCSA, the claims of the Plaintiff and the Class Members relate only to any Impugned Document released on or after May 3, 2011.
122. During the Class Period:
  - (a) APX was a “responsible issuer” within the meaning of Part 16.1 of the BCSA;
  - (b) each of Birmingham, Kuang, Wilson, Dorin and Raymont was an officer or a director of APX within the meaning of Part 16.1 of the BCSA; and
  - (c) Manning constituted an expert within the meaning of Part 16.1 of the BCSA.
123. Each of the Impugned Documents is a core document within the meaning of Part 16.1 of the BCSA.
124. APX released the Impugned Documents. As particularized above, each of the Impugned Documents contains one or more Misrepresentations.
125. Each of the Individual Defendants, as directors and officers of APX, authorized, permitted or acquiesced in the making of the Misrepresentations in the Impugned Documents, or caused the Impugned Documents to be released through instructing APX employees to release the Impugned Documents, as defined more fully above.
126. Each of the Individual Defendants knew the Impugned Documents contained the Misrepresentations, and knew the Misrepresentations were, in a material way, false, misleading or failed to state a fact required to be stated or necessary to be stated to make the statement not misleading.
127. In the alternative, each of the Individual Defendants ought reasonably to have known the Impugned Documents contained the Misrepresentations, and conducted no, or no reasonable, investigation in that regard prior to the release of the Impugned Documents.
128. Each of the Audited Financial Statements contained a report, statement or opinion of Manning that contained the Representation, which constituted a misrepresentation within the meaning of the BCSA.



129. Manning consented in writing to the inclusion of its report, statement or opinion in each of the Annual Financial Statements and the Filing Statement.
130. In respect of the Impugned Documents, each of APX, the Individual Defendants and Manning, as applicable to each particular document:
  - (a) Failed to conduct a reasonable investigation before the release of the document and/or;
  - (b) Had reasonable grounds to believe that the document contained a misrepresentation at the time of the release of the document.
131. The Plaintiff and the other Class Members are entitled to damages assessed in accordance with section 140.5 of the *BCSA*.

#### **DAMAGES FOR COMMON LAW CLAIMS**

132. As a result of the actions of the Defendants, the Plaintiff and the Class Members have lost their total investment in APX.
133. The Plaintiff pleads that but for the various causes of actions pleaded against all Defendants, all investment losses of the Plaintiff and the Class Members would have been avoided.
134. In the alternative, as a result of the Misrepresentations in the Impugned Documents, all of which were materially false or misleading, the Plaintiff and the other Class Members purchased APX's securities at substantially inflated prices during the Class Period, and were thereby damaged.
135. The Plaintiff and the Class Members who continue to own APX's shares have been further damaged, and are prevented from mitigating their damages, by the failure of APX and the Individual Defendants to take the necessary steps either to prevent the suspension of trading in APX's securities or to permit the resumption of trading.
136. The Plaintiff and the other Class Members are also entitled to recover, as damages or costs in accordance with the CPA, the costs of administering the plan to distribute the recovery in this action.

#### **VICARIOUS LIABILITY**

137. In addition to their direct liability, APX and Manning are vicariously liable for the acts and/or omissions of each of their respective officers, directors, partners and/or employees as set out above.



**PLAINTIFF'S ADDRESS FOR SERVICE:****CAMP FIORANTE MATTHEWS MOGERMAN**

#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

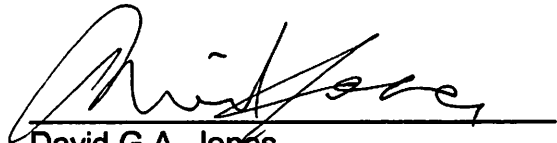
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PLACE OF TRIAL: VANCOUVER LAW COURTS

ADDRESS OF THE REGISTRY: 800 SMITHE STREET, VANCOUVER, BC V6Z 2E1

Date: 25/Apr/2014



David G.A. Jones  
Camp Fiorante Matthews Mogerman  
Agent for Jensen Shawa Solomon Duguid  
Hawkes LLP

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA**

**REAL AND SUBSTANTIAL CONNECTION TO BRITISH COLUMBIA**

Where this claim is served on Defendants outside of British Columbia, the Plaintiff and the other class members plead and rely on s.10(h) of the *Court Jurisdiction and Proceedings Transfer Act* RSBC 2003 Ch. 28 (the "CJPTA") as it concerns a business carried on in British Columbia. Without limiting the foregoing, a real and substantive connection between British Columbia and the facts alleged in the this proceeding exists. That connection arises from the following:

- (a) APX was incorporated in British Columbia, its head office is located in British Columbia, and it is business carried on in British Columbia;
- (b) APX is a reporting issuer in British Columbia;
- (c) The Plaintiff resides in British Columbia;
- (d) The Defendant Manning conducts business in British Columbia;
- (e) The Defendants Birmingham, Dorin and Kuang reside in British Columbia; and



- (f) A portion of the damages sustained by the Class were sustained in British Columbia.

**SERVICE OUTSIDE OF BRITISH COLUMBIA**

The Plaintiff proposes to serve this claim on the defendants outside of Alberta. Service outside of British Columbia is necessary, and permitted pursuant to rule 4-5 of the British Columbia *Rules of Court*, BC Reg 168/2009, in that, to the best of the plaintiff's knowledge, Raymont lives in Alberta and Wilson lives in Ontario.



**RULE 7-1 (1) OF THE SUPREME COURT CIVIL RULES STATES:**

**(1) UNLESS ALL PARTIES OF RECORD CONSENT OR THE COURT OTHERWISE ORDERS, EACH PARTY OF RECORD TO AN ACTION MUST WITHIN 35 DAYS AFTER THE END OF THE PLEADING PERIOD,**

- (g) Prepare a list of documents in Form 22 that lists**
    - (i) All documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and**
    - (ii) All other documents to which the party intends to refer at trial, and**
  - (h) Serve the list on all parties**
- 

**Appendix**

***[THE FOLLOWING INFORMATION IS PROVIDED FOR DATA COLLECTION PURPOSES ONLY AND IS OF NO LEGAL EFFECT.]***

**PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This proposed class action claim involves allegations of misrepresentation in respect of securities.

**PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

***[CHECK ONE BOX BELOW FOR THE CASE TYPE THAT BEST DESCRIBES THIS CASE.]***

**A PERSONAL INJURY ARISING OUT OF:**

- ☐ A MOTOR VEHICLE ACCIDENT
- ☐ MEDICAL MALPRACTICE
- ☐ ANOTHER CAUSE

**A DISPUTE CONCERNING:**

- ☐ CONTAMINATED SITES
- ☐ CONSTRUCTION DEFECTS
- ☐ REAL PROPERTY (REAL ESTATE)



- ☐ PERSONAL PROPERTY
- ☐ THE PROVISION OF GOODS OR SERVICES OR OTHER GENERAL COMMERCIAL MATTERS
- ☒ INVESTMENT LOSSES
- ☐ THE LENDING OF MONEY
- ☐ AN EMPLOYMENT RELATIONSHIP
- ☐ A WILL OR OTHER ISSUES CONCERNING PROBATE OF AN ESTATE
- ☐ A MATTER NOT LISTED HERE

**PART 3: THIS CLAIM INVOLVES:**

- ☒ A CLASS ACTION
- ☐ MARITIME LAW
- ☐ ABORIGINAL LAW
- ☐ CONSTITUTIONAL LAW
- ☐ CONFLICTS OF LAW
- ☐ NONE OF THE ABOVE
- ☐ DO NOT KNOW

**PART 4:**

*[IF AN ENACTMENT IS BEING RELIED ON, SPECIFY. DO NOT LIST MORE THAN 3 ENACTMENTS]*

1. *Class Proceedings Act, R.S.B.C., 1996 c. 50;*
2. *Business Corporations Act, SBC 2002, c 57, as amended;*
3. *Securities Act, RSBC 1996, c 418, as amended, and the British Columbia Securities Act, SBC 2004, c 43, as amended, should it come into force.*