

COURT FILE NUMBER	1701-04755 JDR
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	CALGARY
PLAINTIFF	N.B.
DEFENDANTS	PHILIP HEEREMA, CALGARY EXHIBITION AND STAMPEDE LIMITED, and CALGARY STAMPEDE FOUNDATION
DOCUMENT	<b><u>CERTIFICATION ORDER</u></b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>JENSEN SHAWA SOLOMON DUGUID HAWKES LLP</b> Barristers 800, 304 - 8 Avenue SW Calgary, Alberta T2P 1C2  Carsten Jensen, Q.C., FCI Arb Gavin Price Kajal Ervin Cassandra Sutter  Phone: 403 571 1520 Fax: 403 571 1528 File: 13652.001
<b>DATE ON WHICH ORDER WAS PRONOUNCED:</b>	<u>June 10, 2019</u>
<b>LOCATION OF HEARING OR TRIAL:</b>	<u>Calgary</u>
<b>NAME OF JUDGE WHO MADE THIS ORDER:</b>	<u>The Honourable Associate Chief Justice John D. Rooke</u>

**UPON THE APPLICATION** of the Plaintiff, N.B., for an Order certifying this action as a class proceeding; **AND UPON** reading the Affidavit of N.B., filed October 11, 2018; **AND UPON** reading the Affidavit of Dr. Catherine Carter-Snell, filed October 11, 2018; **AND UPON** hearing

from counsel for the Plaintiff; **AND UPON** noting the consent of counsel for the Defendants, Calgary Exhibition and Stampede Limited and Calgary Stampede Foundation (collectively, the “**Calgary Stampede**”); **AND UPON** noting that the Defendant, Philip Heerema, was served with Application materials but did not attend at this Application and did not submit evidence or written submissions with respect to this Application;

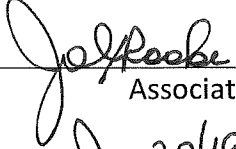
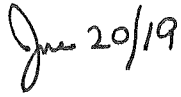
**IT IS HEREBY ORDERED THAT:**

1. For the purposes of this Order, capitalized terms used but not defined herein shall have the meaning given to such terms in the Plaintiff’s Seconded Amended Statement of Claim filed October 4, 2018 and attached hereto as **Schedule “A”** (the “**Statement of Claim**”).
2. This action is certified as a Class Proceeding pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5 (“**CPA**”).
3. The “Class” is defined as follows:

All male students, employees, contractors or volunteers of the Young Canadians between July 1, 1997 to January 31, 2014.
4. The definition of “Class” in paragraph 3, above, may be amended by order of the Court, or on the consent of the Representative Plaintiff and Calgary Stampede and approval by the Court. Counsel for the Representative Plaintiff shall provide notice of any consent order to the Defendant, Philip Heerema, who may seek leave to vary the consent order.
5. N.B. is appointed as Representative Plaintiff for the Class.
6. The proceeding is certified on behalf of the Class in respect of the common issues identified in **Schedule “B”** and attached hereto.
7. The list of common issues in Schedule “B” may be amended by order of the Court, or on the consent of the Representative Plaintiff and Calgary Stampede and approval by the Court. Counsel for the Representative Plaintiff shall provide notice of any consent order to the Defendant, Philip Heerema, who may seek leave to vary the consent order.
8. The Notice of Certification of this action as a class proceeding, in the form and method attached hereto as **Schedule “C”**, is hereby approved.
9. The costs of the Notice of Certification are to be paid by the Defendants.
10. Members of the Class may opt out of this Class Proceeding by submitting an Opt-Out Form in the form attached hereto as **Schedule “D”**, by no later than 90 days after the date of the first publication of the Notice of Certification of the action as a class proceedings. Class Members who do not opt out of the Class Proceeding in the 90 days

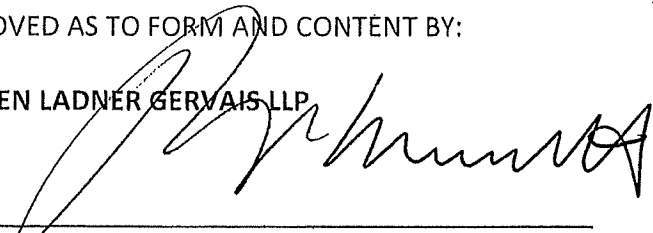
following the first publication of the Notice of Certification may only opt out prior to approval of settlement, if applicable, upon further Order of the Court.

11. A Class member may opt out of this class proceeding by sending the completed Opt-Out Form, signed by the Class member (including where appropriate an electronic signature) by regular mail, fax, email, or courier, before the opt-out date fixed by the Court, to JSS Barristers as set out in the Opt-Out Form.
  - (a) Where the postmark is not visible or legible, the Opt-Out Form shall be deemed to have been post-marked five (5) business days prior to the date that it is received by JSS Barristers.
  - (b) Any putative member of the Class who validly opts-out of the action by the opt-out deadline, in accordance with paragraphs 10 and 11 and Schedule "D" of this Order, are not bound by any judgment or by the terms of any future settlement, compensation, or benefits derived from this action, and shall no longer participate in or have the opportunity in the future to participate in this action or any future settlement of compensation arising from it; and
  - (c) This Order is binding upon each member of the Class who does not validly opt-out from this action on or prior to the opt-out deadline or upon further Order of the Court in accordance with paragraphs 10 and 11 and Schedule "D" of this Order, including those persons who are minors or mentally incapable.
12. The Litigation Plan put forward by the Representative Plaintiff and attached hereto as **Schedule "E"** is hereby approved. The Litigation Plan may be amended without further Court Order upon agreement by counsel for the Representative Plaintiff and counsel for Calgary Stampede, and upon notice of such agreement to the Defendant, Philip Heerema.
13. There shall be no costs of the Application for Certification as against the Defendant, Calgary Stampede.

  
\_\_\_\_\_  
Associate Chief Justice Rooke  


APPROVED AS TO FORM AND CONTENT BY:

**BORDEN LADNER GERVAS LLP**




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Bruce Churchill-Smith, Q.C.  
Counsel for the Defendants, Calgary Exhibition and Stampede Limited  
and Calgary Stampede Foundation

APPROVED AS TO FORM AND CONTENT BY:

**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP**



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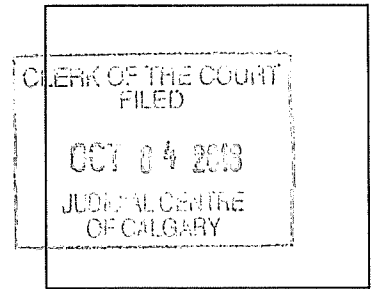
Kajal Ervin  
Counsel for the Plaintiff, N.B.

**Schedule "A"**  
**Second Amended Statement of Claim**

Schedule "A"

Clerk's stamp

FORM 10  
[RULE 3.25]



COURT FILE NUMBER 1701-04755

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

PLAINTIFF(S) N.B.

DEFENDANT(S) PHILIP HEEREMA, CALGARY EXHIBITION AND STAMPEDE LIMITED, and CALGARY STAMPEDE FOUNDATION

DOCUMENT Brought under the *Class Proceedings Act*  
SECOND AMENDED STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
JENSEN SHAWA SOLOMON DUGUID HAWKES LLP  
Barristers  
800, 304 - 8 Avenue SW  
Calgary, Alberta T2P 1C2

AMENDED this 4<sup>th</sup> day of October, 2018 Pursuant to  
Rule 3.62  
Dated the 4<sup>th</sup> day of Oct, 2018

Carsten Jensen, Q.C.  
Kajal Ervin  
Cassandra Sutter  
Phone: 403 571 1520  
Fax: 403 571 1528  
File: 13652.001

CLERK OF THE COURT

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.  
Go to the end of this document to see what you  
can do and when you must do it.

Statement of facts relied on:

The Parties

1. The Plaintiff, N.B, is an individual who resides in the City of Calgary, in the Province of Alberta.

2. The Defendant, Philip Heerema ("**Heerema**") is an individual, who was at all relevant times a resident in the City of Calgary, in the Province of Alberta. Heerema was at all relevant times employed by the Calgary Stampede Foundation in various capacities including Business Administrator, Production Manager and as a Production Services Coordinator.
3. The Defendant, Calgary Stampede Foundation ("**Stampede Foundation**") is a non-profit corporation, registered in Alberta. The Stampede Foundation carries on business in Alberta.
- 3.1 The Defendant, Calgary Exhibition and Stampede Limited ("**Stampede Exhibition**") is a non-profit corporation, registered in Alberta. The Stampede Exhibition carries on business in Alberta.
4. The Stampede Foundation operates the Young Canadians School of the Performing Arts, which is a school that focuses on training youth from the ages 7 – 19 years, in the art of dance, voice and performance (the "**School**"). The students train and perform throughout the year and hold their largest performance as part of the Grandstand Show during the annual Calgary Stampede.
- 4.1 The School has been a program of the Stampede Foundation since January 1, 2007. Prior to 2007, the School was a program of the Stampede Exhibition. The Stampede Exhibition transferred the School to the Foundation through a "Transfer, Services Supply Agreement" dated January 1, 2007.
- 4.2 From 2007 to present, the School is managed as an "activities model" in which Stampede Exhibition personnel manage the School on behalf of the Stampede Foundation. This arrangement was codified in a "Management Agreement" entered into between the Stampede Exhibition and Stampede Foundation dated September 30, 2013.

5. The Stampede Foundation, Stampede Exhibition, and the ^School^ are hereinafter collectively referred to as the "Young Canadians".

#### **Overview of the Claim**

6. This claim is brought by the Plaintiff who seeks Court approval to prosecute the Action as a class action on behalf of the proposed class members, as defined below ("Class" or "Class Members").
7. The Plaintiff, along with all of the Class Members, were students, employees, contractors or volunteers of the Young Canadians and were subject to sexual exploitation and / or sexual assault by Heerema. This claim is to remedy the harm that was committed by Heerema and the Young Canadians.
8. The Young Canadians provide training for youth through a diverse team of specialists who foster technical development, artistic creation and performance excellence. The program involves group lessons and one-on-one training with the faculty employed by the Young Canadians.
9. After auditioning for the Young Canadians and being accepted into the program, students spend months training in vocal and all types of dance, as well as nutrition and acting classes. Students train for approximately 20 hours per week until they near a performance and then training time is increased substantially. Training is conducted from September until the July performances at the Calgary Stampede. As part of the program, students also perform in a Christmas show and a spring show, which has included travel outside of Calgary, such as to Banff, Alberta and Anaheim, California.
10. The Young Canadians generally employ 5 or 6 adults who are comprised of dance and vocal instructors, a gymnastics teacher and occasionally weight and strength trainers and acting coaches. Senior students of the Young Canadians have close relationships with the instructors and often classes and lessons are between an instructor and a student alone.



11. For the annual spring performance of the Young Canadians, the senior students and faculty, including Heerema would sometimes travel to perform. In February of 2013 and 2014, the spring performance trip was to Disneyland in Anaheim, California. At all relevant times, Heerema was central in organizing the trips taken by the senior students of the Young Canadians. Heerema and other faculty travelled with the students of the Young Canadians on all the trips in the relevant time period. Further, Heerema advised the students, including N.B., that the trips taken by the senior students of the Young Canadians could only happen with Heerema's connections.
12. Heerema's involvement with the students of the Young Canadians was primarily focused on the senior students. At the beginning of the performance year, Heerema was tasked by the Young Canadians and responsible for reviewing the code of conduct with the students, which addressed, among other things, faculty and student interactions. Heerema was frequently at the Young Canadians facility during rehearsals and would attend at the end of rehearsals to give the students announcements and information regarding schedules, fundraising and other administrative matters for the Young Canadians. The faculty and administration of the Young Canadians promoted Heerema to the students, parents and other parties as a fundamental member of the Young Canadians and even promoted December 13, 2013 as "Phil Heerema Appreciation Day" on the Young Canadians Facebook webpage and otherwise, and asked the students of the Young Canadians to sign a book for Heerema to express their gratitude for the work Heerema did for the Young Canadians (the "Appreciation Book").

#### **The Class Members**

13. The Plaintiff brings this Action on his own behalf and on behalf of the proposed Class Members, being male students, employees, contractors or volunteers of the Young Canadians ^ between ^the year that Hereema commenced employment with the Young Canadians to 2014 (the "Class" or "Class Members").

14. There are an estimated 120 students alone in the Young Canadians organization each year.
15. There have been criminal proceedings commenced against Heerema for sexually exploitive acts that occurred in respect of ^eight Class Members between 1992 and 2014. As a result of those ^eight complaints, Heerema was charged with: 4 counts of sexual assault, 4 counts of sexual exploitation of a minor; 4 counts of luring a minor over the internet; 3 counts of making child pornography; 3 counts of accessing child pornography; 2 counts of unlawful confinement; 1 count of possessing child pornography; and 1 count of assault.
16. The Class Members ^include victims of Heerema, who used Young Canadian equipment, facilities and relationships to create opportunities to sexually lure, sexually exploit and sexually assault the Class Members. Heerema sexually lured and sexually exploited the Class Members and in some cases lured Class Members into sexual relations while performing his duties as an employee of the Young Canadians. Heerema manipulated and pressured the Class Members into beginning and continuing inappropriate physical and sexual relationships with him, notwithstanding that most of the Class Members were underage, his students or under his direct supervision, and that he did so for his own gratification in flagrant disregard for his duties as an adult, as a caregiver, supervisor, and as an educator.
17. The Class Members were also victims of the Young Canadians, which failed to provide a safe and secure environment free of sexual exploitation and sexual abuse. The Young Canadians failed to adequately investigate and screen Heerema before he was hired and before he was in contact with the Class Members. The Young Canadians failed to adequately supervise Heerema and failed to establish, implement, or enforce adequate policies, practices or procedures to protect the Class Members against child sexual abuse or exploitation by staff of the Young Canadians. The Young Canadians created or permitted an atmosphere tolerant of inappropriate sexual behaviour by Heerema and failed to adequately investigate and act with respect to Heerema's sexual exploitation

and inappropriate conduct with respect to the Class Members, notwithstanding suspicions or actual knowledge of that conduct.

**The Proposed Representative Plaintiff's Circumstances**

18. N.B. is the Proposed Representative Plaintiff for the Class Members as described above. N.B. first joined the Young Canadians as a junior student in February, 2008 and became an apprentice male singer in August, 2008. As an apprentice, N.B. was required to train with the Young Canadians from August, 2008 to July, 2009 and to appear in all the Young Canadians performances, being the Christmas, spring and Calgary Stampede Grandstand shows. N.B. was an apprentice student of the Young Canadians from August, 2008 to July, 2011.
19. In August 2011, N.B. auditioned with the Young Canadians to be a senior student, but was not accepted and did not participate in the Young Canadians for the 2011 to 2012 season.
20. In or about May, 2012 Heerema contacted N.B. by sending him a private message on Facebook, to ask N.B. to return to the Young Canadians as a senior student. Based on Heerema's message, in August, 2012 N.B. auditioned and was accepted with the Young Canadians to be a senior male singer student. As a senior male student of the Young Canadians, N.B. participated in the 2012 Christmas show, travelled with the Young Canadians to California in February, 2013, and participated in the July, 2013 Calgary Stampede Grandstand show.
21. In February, 2013, rather than performing in the traditional spring performance, Heerema organized a trip for the senior students of the Young Canadians to attend a performance school and to perform at Disneyland in Anaheim, California.
22. In August, 2013, N.B. auditioned and was accepted into a new division of the Young Canadians to be focused on senior male dancers. N.B. performed with the Young

Canadians in the Christmas, spring and Calgary Stampede Grandstand show, for the 2013 to 2014 season.

23. In early December of 2013, at the direction of staff and faculty of the Young Canadians, N.B., along with the other students of the Young Canadians including some of the Class Members, wrote in the Appreciation Book to express gratitude for the work Heerema did for the Young Canadians for "Phil Heerema Appreciation Day" on December 13, 2013. Heerema was presented with the Appreciation Book on or about December 13, 2013.
24. Following the 2013 Christmas performance, the Young Canadians took a break for the holiday season referred to as the "winter break". During the winter break, Heerema sent N.B. private messages on Facebook and Apple iMessage, luring N.B. into explicit conversations by stating that private messaging is a good place to share photos and videos. The particulars of such messages included, but were not limited to Heerema complimenting N.B.'s body and stating that there was "a lot [Heerema] would do for [N.B.]" if N.B. asked.
25. On or about the evening of December 31, 2013 to the morning of January 1, 2014, Heerema sent N.B. several messages and Heerema directed N.B. to send him pictures of N.B. both in his underwear and naked. Heerema also sent N.B. pictures of Heerema naked and also suggested that N.B. could visit Heerema's room when the Young Canadians were on tour and "pose in person" for Heerema. This exchange of messages and pictures between Heerema and N.B. took place between the evening of December 31, 2013 and January 1, 2014.
26. On or about January 7, 2014, Heerema asked N.B. to stay after the rehearsal to talk with him alone. N.B. did not want to be alone with Heerema and told Heerema that he had to go home and do homework; however, Heerema asked N.B. to promise to talk with him privately after the next rehearsal.

27. On or about January 12, 2014, when N.B. was changing out of his practice attire after the Young Canadians' rehearsal, Heerema approached N.B. and told N.B. that he wished to speak privately with N.B. Heerema took N.B. to the vocal studio at the Young Canadians' facility and, when they were alone, Heerema took and held N.B.'s hands in his own. While continuing to hold onto N.B.'s hands, Heerema stated that he would appreciate how "good looking" N.B. was if N.B. sent Heerema a picture of N.B. coming out of the shower. Heerema stated to N.B. that N.B. should find a reason when the Young Canadians were on their trip to Anaheim, California to come to Heerema's room so they could "chat or do whatever".
28. On or about January 27, 2014 Heerema asked N.B. to leave rehearsal and come to Heerema's office. Once Heerema and N.B. were alone in Heerema's office, Heerema said to N.B. that if their Facebook or Apple iMessage conversations were to be shown to anyone, it "would not be good" for Heerema or N.B. Heerema then hugged N.B. before allowing N.B. to leave Heerema's office.
29. On or about January 28, 2014, N.B. and his parents attended at the Sheldon Kennedy Child Advocacy Centre to meet with Calgary Police and report Heerema's conduct.
30. On or about January 31, 2014, the Young Canadians were advised of Heerema's conduct and that Heerema's conduct had been reported to the Calgary Police. Heerema was removed from the Young Canadians facilities and Heerema subsequently resigned from the Young Canadians.
31. Following Heerema's resignation, the Young Canadians failed to adequately contact N.B., the other Class Members or the students to address Heerema's conduct. No reasonable steps were taken by the Young Canadians to provide counselling for the students and the Young Canadians failed to compensate N.B. and the other Class Members for their counselling costs. The Young Canadians did organize a workshop for all current senior and show band students of the Young Canadians, as well as the faculty. An ex-police officer provided a presentation at the workshop on cyberbullying.

The content of the presentation was only focused on advising students that sending sexual pictures of themselves to others could have a lifelong negative impact on the students' lives and did not address anything regarding the allegations against Heerema or about adult sexual exploitation of minors. When N.B. contacted the Young Canadians later in 2014 to ask about the steps being taken to ensure such a situation did not happen again, N.B. was advised that the cyberbullying presentation was the only step that would be taken.

32. Following Heerema's resignation, in the summer of 2014, it came to N.B.'s attention that a former teacher of the Young Canadians, who had previously left the Young Canadians, publicly posted on her Instagram account that she and another faculty member of the Young Canadians had previously advised the Young Canadians that Heerema's conduct toward students was inappropriate. This post on Instagram also stated that the Young Canadians did not take any steps to address the faculty's concerns at that time. The former teacher's post was removed from her Instagram account shortly after it was posted.
33. As a result of Heerema's luring and inappropriate conduct, N.B. suffered and continues to suffer from depression that caused his grades to significantly drop and caused a substantial decline in N.B.'s interest in learning and in participating in recreational activities. N.B.'s depression has impacted all aspect of his life, including his emotional well-being and his social and academic pursuits.
34. N.B. also suffered from depression as a direct result of learning that prior to Heerema's inappropriate conduct toward N.B., the Young Canadians were aware or ought to have been aware that Heerema had engaged in inappropriate conduct and relationships with other Young Canadians students, but took no steps to address Heerema's conduct or protect students from future victimization.

### **The Sexual Exploitation of the Class Members**

35. The Class Members, or any of them, were lured by Heerema in person, by computer and / or by cell phone text messaging to create and exchange sexually explicit messages, photographs and videos. The Class Members were all put at risk as a result of their exposure to Heerema. Heerema used his position of authority to sexually exploit the Class Members and to create and exchange child pornography.
36. Heerema used his position of authority and trust to isolate the Class Members, or any of them, in the facilities of the Young Canadians, or otherwise, to unlawfully confine, sexually assault and incite sexual contact with the Class Members.
37. The Young Canadians failed to supervise Heerema and permitted Heerema to sexually exploit, assault and lure the Class Members. The Young Canadians failed to create, implement and enforce processes or policies to protect the Class Members from Heerema's victimization and permitted Heerema to use the Young Canadians' organization and property to promote and create child pornography and to sexually exploit and assault the Class Members. The Young Canadian put each of the Class Members at risk and in danger by allowing them to be exposed to Heerema.

### **Heerema's Direct Liability**

38. Heerema as an educator, supervisor, and a figure of authority within the Young Canadians organization owed a duty of care to the Class Members to provide a safe and secure environment free of sexual abuse, sexual assault, sexual exploitation and sexual luring.
39. Heerema breached his duty of care to the Class Members, some of the particulars of which include, but are not limited to:
  - (a) Engaging in inappropriate physical and sexual relationships with the Class Members;
  - (b) Abusing his position of trust and authority over the Class Members;

- (c) Sexual assault and sexual exploitation of the Class Members;
- (d) Engaging in sexual luring of the Class Members
- (e) Creating child pornography involving the Class Members;
- (f) Engaging in deception with respect to his inappropriate conduct, and encouraging the Class Members to deceive their parents and others; and
- (g) Such other particulars as may be proven at the Trial of this Action.

40. The Class Members were harmed by Heerema's breach of his duty of care and but for this breach, the Class Members would not have suffered physical and psychological damages, some of the particulars of which include, but are not limited to:

- (a) Post Traumatic Stress Disorder (Rape Trauma Syndrome);
- (b) Flashbacks;
- (c) Anxiety;
- (d) Depression;
- (e) Fear of retaliation and retribution;
- (f) Damaged relationships with family and friends;
- (g) Difficulty in establishing age-appropriate intimate relationships;
- (h) Damaged self esteem;
- (i) Fear of being alone with male authority figures; and
- (j) Such other particulars as may be proven at the Trial of this Action.

41. The Class Members will require ongoing medical, psychiatric and psychological treatment as a result of Heerema's breach of the duty of care he owed to the Class Members and the Class Members have suffered a loss of past and future earning capacity.



42. The harm suffered by the Class Members as a result of Heerema's breaches of his duty of care was proximate, direct and reasonably foreseeable at all material times.

42.1 Further, the particulars as set out in paragraph 39 above include intentional acts committed by Heerema which invaded the Class Members' private affairs or concerns, without lawful justification. Such acts constituted an invasion of privacy that was highly offensive, causing distress, humiliation or anguish among the Class Members.

#### **The Young Canadians' Vicarious Liability**

43. The Young Canadians are vicariously liable for the actions of Heerema as detailed above. Specifically, the Young Canadians are vicariously liable because:
- (a) The close relationship between staff, teachers and students at the Young Canadians created or enhanced the risk of sexual abuse and sexual exploitation;
  - (b) The nature of Heerema's employment as a coach, an administrator and a production manager; the responsibilities afforded to Heerema, such as reviewing the code of conduct with the Class Members; the supervision of employees, contractors and/or volunteers of the Young Canadians; and the day-to-day contact between Heerema and the Class Members created opportunities for Heerema to abuse his power and authority over the Class Members;
  - (c) The opportunities afforded by the Young Canadians to Heerema to foster sexually exploitive relationships by allowing Heerema to have access to office space which would segregate the Class Members from the rest of the students and staff and by allowing Heerema to travel with the Class Members on trips that required the Class Members and Heerema to stay in hotel rooms;
  - (d) The close and intimate relationship between Heerema and the Class Members fostered and encouraged by the Young Canadians promoting Heerema as a central employee of the Young Canadians, thereby enhancing his position of

power and authority and creating or enhancing the risk of sexual exploitation and sexual abuse;

- (e) Exposing each of the Class Members to Heerema, thereby exposing each Class Member to the danger and risk that Heerema posed; and
- (f) Allowing Heerema and the Class Members to communicate via email, text messaging or through social media provided additional opportunities to Heerema to foster sexually exploitive relationships.

44. The Young Canadians are vicariously liable for the harm and losses caused as a result of the breaches of duty of care owed to the Class Members by Heerema.

#### **The Young Canadians' Direct Liability**

45. At all material times, the Young Canadians owed a duty of care to the Class Members to provide a safe and secure environment free of sexual exploitation and sexual abuse, in accordance with the high standard of care expected of a school of performing arts.

45.1 Further, each year the Class Members were presented with the Young Canadians Official Student Handbook (the "Handbook") setting out information, responsibilities and obligations required by both students and the Young Canadians, including the code of conduct. The Handbook was reviewed and signed by the Class Members. It was an express and/or implied term of these contracts with the Young Canadians that the Young Canadians would take all reasonable steps to safeguard the safety, security and well-being of the Class Members while attending the Young Canadians school (the "Contract").

45.2 The Young Canadians breached their duty of care to the Class Members and the Contract, some particulars of which include:

- (a) Failing to adequately investigate and screen Heerema before he was hired;

- (b) Failing to adequately investigate and screen Heerema before he was promoted and in contact with the Class Members;
- (c) Failing to adequately supervise Heerema;
- (d) Allowing Heerema to interact with the Class Members and exposing the Class Members to Heerema, including placing Heerema in a position of authority and supervision over the Class Members, thereby placing them at risk and in danger;
- (e) Allowing or directing that Heerema be responsible for advising and explaining to the students, including the Class Members, the conduct of conduct;
- (f) Ignoring the warning signs of improper sexually exploitive conduct engaged in by Heerema with respect to the Class Members;
- (g) Failing to reasonably investigate and act with respect to Heerema's sexual exploitation and inappropriate conduct with respect to the Class Members, notwithstanding suspicions or actual knowledge of such conduct;
- (h) Creating or permitting <sup>an</sup> atmosphere tolerant of inappropriate sexual behaviour by people in positions of authority over students and the Class Members;
- (i) Failing to establish, implement, or enforce adequate policies, practices or procedures to protect against sexual abuse or exploitation by staff and people in positions of authority in the Young Canadians organization;
- (j) Failing to have proper procedures and safeguards in place to ensure that the Young Canadians' policies, practices and procedures were followed by Heerema; and
- (k) Such further and other breaches of duty of care as may be proved at the Trial of this Action.

46. The Young Canadians had actual knowledge of Heerema's inappropriate conduct, allegations of sexual assault and sexual exploitation with respect to some of the Class Members as a result of one or more complaints made by one or more faculty members of the Young Canadians. Notwithstanding this actual knowledge, the Young Canadians failed to adequately investigate Heerema's conduct, failed to supervise Heerema adequately or at all, and failed to protect the Class Members from Heerema.

#### **Breaches of Fiduciary Duty**

47. Heerema was in a position of trust and authority over the Class Members, as their coach, supervisor, program director and an administrator of the Young Canadians, and he abused that trust and authority and sexually lured, sexually assaulted and sexually exploited the Class Members for his own gratification. Further, Heerema created child pornography by obtaining and retaining photographs and videotapes of some or all of the Class Members.
48. The Defendants, or any combination of them, owed a fiduciary duty to the Class Members to provide a safe and secure work and educational environment free of sexual abuse and sexual exploitation, in accordance with the high standard of care expected of a performing arts educational institution. This fiduciary duty arises from the discretion and power of the Defendants over the Class Members, and some of their particularly vulnerable status as students under the age of 18. The Defendants breached their fiduciary obligations to the Class Members, some of the particulars of which include:
49. With respect to Heerema:
- (a) Engaging in inappropriate physical and sexual relationships with Class Members;
  - (b) Engaging in sexual luring of Class Members;
  - (c) Abusing his position of trust and authority over the Class Members;
  - (d) Sexual assault and exploitation of the Class Members;
  - (e) Creating child pornography involving Class Members;

- (f) Engaging in deception with respect to his inappropriate conduct, and encouraging the Class Members to deceive their parents and others.

50. With respect to the Young Canadians:

- (a) Failing to adequately investigate and screen Heerema before he was hired;
- (b) Failing to adequately investigate and screen Heerema before he was promoted and in contact with the Class Members;
- (c) Failing to adequately supervise Heerema;
- (d) Allowing Heerema to interact with the Class Members and exposing the Class Members to Heerema, thereby placing them at risk and in danger;
- (e) Ignoring the warning signs of improper sexually exploitive conduct engaged in by Heerema with respect to the Class Members;
- (f) Failing to investigate and act with respect to Heerema's sexual exploitation and inappropriate conduct with respect to the Class Members, notwithstanding suspicions or actual knowledge of that conduct;
- (g) Creating or permitting a school atmosphere tolerant of inappropriate sexual behaviour by people in positions of authority over students and the Class Members;
- (h) Failing to establish, implement, or enforce adequate policies, practices or procedures to protect against child sexual abuse or exploitation by staff and people in positions of authority in the Young Canadians;
- (i) Failing to have proper procedures and safeguards in place to ensure that the Young Canadians' policies, practices and procedures were followed by Heerema; and
- (j) Such further and other breaches of fiduciary duty as may be proved at the Trial of this Action.

51. As a result of the breaches of fiduciary duty owed by the Defendants to the Class Members, the Class Members suffered severe and permanent physical and psychological damage, some of the particulars of which include, but are not limited to:

- (a) Post Traumatic Stress Disorder (Rape Trauma Syndrome);
- (b) Flashbacks;

- (c) Anxiety;
- (d) Depression;
- (e) Fear of retaliation and retribution;
- (f) Damaged relationships with family and friends;
- (g) Difficulty in establishing age-appropriate intimate relationships;
- (h) Damaged self esteem; and
- (i) Fear of being alone with male authority figures.

52. The Class Members will require ongoing medical, psychiatric and psychological treatment as a result of the sexual assaults and/or sexual exploitation intentionally perpetrated by the Defendants.
53. As a result of the intentional sexual assaults, sexual exploitation and breaches of fiduciary duties, as described herein, the Class Members have suffered a loss of past and future earning capacity.

#### **Effect of the Defendants' Conduct**

54. The Young Canadians and Heerema held themselves out as an educational institution providing its students with the opportunity to train in dance, voice and performance with a professional faculty in a safe environment.
55. In contravention of those representations, the Young Canadians and Heerema permitted an unsafe, and sexually exploitive environment to develop, resulting in the numerous breaches detailed above.
56. As a result of the intentional sexually exploitive acts and breaches of duty detailed above, the Class Members have suffered and will continue to suffer physical and psychological trauma, and financial loss and damages.

57. As a direct and sole result of the matters described herein, the Class Members have incurred and will continue to incur losses and damages, some of the particulars of which include, but are not limited to:

- (a) General damages for pain and suffering and loss of amenities of life;
- (b) Past and future loss of income and loss of earning capacity in an amount to be determined at the Trial of this action;
- (c) Out-of-pocket expenses associated with past and future care and treatment, tutoring and education in an amount to be determined at the Trial of this action;
- (d) Cost of future care expenses, including costs for therapy, counselling, tutoring and education in an amount to be determined at the Trial of this action; and
- (e) Such further and other losses as may be proved at the Trial of this action.

**A Class Proceeding is Appropriate**

58. The Class Members as individuals cannot match the resources of the Young Canadians. The individual claims of some individual Class Members would not be economical to pursue individually. The Class Members would be denied access to justice in the absence of a class proceeding.

59. It is unlikely that, in these circumstances, an individual could or would seek prospective relief to deter future misconduct by the Defendants. The Young Canadians is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have a significant impact on its behaviour.

60. The allegations regarding the Defendants' breaches of the duties owed to the Class Members are common to the claims of the proposed Class Members. Determination of the nature and extent of the duties owed are common to the claims made.

61. In addition, the following are common issues to the claims of the proposed Class Members:

- (a) The Young Canadians failing to adequately investigate and screen Heerema before he was hired and before he was in contact with students, employees, contractors and volunteers of the Young Canadians;
  - (b) The improper or inadequate supervision of Heerema;
  - (c) The Young Canadians creating or permitting a work and school atmosphere that was tolerant of inappropriate sexual behaviour by people in positions of authority;
  - (d) The Young Canadians failing to adequately establish, implement or enforce policies, practices or procedures to protect its students, employees, contractors and volunteers against sexual abuse or exploitation by people in positions of authority; and
  - (e) Determining the nature and extent of the Young Canadian's failure to screen and supervise Heerema and put in place policies and safeguards to protect the Class Members.
62. Heerema's sexually exploitive conduct should have been apparent or readily discoverable to the Young Canadians. There were sufficient warning signs, rumours or complaints about Heerema that the Young Canadians ought to have been aware of, or at the very least conducted an investigation into, at which time Heerema's inappropriate conduct would have become abundantly clear. The Young Canadians could have taken the appropriate remedial steps to protect the Class Members from Heerema, thus preventing further inappropriate conduct and abuse. Determination of when the Young Canadians should have reasonably discovered Heerema's conduct and put an end to his exposure to the Class Members is a common issue to all of the claims of the proposed Class Members.
63. Whether the actions of the Defendants merit an award of punitive damages is a common issue that can be determined on a common basis.
64. The proposed Representative Plaintiff can fairly and adequately represent the interests of the Class Members.



65. The proposed Representative Plaintiff and the Class Members propose that the Trial of the common issues take place at the Court House in the City of Calgary, in the Province of Alberta.
66. The proposed Representative Plaintiffs and Class Members plead and rely on the *Class Proceedings Act*, SA 2003, c C-16.5 and the *Alberta Rules of Court*, Alta Reg 124/2010.

**Remedy sought:**

67. The Representative Plaintiff and Class Members seek:
- (a) An order certifying this Action as a class proceeding and appointing the Plaintiff as the representative of a class to be certified by the Court;
  - (b) General damages for the Class Members in an amount to be determined by this Honourable Court;
  - (c) Special damages, loss of income, future loss of income and cost of future care in an amount to be determined by this Honourable Court;
  - (d) Special damages in trust for the parents or other individuals who incurred expenses for the past and future care and treatment, tutoring and education of the Class Members, in an amount to be determined by this Honourable Court;
  - (e) Punitive and exemplary damages in an amount to be determined by this Honourable Court;
  - (f) An order, pursuant to s. 30 of the Class Proceedings Act, RSA 2003, c C-16.5 directing an aggregate monetary award;
  - (g) An order, pursuant to s. 32 of the Class Proceedings Act, RSA 2003, c C-16.5 allowing for the use of standard claim forms or other documentary evidence or such other procedure as warranted under the circumstances;
  - (h) An order that the damages be paid by the Defendant into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
  - (i) Pre-judgment and post-judgment interest;
  - (j) Any applicable Goods and Services Tax;
  - (k) The costs of this Action on a substantial indemnity basis;

- (l) The costs of administering the plan of distribution of the recovery in this Action;  
and
- (m) Such further and other relief as may be required and as this Honourable Court  
deems to be just.

**NOTICE TO THE DEFENDANT(S)**

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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

**WARNING**

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

**Schedule "B"**  
**Common Issues**

1. Were the Defendants, or any of them, negligent, including:
  - (a) Did the Defendants or any of them owe a duty of care to the Class Members to provide a safe and secure environment free of sexual luring, exploitation and assault;
  - (b) What was the applicable standard of care required of the Defendants or any of them in the circumstances;
  - (c) Did the Defendants or any of them breach their duties such that their conduct fell below the applicable standard of care; and
  - (d) Did the conduct of the Defendants or any of them cause losses or damages to the Class Members?
2. In respect of issue 1(c) and the alleged breaches of duties by Heerema:
  - (a) Did Heerema engage in inappropriate physical and sexual relationships with Class Members?
  - (b) Did Heerema abuse his position of trust and authority over Class Members?
  - (c) Did Heerema sexually lure, exploit and assault Class Members?
  - (d) Did Heerema create child pornography involving Class Members?
  - (e) Did Heerema engage in deception with respect to his inappropriate conduct, and encourage Class Members to deceive parents and others?
3. In respect of issue 1(c) and the alleged breaches of duties by the Young Canadians:
  - (a) Did the Young Canadians fail to adequately investigate and screen Heerema before he was hired?
  - (b) Did the Young Canadians fail to adequately investigate and screen Heerema before he was promoted and in contact with the Class Members?
  - (c) Did the Young Canadians fail to adequately supervise Heerema?
  - (d) Did the Young Canadians allow Heerema to interact with the Class Members and expose the Class Members to Heerema, including placing Heerema in a position of authority and supervision over the Class Members?

- (e) Did the Young Canadians allow or direct Heerema to be responsible for advising and explaining to the students, including the Class Members, the code of conduct?
  - (f) Did the Young Canadians ignore warning signs of improper sexually exploitive conduct engaged by Heerema with respect to the Class Members?
  - (g) Did the Young Canadians fail to adequately investigate and act with respect to Heerema's sexual exploitation and inappropriate conduct with respect to the Class Members, notwithstanding suspicions or actual knowledge of that conduct?
  - (h) Did the Young Canadians create or permit an atmosphere tolerant of inappropriate sexual behaviour by Heerema or other people in positions of authority over students and the Class Members?
  - (i) Did the Young Canadians fail to establish, implement or enforce adequate policies, practices or procedures to protect the Class Members against sexual abuse and sexual exploitation by staff and people in positions of authority in the Young Canadians organization?
  - (j) Did the Young Canadians fail to have proper procedures and safeguards in place to ensure that the Young Canadians' policies, practices and procedures were followed by Heerema?
4. Is Heerema liable for the tort of intrusion upon seclusion?
- (a) Was Heerema's sexual exploitation and inappropriate conduct, including the creation of child pornography involving Class Members, intentional?
  - (b) Did Heerema invade, without lawful justification, the private affairs or concerns of the Class Members?
  - (c) Would a reasonable person regard the invasion of privacy as highly offensive causing distress, humiliation or anguish?
5. Did the Young Canadians have a contractual relationship with the Class Members?
- (a) If so, was it an express or implied term of the contracts with the Class Members that the Young Canadians would take all reasonable steps to safeguard the safety, security and well-being of the Class Members while attending the Young Canadians' school?
  - (b) Did the Young Canadians breach that term of the contracts?

- (c) Did the breach of that term of the contracts cause losses or damages to the Class Members?
6. Did the Defendants or any of them owe a fiduciary duty to the Class Members?
- (a) Were the Defendants or any of them in a position of trust and authority over the Class Members?
  - (b) Did Defendants or any of them breach that fiduciary duty?
  - (c) Did the breach of fiduciary duty by the Defendants or any of them cause losses or damages to the Class Members?
7. If Heerema breached any duties of care or fiduciary duties owed to the Class Members, are the Young Canadians vicariously liable for such breaches by Heerema:
- (a) Does a precedent exist in which vicarious liability has been found such as to impose vicarious liability between Heerema and the Young Canadians in this Action?
  - (b) If the answer to question 5(a) is no, then:
    - (i) was the relationship between Heerema and the Young Canadians sufficiently close; and
    - (ii) is there a sufficient connection between the wrongful conduct alleged in this Action and the conduct authorized by the Young Canadians as employer for Heerema?
8. Did the Young Canadians have actual knowledge of Heerema's sexual luring, exploitation and abuse of the Class Members?
9. Does the conduct of any of the Defendants justify an award of punitive damages?
10. Is an aggregate damages award appropriate in respect of all or part of the Defendants' liability to the Class Members?

**Schedule "C"**  
**Form and Method of Notice of Certification**

1. The form of Notice of Certification is attached.
2. Notice of Certification shall commence on July 22, 2019 and shall conclude by August 22, 2019. The method for delivery of Notice of Certification is as follows:
  - (a) Class Counsel will send a copy of the Notice of Certification to all Class Members who have provided them with their contact information.
  - (b) Class Counsel will arrange for the Notice of Certification to be published once, or as many times as required by the Court, in the following newspapers: The Globe and Mail, the Calgary Herald, the Calgary Sun, and the National Post.
  - (c) Class Counsel will arrange for the Notice of Certification to be published via social media once, or as many times as required by the Court, in the following locations: Facebook and Twitter.
  - (d) The Calgary Stampede will arrange for the Notice of Certification to be published once on each Facebook alumni page for the Young Canadians by the administrator(s) for those Facebook pages. The Notice of Certification shall be removed following the expiry of the initial opt-out period.
  - (e) Class Counsel will send the Notice of Certification by mail or e-mail to any person who requests it after publication in the above noted newspapers.
  - (f) The Calgary Stampede will undertake best efforts to locate a last known email address or mailing address for all Class Members. The Calgary Stampede will then mail or email a copy of the Notice of Certification to the last known available address of the Class Members.
  - (g) Class Counsel will post the Notice of Certification to the JSS Barristers Twitter account.
  - (h) Class Counsel will issue a Press Release with respect to the Notice of Certification.
  - (i) Class Counsel will publish the Notice of Certification on the JSS Barristers website at [www.jssbarristers.ca/pages/class-actions/class-actions.cfm](http://www.jssbarristers.ca/pages/class-actions/class-actions.cfm)
  - (j) Class Counsel will publish the Notice of Certification on the Canadian Bar Association Class Action Database at <https://www.cba.org/Publications-Resources/Class-Action-Database>.

**CLASS ACTION REGARDING PHILIP HEEREMA, THE CALGARY EXHIBITION AND STAMPEDE LIMITED, AND THE CALGARY STAMPEDE FOUNDATION**

**NOTICE OF CERTIFICATION**

**What is the Class Action about?**

A lawsuit has been certified as a Class Action against Philip Heerema, Calgary Exhibition and Stampede Limited, and the Calgary Stampede Foundation.

The lawsuit alleges that the Class Members who were male students, employees, contractors, or volunteers with the Young Canadians organization of the Calgary Stampede Foundation and/or the Calgary Exhibition and Stampede Limited were sexually exploited, sexually lured, and / or sexually assaulted by Philip Heerema, or at risk. The lawsuit also alleges that the Calgary Stampede Foundation and the Calgary Exhibition and Stampede Limited failed to provide a safe and secure environment free of sexual exploitation and sexual abuse. Further, the lawsuit alleges that the Calgary Stampede Foundation and the Calgary Exhibition and Stampede Limited failed to adequately supervise Philip Heerema and failed to establish, implement, or enforce adequate policies, practices, or procedures to protect Class Members against sexual abuse or exploitation from staff and faculty of the Calgary Stampede Foundation and the Calgary Exhibition and Stampede Limited. The lawsuit alleges that the Calgary Stampede Foundation and the Calgary Exhibition and Stampede Limited are vicarious liable for Philip Heerema's actions.

The Representative Plaintiff, who can only be identified by his initials in accordance with a Court Order, is N.B. In this lawsuit the Representative Plaintiff is seeking damages on his own behalf and on behalf of everyone who was a male student, employee, contractor, or volunteer with the Young Canadians organization of the Calgary Stampede Foundation and the Calgary Exhibition and Stampede Limited and who was sexually exploited, sexually lured, and / or sexually assaulted by Philip Heerema, or at risk.

**How do I know if I am a member of the Class?**

The Class has been defined by the Court as follows:

All male students, employees, contractors or volunteers of the Young Canadians between July 1, 1997 and January 31, 2014.

If you were a male student, employee, contractor, or volunteer with the Young Canadians organization, during the time that Philip Heerema was employed there, then you are likely a Class Member.

If you are not sure whether you are a member of the Class or not, or if you would be entitled to damages should the Defendants be found responsible and required to pay damages, then you should speak to Class Counsel, whose address is set out below.

### **How do I participate in this Class Action?**

Class Members who wish to participate in the Class Action do not need to do anything at this time. They are automatically included in the Class Action.

Class Members who wish to participate are also encouraged to contact Jensen Shawa Solomon Duguid Hawkes LLP ("Class Counsel") at:

Kajal Ervin / Cassandra Sutter  
Jensen Shawa Solomon Duguid Hawkes LLP  
#800, 304 – 8 Avenue SW  
Calgary, Alberta T2P 1C2  
(403) 571-1520  
classactions@jssbarristers.ca

### **What if I do not want to participate in the Class Action?**

Any Class Member who wishes to opt out of the Class Action must do so by sending a written opt out form, signed by the Class Member, stating that he opts out of the Class Action. The written opt out form can be obtained from Class Counsel, and must be sent by pre-paid mail, courier, or e-mail to Class Counsel at the address above.

The written opt-out form must be received by Class Counsel no later than October 20, 2019

Class Members may be permitted to opt out of the Class Action after October 20, 2019 and prior to approval of settlement, if applicable, upon further order of the Court. If you opt-out of the Class Action, you will take full responsibility for initiating your own lawsuit against the Defendants and for taking all legal steps necessary to protect your claim, if you wish to proceed with a claim.

### **What are the costs to me?**

Class Members will not be personally liable to pay any legal fees or disbursements to Class Counsel.

If Class Counsel is successful in establishing that the Defendants are liable to pay money to the Class Members, the Court will then proceed to determine which Class Members may be entitled to that money, and how such amounts should be distributed to those Class Members.

The Representative Plaintiff has retained Class Counsel to represent him and the Class in this lawsuit. Class Counsel will only be paid legal fees if the lawsuit is successful. If the lawsuit is successful, Class Counsel will request that legal fees be set by the Court.



If the Class Action is successful, legal costs will be deducted from the amounts recovered for the Class Members, but only after such costs are approved by the Court.

**How do I find out more about this Class Action?**

Questions about the matters in this Notice must not be directed to the Court. The Certification Order and other information with respect to this Class Action can be obtained at the following website: [www.jssbarristers.ca/pages/class-actions/class-actions.cfm](http://www.jssbarristers.ca/pages/class-actions/class-actions.cfm)

In addition, questions for Class Counsel should be directed by mail, e-mail, or telephone to:

Kajal Ervin / Cassandra Sutter  
Jensen Shawa Solomon Duguid Hawkes LLP  
#800, 304 – 8 Avenue SW  
Calgary, Alberta T2P 1C2  
(403) 571-1520  
[classactions@jssbarristers.ca](mailto:classactions@jssbarristers.ca)

**Schedule "D"**

**OPT-OUT FORM**

**TO: JENSEN SHAWA SOLOMON DUGUID HAWKES LLP ("JSS BARRISTERS")**

I, \_\_\_\_\_ (insert full name), have received notice of the Class Action claim commenced against Philip Heerema, the Calgary Stampede Foundation the Calgary Exhibition and Stampede Limited.

I believe that I am a Class Member. I was a male student, employee, contactor or volunteer with the Young Canadians organization of the Calgary Stampede Foundation and/or the Calgary Exhibition and Stampede Limited while Philip Heerema was an employee with the Young Canadians.

**I DO NOT** wish to participate in the Philip Heerema / Calgary Stampede Foundation/Calgary Exhibition and Stampede Limited Class Action.

I understand that by **OPTING OUT** of this Class Action, I will not be eligible for any benefit that may be available to the Class upon resolution of this matter.

I understand that, if I believe I suffered losses and I wish to pursue any remedy with respect to my experience and interaction with Philip Heerema as a student / contractor / volunteer / employee of the Calgary Stampede Foundation and/or the Calgary Exhibition and Stampede Limited, I must do so on my own.

I understand that the *Limitations Act*, RSA 2000, c L-1 may limit or extinguish any rights I may have to pursue a remedy if I do not act promptly to pursue any claim.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

Insert Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

## **Schedule "E"**

### **LITIGATION PLAN**

#### **INTRODUCTION**

1. The *Class Proceeding Act* requires a workable Litigation Plan to be put into place as part of the Certification Process. N.B. as the proposed Representative Plaintiff in this matter, hereby proposes the following draft Litigation Plan, and further proposes that the final Litigation Plan involve input from counsel for the Defendants and direction from this Honourable Court.

#### **CERTIFICATION APPLICATION**

2. The Certification Application will be heard by the Case Management Justice based on the schedule set out in the Order arising from the first Case Management Meeting, filed November 27, 2018.

#### **NOTIFICATION TO THE CLASS**

3. The Certification Notice, attached as Schedule "C" to the Certification Order, shall be circulated to advise Class Members, among other things, that:
  - (a) The Court certified the action as a class proceeding;
  - (b) The Class definition;
  - (c) JSS Barristers is Class Counsel and contact information for Class Counsel;
  - (d) A person may only opt out of the class proceeding by sending a written opt out election to the recipient designated by the Court, before a date and time fixed by the Court; and
  - (e) A person may opt out of the class proceeding after the date fixed by the Court and prior to approval of settlement, if applicable, upon further Court order.
4. The Notice of Certification to the Class shall commence on July 22, 2019 and shall conclude by August 22, 2019.

#### **STATEMENTS OF DEFENCE**

5. The Defendants shall provide Statements of Defence no later than 60 days after the date the Certification Order is filed in this matter.

## **DOCUMENT PRODUCTION**

6. The Representative Plaintiff shall provide his Affidavit of Records no later than 30 days after service of the Statements of Defence.
7. The Defendants shall provide their Affidavit of Records no later than 90 days after the service of the Representative Plaintiff's Affidavit of Records.
8. Documents will be exchanged in electronic format, to the extent possible, using Eclipse. The parties will confer and agree on document coding protocols to facilitate an orderly exchange of documents, taking into account the direction provided in *Civil Practice Note* 4, with any issues arising to be addressed in Case Management.

## **QUESTIONING**

9. Questioning shall be completed within 60 days from the date the Defendants provide their Affidavits of Records. The Representative Plaintiff anticipates that the Questioning of the Defendants (including their officers and employees) can be completed in 5 days or less, and that the Questioning of the Representative Plaintiff can be completed in 2 days, all subject to undertakings and objections.

## **COMPLETING UNDERTAKINGS**

10. Each party or individual questioned as part of the Part 5 Questioning pursuant to the *Alberta Rules of Court* shall provide answers to undertakings within 30 days of the undertaking being given.

## **QUESTIONING ON UNDERTAKINGS**

11. Any Questioning on undertaking answers given by a person Questioned pursuant to Part 5 of the *Alberta Rules of Court*, shall be completed within 30 days of receipt of the undertaking answers from that person.

## **ISSUES ARISING FROM QUESTIONING**

12. Following the completion of the Questioning process, the parties may seek an amendment of the Certification Order to deal with any necessary refinements to the common issues.
13. In addition to regular Case Management meetings, there be a Case Management meeting scheduled to take place within 30 days of the deadline for the conclusion of the Questioning process, including any questioning on undertakings, to deal with or schedule any Applications that may arise from any objections taken by any party and to address any necessary refinements to the common issues.

## **EXCHANGE OF EXPERT REPORTS**

14. The Representative Plaintiff anticipates that expert reports will be provided on behalf of all parties.
15. Expert reports shall be exchanged in accordance with the sequence outlined in Rule 5.35 of the Alberta *Rules of Court*, on the following schedule:
  - (a) Primary Reports due within 90 days of the completion of Questioning, including any questioning on undertakings;
  - (b) Rebuttal Reports due within 60 days of the deadline for service of Primary Reports; and
  - (c) Surrebuttal Reports due within 30 days of the deadline for Rebuttal Reports.

## **ALTERNATIVE DISPUTE RESOLUTION**

16. The Representative Plaintiff and the Defendants shall consider alternative dispute resolution and may discuss and agree upon the format of such a process as between the parties or during a Case Management Meeting, as may be appropriate. If the parties participate in alternative dispute resolution and if the parties reach a proposed settlement of the Action and the Court approves the settlement, this Litigation Plan will require amendment.

## **TRIAL OR SUMMARY JUDGMENT ON THE COMMON ISSUES**

17. If appropriate, the Representative Plaintiff may seek summary judgment on one or more of the common issues.
18. If the Representative Plaintiff does not seek summary judgment on common issues, or if any common issues remain following a motion for summary judgment, the Representative Plaintiff will seek the early appointment of the common issue trial judge. The Representative Plaintiff will address issues of trial management to the trial judge in advance of the trial to ensure the orderly and efficient determination of common issues.
19. A Form 37 – Request to Schedule a Trial Date for the common issues will be filed by the parties within 30 days following the deadline for service of the Surrebuttal Reports.
20. The Representative Plaintiff anticipates that the Common Issues Trial will take approximately 10 days.
21. It is anticipated that the Common Issue Trial will resolve all core liability issues. Further it is anticipated that the Common Issues Trial may also resolve certain core damages questions, including the award of punitive or exemplary damages.

22. The Representative Plaintiff may seek an aggregate award of monetary relief, in which case the Class will request that the Court approve and order the distribution of the aggregate award amongst Class Members in proportion to the losses suffered. The methodology for distributing the aggregate award would be worked out between Class Counsel, a claims administrator, and any experts retained by Class Counsel for that purpose. Once finalized, the distribution plan would be brought before the Court for approval.
23. In the event of punitive or exemplary damages being awarded, Class Counsel shall bring a motion before this Honourable Court to determine the manner in which such damages ought to be distributed to the Class. The Representative Plaintiff expects that such damages would be allocated to the Class Members on a *pro rata* basis having regard to the amount of damages sustained by each Class Member.

#### **NOTICE OF RESOLUTION OF COMMON ISSUES**

24. Following the Common Issues Trial, the Representative Plaintiff will ask the Court to:
  - (a) Settle the form and content of a notice of resolution to the common issues (the **Notice of Resolution**); and
  - (b) Order that the Notice of Resolution be distributed substantially in accordance with the method of Notice of Certification set out above, except that the Notice of Resolution shall not be delivered to any Class Member who validly opted out of the proceedings.

#### **RESOLUTION OF ANY REMAINING INDIVIDUAL ISSUES**

25. In the event that the Representative Plaintiff is successful at the common issues stage but an aggregate award of monetary relief is not granted, it is proposed that a Case Management Conference be convened before this Honourable Court to determine the most efficient and practical means of determining the individual issues which remain to be resolved. Pursuant to section 28 of the *CPA*, the Court will be asked to make orders as are necessary to determine all issues not determined at the Common Issues Trial.
26. The Representative Plaintiff expects that the Common Issues Trial will resolve all issues related to duties owed by the Defendants to the Class Members, the nature of the relationship between the Defendants, the nature of relationship between each of the Defendants and the Class Members, and breaches by the Defendants.
27. The Representative Plaintiff anticipates that the only remaining issues following the Common Issues Trial will relate to damages. Further, the Representative Plaintiff anticipates that the following issue may have to be determined in order to conclude each Class Members' claim:

- (a) An assessment of the particular individual circumstances of the claimant, and their experience with Mr. Heerema to assess the nature and extent of damages suffered by the claimant.
- 28. This process may involve individual trials, however, it is expected that such trials will be expedient, and will consume less than one day each. A Case Management Conference will be convened before this Honourable Court to determine the most efficient and practical means for proceeding with individual trials, including the possibility of grouping similarly situated claimants together.
- 29. With respect to the quantum of damages, the Representative Plaintiff expects this will be primarily an expert driven exercise.

#### **CLASS COUNSEL'S FEES AND THE COSTS OF ADMINISTRATION**

- 30. If the Court awards damages in the aggregate, Class Counsel will ask the Court to order payment of their fees, disbursements and applicable taxes (**Class Counsel Fees**) as a first charge on the aggregate amount.
- 31. If the Court does not award damages in the aggregate, Class Counsel will ask the Court to direct the Defendants to pay Class Counsel Fees out of the awards in favor of the Class Members, as a first charge on the awards.
- 32. The Plaintiffs will ask the Court to order that the Defendants pay all administration costs, including the costs of all notices and the fees and disbursements of the Administrator as those costs are incurred.

#### **CASE MANAGEMENT AND FURTHER ORDERS CONCERNING THIS PLAN**

- 33. This Plan may be amended from time to time by directions given at case conferences or by further order of the Court, or without further Court Order upon agreement by Class Counsel and counsel for the Calgary Stampede, and upon notice of such agreement to the Defendant, Philip Heerema.
- 34. The parties shall appear before the Case Management Justice for such Case Management meetings as may be required to implement this Litigation Plan and to resolve any issues that may arise, and to establish a process and schedule after the Common Issues Trial.

## SCHEDULE SUMMARY

35. The following is a summary of the proposed schedule from the Certification Order to the Common Issues Trial:

Step	Days Allotted for Completion	Days from Certification Order
1. Certification Order	0	0
2. Notification to Class	30	41
3. Statements of Defence	60	60
4. Document Production from the Representative Plaintiffs	30	90
5. Document Production from the Defendants	90	180
6. Questioning Completed	60	240
7. All Undertakings Completed	30	270
8. All Questioning on Undertakings Completed	30	300
9. Issues Arising from Questioning	30	330
10. (a) Expert Reports (if required) – Primary	90	420
(b) Expert Reports (if required) – Rebuttal	60	480
(c) Expert Reports (if required) – Surrebuttal	30	510
11. Common Issues Trial	As scheduled by the Court	As scheduled by the Court