

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

IMAM YUSUF PANCHBHAYA

Plaintiff

-and-

CENTRAL 1 CREDIT UNION, CREDIT UNION CENTRAL,
CUCO COOPERATIVE ASSOCIATION, GRANT THORNTON LLP, 3734366 CANADA
INC., GRANT THORNTON LIMITED, GRANT THORNTON CORPORATE FINANCE INC.,
GRANT THORNTON CONSULTING, GRANT THORNTON INTERNATIONAL LIMITED,
THORNTON GROUT FINNIGAN LLP, MARK THOMSON, and MICHAEL CREBER

Defendants

STATEMENT OF CLAIM

(Notice of Action issued December 6, 2019)

Proceeding under the *Class Proceedings Act, 1992*

OVERVIEW

1. Central 1 Credit Union (“Central 1”), Credit Union Central (“Credit Union”), and UM Financial Inc. (“UM Financial”) were engaged in a form of joint venture or limited partnership rather than a traditional debtor/creditor relationship, which provided Halal compliant mortgages to the Muslim community of Canada.

2. The form of joint venture Mudarabah structure created an accepted risk of loss on the part of Central 1 and Credit Union, while simultaneously recognizing that there would be expenses borne by UM Financial to ensure Halal compliance and certification of the venture.

3. UM Financial and UM Capital Inc. offer Halal compliant mortgages which allow for ordinary security and lending arrangements to be connected to and function in concert with recognized Islamic lending instruments. These instruments accommodate, among other things, the Islamic prohibition against charging or payment of interest and allow for the lender and the borrower to enter into a partnership instead of a strict debtor-creditor relationship.

4. As a result of this structure, homeowner payments were made to UM Financial. UM Financial was contractually permitted to utilize payments in the following ways: (1) to pay Central 1/Credit Union its share of the profits, (2) to pay UM Financial its share of the profits; and (3) to pay the various expenses of the joint venture, such as those associated with the Halal Ethics Board (“SEB”), later incorporated as the Multicultural Consultancy Canada Inc. (together “SEB/MCC”).

5. UM Financial also worked with SEB/MCC, to oversee the religious aspects of the financing.

6. Central 1/Credit Union’s unilateral decision to end the Mudarabah left UM Financial in an impossible position where it faced demands to pay Central 1/Credit Union and the SEB/MCC, while also ensuring that homeowner mortgages remained Halal compliant.

7. UM Financial struggled to balance these competing demands and utilized funds in the UM Financial account to cover the costs associated with the closing out of the Mudarabah venture. Most of these costs related to paying the Halal scholars, which Omar Kalair (the Chief Executive

Officer of UM Financial) understood that he was authorized by the Mudarabah partnership to use UM funds to cover these expenses, and if this generated a shortfall, that shortfall would be borne by the funding partner in the Mudarabah, Central 1/Credit Union, in accordance with the rules of Islamic finance.

8. During this time, homeowners continued to make payments in satisfaction of their Musharakah mortgages and Kalair did not block the accounting of these payments or the discharge of their mortgages. However, in a devastating move, the receiver, Grant Thornton Limited (“Grant Thornton”), along with Central 1/Credit Union, refused to accept the evidence of the payments and moved to enforce the mortgage security despite knowing that each partner had been paid.

9. Homeowners lost money and, in some cases, lost their homes. Their Halal compliant mortgages were not honoured, homeowners were not provided with Halal renewals of their mortgages, and homeowners lost money due to having to sell their homes/properties quickly in order to comply with the requirements of their faith. The Halal compliant mortgages were converted and/or substituted into interest bearing non-Halal compliant mortgages, without the homeowners and/or UM Financials’ consent.

10. The Plaintiff now brings this action on behalf of all persons who themselves and/or with or through their family members, sought to obtain Halal compliant mortgages or second mortgages through the defendants and UM Financial Inc., or did obtain such mortgages, second

mortgages, or other financing, prior to the bankruptcy of UM Financial Inc. or any related entities to UM Financial Inc., and/or Central 1 Credit Union (the “Class” or “Class Members”).

RELIEF SOUGHT

11. As a result of the defendants’ actions, and in particular the failure to recognize the Halal compliant mortgages, the Plaintiff and Class Members have suffered and will continue to suffer damages.

12. The Plaintiff, on his own behalf and on behalf of the Class, claim:

- a. an order pursuant to the *Class Proceeding Act*, 1992, S.O. 1992, c. 6 (the “CPA”), certifying this action as a class proceeding and appointing him as representative Plaintiff of this Class;
- b. against Central 1 Credit Union, Credit Union Central, and CUCO Cooperative Association:
 - i. a declaration that the defendants owed a duty of care to the Plaintiff and the Class Members, and breached the standard of care owed to them;
 - ii. a declaration that the defendants breached their fiduciary duty to the Plaintiff and the Class Members;
 - iii. a declaration that the defendants are liable for deceit to the Plaintiff and the Class Members;

- iv. a declaration that the defendants are liable for breach of contract to the Plaintiff and the Class Members;
 - v. a declaration that the defendants are liable for breach of express and implied warranty to the Plaintiff and the Class Members,
 - vi. a declaration that the defendants have been unjustly enriched;
 - vii. a declaration that the defendants are liable for fraudulent and negligent misrepresentation to the Plaintiff and the Class Members;
 - viii. a declaration that the defendants are liable for conspiracy against the Plaintiff and the Class Members;
 - ix. a declaration that the defendants are liable for discrimination to the Plaintiff and the Class Members;
- c. against Grant Thornton LLP, 3734366 Canada Inc., Grant Thornton Limited, Grant Thornton Corporate Finance Inc., Grant Thornton Consulting, Grant Thornton International Limited, Thornton Grout Finnigan LLP, Mark Thomson, and Michael Creber:
- i. professional negligence;
 - ii. breach of fiduciary duty and breach of obligations as Licensed Insolvency Trustee (L.I.T);
- d. against Central 1 Credit Union, Credit Union Central, CUCO Cooperative Association and Grant Thornton LLP, 3734366 Canada Inc., Grant Thornton Limited, Grant Thornton Corporate Finance Inc., Grant Thornton Consulting,

Grant Thornton International Limited, Thornton Grout Finnigan LLP, Mark Thomson, and Michael Creber;

- i. abuse of process
- e. damages in an amount to be determined prior to trial;
- f. punitive damages;
- g. an order, pursuant to s. 24 of the *CPA*, directing an aggregate assessment of damages;
- h. an order directing a reference or giving such other directions as may be necessary to determine any issues not determined at the trial of the common issues;
- i. pre-judgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1980, c. 43 (the “*CJA*”);
- j. costs of this action on a partial indemnity basis, together with applicable taxes thereon; the costs of administering the plan of distribution of the recovery in this action; and
- k. such further and other relief as this Honourable Court deems just.

THE PARTIES

Imam Yusuf Panchbhaya

13. The Plaintiff, Imam Yusuf Panchbhaya (“Panchbhaya” or the “Plaintiff”) resides in Mississauga. He applied for a Halal compliant mortgage and put a down payment in the amount of \$5000 to purchase a home, which he later lost when Central 1/Credit Union did not follow

through on the \$49 million commitment letter (discussed below). He is also a Mufti or Islamic scholar and was the chair of the SEB/MCC.

Defendants

14. The defendant, Central 1 Credit Union (“Central 1”) is a credit union under the *Credit Union Incorporation Act* (British Columbia). Most credit unions located in Ontario and all of those in British Columbia, are classified as ‘Class A’ members of Central 1. Central 1 administers the various credit union members from its head office located in Vancouver, British Columbia.

15. The defendant, Credit Union Central (“Credit Union Central”), is or was a credit union operating in Ontario.

16. On or about July 1, 2008, Central 1 purchased substantially all the assets of Credit Union and Central 1 is the successor entity of Credit Union and is the assignee of all of Credit Union’s rights and obligations under its agreement and arrangement with UM Financial Inc. and UM Capital Inc (collectively “UM Financial/UM Capital”).

17. CUCO Cooperative Association (“CUCO”) is in Toronto, Ontario, and is a subsidiary of Central 1/Credit Union.

18. Central 1, Credit Union, and CUCO are collectively referred to as the “Credit Union Defendants”. The Credit Union Defendants provide or provided banking and financing facilities to members of its credit union.

19. Grant Thornton LLP Canada is an audit, tax, and advisory firm with its headquarters in Toronto, Ontario. Grant Thornton acted as both the receiver and the trustee in bankruptcy against UM Financial/UM Capital.

20. 3734366 CANADA INC., Grant Thornton Limited, Grant Thornton Corporate Finance Inc., Grant Thornton Consulting, Grant Thornton International Limited, and Thornton Grout Finnigan LLP are all subsidiaries of Grant Thornton LLP and acted in concert with them either directly or through their agents.

21. Mark Thomson (“Thomson”) was an upper executive at Grant Thornton Limited and was a directing mind during the receivership.

22. Michael Creber (“Creber”) was the President of Grant Thornton and was a directing mind during the receivership. In 2016, Creber resigned as President and was promoted to Chief Executive Officer and Chairman of the Board.

23. Collectively, Grant Thornton LLP, Mark Thomson, Michael Creber, 3734366 CANADA INC., Grant Thornton Limited, Grant Thornton Corporate Finance Inc., Grant Thornton

Consulting, Grant Thornton International Limited, and Thornton Grout Finnigan LLP are referred to as “the Grant Thornton Defendants”).

FACTS

Background

24. Omar Kalair (“Kalair”) was the CEO of UM Financial Inc. (“UM Financial”) and UM Capital Inc. (collectively, “UM Financial/UM Capital”), which provided Halal compliant home financing. UM Financial/UM Capital entered into an agreement with Central 1, previously Credit Union Central of Ontario, to act as a financial backer and lending institution.

25. UM Financial also worked with an independent SEB, later the SEB/MCC, to oversee the religious aspects of the financing. Yusuf Panchbhaya is a Mufti or Islamic scholar who was the chair of the SEB/MCC.

26. UM Financial operated its Halal compliant home financing business from 2004 until 2011 when it was ordered into receivership by the court after an application was made by Central 1.

27. UM Financial/UM Capital offer Halal compliant mortgages which allow for ordinary security and lending arrangements to be connected to and function in concert with recognized Islamic lending instruments. These instruments accommodate, among other things, the Islamic prohibition against charging or payment of interest and allow for the lender and the borrower to enter into a partnership instead of a strict debtor-creditor relationship.

28. UM Financial/UM Capital had approximately 180 clients with a total mortgage loan value of approximately \$30,500,000 (the “Mortgage Portfolio”) at the time of the receivership (discussed below) and reached 500 clients in 2007 with a total mortgage loan value of approximately \$82,000,000.

29. The clients of UM Financial/UM Capital were generally located in and around the Greater Toronto area and governed by the laws of Ontario.

30. UM Financial/UM Financial Capital were widely recognized and known as the sole significant provider of Halal compliant mortgages facilities in Canada.

31. The Canadian Muslim community is a significant and growing portion of the Canadian financial market. It is expected to double to 2.6 million by 2030. It is anticipated that close to 20 percent of new bank accounts opened by 2030 will be from the Muslim community. The global Islamic finance industry, which has been growing by 15 to 20 percent per year, is widely expected to reach 2 trillion in the next three to five years.

32. A unique feature about the lending arrangements among UM Financial/UM Capital and Central 1/Credit Union is that the agreements made no provision for the payment of interest by UM Financial/UM Capital or Central 1/Credit Union from the clients who receive loans through this structure.

33. This is because the agreements are based on Halal (Islamic law) principles, which prohibit, among other things, the payment of interest. No agreement exists or was signed between UM Financial/UM Capital and Central 1/Credit Union that uses the word “interest” and there is no reference to penalty or late fees.

34. Central 1/Credit Union benefited from UM Financial/UM Capital being the only substantial lending entity providing these facilities to the Canadian Muslim community.

Creation of the Halal Lending Structure

35. Central 1/Credit Union were fully involved in the development and application of the security and lending documents among UM Financial/UM Capital and the Class. Central 1/Credit Union were expected to but did not conduct their business with UM Financial/UM Capital in accordance with the terms of the security and lending documents.

36. In 2003, Kalair, who would become the principal of both UM Financial and UM Capital, attended Credit Union with various other members of the Canadian Muslim community to explore the opportunity of providing for the financing needs of the growing Canadian Muslim community through the credit union system.

37. Peter Collins and Andrew Schroer, managers of Central 1/Credit Union, were particularly enthusiastic about the opportunity to provide credit facilities to this under served and growing

community. Several meetings were held with various people at Credit Union to address this demand.

38. In 2004, UM Financial Inc. was incorporated by Kalair, among others, to serve this need.

39. In or about February 2005, Credit Union agreed to enter into a Halal compliant finance and security structure with UM Financial. This structure included not only financing agreements between Credit Union and UM Financial but acknowledged that UM Financial would finance its clients (the Class) through the use of Halal compliant contracts (Mudarabah) and that a form of mortgage would arise therefrom. Central 1 was directly involved in advising UM Financial on the design of the structure, of tax issues related thereto, and of the form and function of the necessary documents, including providing a confirmation letter on a Credit Union of Ontario letter head which confirmed that the underlying mortgage contract did not contain interest and that it was based on a Mudarabah.

40. UM Financial and Central 1 signed two agreements namely the Master Mortgage Sale and Agreement and the Master Mortgage Assignment Security Agreement. The *Fatwas* (religious edicts and directions) from Muslim scholars about the business structure also governed the security and lending structure with Credit Union and were well known by Credit Union. Collectively all the agreements referenced in paragraphs 39 and 40, are referred to as the **“Security and Lending Documents”**).

41. UM Financial/UM Capital provided unique confidential information in respect of the Halal arrangements and introduced Credit Union to its contacts in the Muslim community. The relationship was such that Credit Union had an obligation to act in good faith in its dealings with UM Financial/UM Capital and not take advantage of the vulnerability of UM Financial/UM Capital that arose as a result of this special relationship.

42. In creating this unusual and novel business structure, UM Financial/UM Capital entered into a special relationship with Central 1 and Credit Union, relying upon their knowledge of the financial sector and their skill and expertise in retail mortgage lending.

43. The lending arrangement among UM Financial/UM Capital and Capital 1/Credit Union are characterized as a Halal compliant Mudarabah arrangement.

44. Mudarabah is a special kind of partnership where one partner provides the capital (rabb-ul-maal) to the other (mudarib) for investment in a commercial enterprise. The distribution of profit must be pre-determined by the two parties. Furthermore, the amount of profit must be pre-determined by the two parties and the amount of profit ascribed to either of the parties must be independent of the capital amount, dependent solely on the actual profit realized by the commercial enterprise. That is, the profit assigned to a party cannot be a percentage of the capital amount contributed as that would be considered a fixed return, or interest. The profit assigned to either of the parties cannot be a lump sum amount either, as this would also constitute interest.

45. In Mudarabah, the rabb-ul-maal has no right to participate in management, which is carried out by the mudarib only. The loss, if any, is suffered by the rabb-ul-mal only because the mudarib does not invest anything. His loss is restricted to the fact that his labor has gone in vain, and his work has not brought any fruit to him. However, this principle is subject to a condition that the mudarib has worked with due diligence, which is normally required for a business of that type. If he has worked with negligence or has committed dishonesty, he shall be liable for the loss caused by his negligence or misconduct.

46. Consistent with such arrangement, Central 1, as a silent partner to UM Financial/UM Capital, provided all of the capital to UM Financial/UM Capital (on an interest-free basis) and UM Financial/UM Capital invested the capital from Central 1 in residential real estate mortgages (a “Central 1 Funded Mortgage”) and provided all of the brokerage, loan approval, and loan administration services associated with residential real estate mortgages.

47. In exchange for such services, UM Financial/UM Capital were paid the pre-determined compensation, estimated at 3% of the profits that Central 1 would make on the Central 1 Funded Mortgages. The documentation for each property has a schedule B where the Central 1 profit rate and the markup rate are quantified.

48. The residential real estate mortgage arrangements among UM Financial/UM Capital and each client it contracts with are characterized as a Mushakarah arrangement. Consistent with such arrangement, UM Financial/UM Capital and the clients (the Class Members) operated as partners to acquire residential real estate.

49. At all times, Central 1 understood that its loan and security arrangements were predicated on and limited by the principles of Islamic law, which governed not only the contracts entered into between UM Financial/UM Capital and the Class, but also between Credit Union and UM Financial/UM Capital.

50. In order to prove the legitimacy of its business in the eyes of the Muslim community, UM Financial sought and received *Fatwas* (religious edicts and directions) from Muslim scholars about the business structure. These *Fatwas* governed the security and lending structure with Credit Union and were well known by Credit Union.

51. Central 1 and Credit Union are parties, either expressly or impliedly, not only to the direct lending and security agreements between themselves and UM Financial/UM Capital but also to the overall contractual structure of the contracts, agreements, and arrangements between Central 1, UM Financial/UM Capital, and the various Class Members who received funds from Central 1 through this method.

52. The Credit Union Defendants received significant profits and benefits from their involvement in this financing arrangement, including through the receipt of regularly scheduled payments from Class Members.

53. Central 1/Credit Union required that all the parties who received loans through this structure become members of the credit union system. In this way, Central 1/Credit Union increased their credit union membership by several hundred members.

54. At that time, there were close to 100 community events sponsored by UM Financial/UM Capital, which were attended and supported by Credit Union and then Central 1.

55. Together UM Financial/UM Capital and Central 1/Credit Union educated the community on the UM Financial/UM Capital products and explained Central 1/Credit Union's role. Close to 500,000 flyers, many of which had Central 1/Credit Union's logo on them, were distributed to the community over time.

56. UM Financial/UM Capital's lending facilities with Central 1/Credit Union peaked at \$82 million in 2007 with UM Financial/UM Capital and Credit Union providing Halal compliant facilities to close to 500 clients.

57. In June 2007, Credit Union provided a new credit facility to UM Capital authorizing loans up to \$49,000,000. A form of loan agreement was executed at that time. That loan, like all the other security and lending arrangements between these parties, was made with the full knowledge and understanding of Credit Union that the loans would be Halal compliant.

58. In reliance upon the creation and existence of this facility and the special relationship which it had with Credit Union, UM Financial/UM Capital entered into preliminary agreements with more than 2000 interested parties at that time who were looking to enter into Halal compliant facilities. It also published the existence of this facility to its community, took on additional staff, and took on larger offices.

59. In or around 2007 onward, UM Financial/UM Capital maintained contact with a database of future clients, as well as other potential clients who approached UM Financial/UM Capital to provide them with Halal compliant mortgages. Collectively, these potential clients, at that time, was approximately 5000 and are referred to herein as the “Future Clients”.

60. However, in August 2007 Credit Union unilaterally decided not to honour the terms of the loan agreement with UM Financial/UM Capital and withdrew the facility, despite the reasonable expectations of UM Financial/UM Capital that this facility would be available.

61. As a direct result of Credit Union’s withdrawal of this facility UM Financial/UM Capital was denied the opportunity to capitalize upon the goodwill it had amassed or the interest of Future Clients in their products. Credit Union’s decision to reduce the facility was done without notice or explanation.

62. UM Financial would have been able to enter into agreements with these 5000 clients using this facility and other facilities, which would have become available from Central 1/Credit Union.

63. Credit Union was aware or ought to have been aware that UM Financial/UM Capital required this facility to provide lending and brokerage facilities to the Future Clients and that they would incur obligations and make statements in reliance on the availability of this facility.

64. Central 1/Credit Union were obliged under their loan agreements with UM Financial/UM Capital and pursuant to their special relationship with UM Financial/UM Capital, to provide these facilities.

65. As a result of Central 1's action in withdrawing this facility, UM Financial suffered damage to its reputation and credibility as well as actual direct monetary damages.

66. UM Financial/UM Capital was named as a party in an action brought by one of these Future Clients who had relied on the Central 1 promises of funding to their detriment. UM Financial/UM Capital ultimately paid \$30,000 of damages in this case in 2010.

67. In addition, not only did UM Financial/UM Capital lose the opportunity to provide products and services to the Future Clients, UM Financial/UM Capital lost approximately 300 existing clients (Class Members) after August 2007 due to lack of refinancing, as Central 1 refused to allow clients (Class Members) to increase financing and therefore lost the opportunities that those clients could have provided for further revenue and profit.

68. These Class Members left as a direct result of Central 1/Credit Union being unwilling to provide further financing to refinance their homes.

69. In addition, after 2007, Central 1/Credit Union required that the existing clients incur new and additional legal fees at the time of the renewal of their mortgages. Central 1/Credit Union

knew or ought to have known that these fees would prevent or discourage many of these Class Members (clients) from renewing their mortgages with UM Financial/UM Capital.

70. Since 2007, because of the pressure exerted by the Central 1/Credit Union and the withdrawal of further financing, UM Financial/UM Capital was forced to coordinate the payouts of over \$50 million to Central 1 involving these 300 clients. No losses were suffered by Central 1 from the payout of these loans.

71. Central 1 knew or ought to have known that UM Financial/UM Capital would have derived revenue from these existing clients and would have used the facility which they would have provided for this purpose.

72. Assuming these 300 clients and/or Class Members had continued to be clients of UM Financial/UM Capital, and again assuming these clients had an average loan of \$160,000 and an average home price of \$325,000, the total revenue lost by UM Financial/UM Capital equal approximately \$1,000,000 per year.

73. In addition, it was known by Central 1/Credit Union that several of the UM Financial/UM Capital clients and/or Class Members had second mortgages with private individuals. UM Financial/UM Capital knew or ought to have known that UM Financial intended to use the new facility and the ongoing support of Central 1/Credit Union to all the clients who were lost, as well the remaining clients and/or Class Members to convert their existing second mortgages into UM Financial/UM Capital mortgages.

74. From August 2007 until November 2010, UM Financial/UM Capital from time to time entered into discussions with Central 1 to try to have Central 1 honour its commitment to offer the 2007 facility and to provide Halal compliant lending facilities to the Future Clients.

75. From time to time, Central 1/Credit Union advanced new funds to existing UM Financial/UM Capital clients and/or Class Members between 2007 and November 2010.

76. Throughout this period UM Financial/UM Capital expected that Central 1 would honour its commitment to UM Financial/UM Capital and allow UM Financial/UM Capital to capitalize on the opportunity presented by Future Clients. UM Financial/UM Capital remained in contact with the Future Clients throughout this period to be able to offer them the new facility when it became available.

77. However, on November 23rd, 2010, Central 1 conclusively terminated these discussions by making a demand for repayment.

Capricious Demand and Bad Faith actions

78. At some point in 2010, Central 1 determined that it no longer wanted to provide banking facilities to the Islamic community through UM Financial/UM Capital. They did not make this fact expressly known to UM Financial/UM Capital at that time.

79. Central 1 embarked on a campaign thereafter to disengage their business from UM Financial/UM Capital, regardless of the damage that it would cause, and ultimately, without

concerning itself with either the terms of its contracts with UM Financial/UM Capital or the Class and other duties to either of UM Financial/UM Capital or Class Members.

80. Central 1 initially attempted to sell their debt and security position to a fellow credit union, Meridian Credit Union (“Meridian”).

81. During this period, Central 1 made positive statements about UM Financial to Meridian and tried to encourage Meridian to enter into the proposed sale.

82. During those discussion, UM Financial/UM Capital explained to Meridian the full scope of their arrangements with UM Financial/UM Capital, including their obligation to abide by the entire Halal compliant structure of those security and lending arrangements.

83. Central 1 made no mention regarding UM Financial/UM Capital or UM Financial/UM Capital’s knowledge to Meridian about any defaults in the security and lending arrangements with UM Financial/UM Capital, although such so called defaults, already existed at that time, and had existed for some time prior.

84. Ultimately, in or around August 2010, Meridian decided not to pursue the proposed transaction. It was later learned by UM Financial, that Meridian passed on the opportunity because they felt UM Financial and its Muslim clients were not a good fit.

85. On November 23rd, 2010, without warning, Central 1/Credit Union issued a demand for repayment of the entire amount of the debt of the Mortgage Portfolio and terminated certain mortgage assignment agreements between UM Financial/UM Capital and Central 1/Credit Union.

86. Central 1 was aware that UM did not have these funds and could not possibly make the payment being demanded, knowing full well that all of the relevant funds that Central 1/Credit Union have advanced to UM Financial/UM Capital were applied to the various mortgages in the Mortgage Portfolio.

87. As the loan facilities between Central 1 and UM Financial/UM Capital are term facilities, Central 1 could only make demand in the event the security and lending arrangements were in default.

88. At the time of the demand, all payments owed by UM Financial/UM Capital to Central 1 were paid in full. There were no monetary defaults of any kind under the security and lending arrangements by UM Financial/UM Capital.

89. Central 1 was unable to and did not provide any details or explanation of any such default in their demand letter.

90. At the time of demand, the only recent monetary default in the security and lending arrangements between the parties was the fact that Central 1 owed UM Financial approximately

\$30,000. This amount was ultimately acknowledged and paid for by Central 1 to UM Financial Inc. in February 2011, after several requests.

91. There was no material change in the conditions of the business relationship between Central 1 and UM Financial/UM Capital from what had been the case at the time Central 1 had attempted to sell its debt and security to Meridian.

92. Central 1's decision to terminate the mortgage assignment agreements, which coincided with the demand for repayment, was done without any reasonable notice or any genuine default. The termination was in breach of the terms of those agreements, contrary to its fiduciary and other duties owed to UM Financial/UM Capital and the Class, including an obligation to act in good faith in its dealings with its partners, UM Financial/UM Capital, and the Class.

93. The mortgage assignment agreements required that disputes between the parties with respect to the subject matter of those agreements be referred to arbitration.

94. Central 1 refused all offers to arbitrate this dispute. Arbitration would have reduced the costs of this process and wasted government/taxpayer resources that it is estimated to be close to \$5 million. Arbitration would have also avoided the negative stigma of the receivership proceedings led by the Grant Thornton Defendants, which damaged UM Financial/UM Capital greatly, including the Class.

95. There was no basis for Central 1 to make a demand for the repayment of its loans to UM Financial/UM Capital in November 2010.

96. Central 1 confirmed in a conversation with UM Financial/UM Capital on November 24, 2010, that it had made a unilateral internal decision that it wished to discontinue its involvement in the Islamic finance business by the first quarter of 2012 and that its demands had been made for that reason.

97. In its demand letters, the Central 1 advised UM Financial/UM Capital of three unacceptable options: 1) pay the entirety of the debt, which Central 1/Credit Union knew UM Financial/UM Capital could not possibly do, 2) declare bankruptcy, which would have thrown the clients into a chaotic situation, or 3) that UM Financial should send a letter that was to instruct its clients that they had to seek conventional financing elsewhere to repay their mortgages in full as the Islamic financing by Central 1 was to be terminated.

98. Central 1 required that all outstanding and future fees due and owing by Class Members to UM Financial/UM Capital should be paid to Central 1. These fees were in excess of \$1,000,000. Central 1 had no legitimate claim to these fees as they were properly due and owing to the UM Financial/UM Capital only under the security and lending arrangements then in place between the parties.

99. UM Financial/UM Capital refused these unreasonable options.

100. Central 1 had no genuine concern about the Mortgage Portfolio or any supposed defaults in the security and lending arrangements. Central 1/Credit Union were motivated solely by their own agenda, reckless of the terms of its agreements with UM Financial/UM Capital. They neither cared about the consequences to UM Financial/UM Capital nor the Class.

101. Central 1 relied on its position as the economically larger and dominant party to impose its will on UM Financial/UM Capital, including the Class and expected their acquiescence in the face of these demands. However, UM Financial/UM Capital retained counsel and resisted.

102. After being confronted by UM Financial/UM Capital and their counsel as to the baseless nature of their demands, Central 1 withdrew their demands on December 3, 2010.

103. Over the next several months, Central 1 attempted to use the threat of forced solvency proceedings to leverage unreasonable concessions from UM Financial/UM Capital, including having UM Financial/UM Capital execute a form of forbearance agreement, which would strip UM Financial/UM Capital of all their rights, including their rights to pursue this action against Central 1 for all their damaging and inappropriate conduct. UM Financial/UM Capital refused to capitulate.

104. On December 22, 2010, almost a month after the demand letter, Central 1 attempted in a letter of that date to retroactively justify their baseless demand from the previous month. Their letter set out a series of supposed defaults of UM Financial/UM Capital, all of which were

technical, extremely stale, and/or insignificant to the security and lending arrangements between the parties.

105. During the period between November 23, 2010, and January 26, 2011, UM Financial/UM Capital were in compliance with all the material terms of the security and lending arrangements with Central 1, continued to make all payments when due to Central 1, and did not commit any monetary defaults with Central 1.

106. After receiving the demand letter of November 23, 2010 and being advised of Central 1's requirement that it would not honour its financing commitments to UM Financial/UM Capital, including to the Class, UM Financial/UM Capital sought an alternate financial partner to take out the security and lending position held by Central 1.

107. UM Financial/UM Capital arranged for Central 1 to enter into negotiations with an arm's length investor who was capable of purchasing the Mortgage Portfolio named Pharos Mortgage Investment Corporation ("Pharos").

108. At that time, Pharos had access to facility in the amount of \$50,000,000 which it was prepared to apply to this matter. Pharos had several meetings and calls with Central 1, up to and including March 8, 2011.

109. Pharos communicated to Central 1 several times that they were ready, willing, and able to close. However, Central 1 would not agree to sell the Mortgage Portfolio.

Second Demand Letter

110. To leverage a better deal out of Pharos, and again in reckless disregard to the consequences to UM Financial/UM Capital and the Class, Central 1 issued on January 26, 2011, demands against UM Financial/UM Capital a second time.

111. Nothing material had changed since the demands were withdrawn on December 3, 2010. No monetary default was identified as outstanding at the time of making the demand. Central 1 continued to be in default of its monetary obligations to UM Financial, having still failed to pay the \$30,000 due to it.

112. UM Financial/UM Capital advised Central 1 that the defaults upon which they relied on were inappropriate, in a letter dated January 31, 2011.

113. UM Financial/UM Capital were either not in default of their lending arrangement with Central 1, or if they were in defaults, the issues which give rise to the alleged defaults had either been condoned by Central 1, had been acknowledged and waived, had become customary between parties in the interim, or were caused by Central 1.

114. Central 1 was also advised at this time, as it had been advised previously and as it knew or should have known, that making demand on UM Financial/UM Capital or pursuing a receivership would be a breach of their security and lending arrangements with UM Financial/UM Capital, and that it would lead to chaos among Class Members. They pursued the receivership anyway.

115. Pharos made a reasonable written offer to Central 1 to purchase the portfolio on February 4, 2011. Central 1 would not accept this offer.

116. Central 1 continued to pressure UM Financial/UM Capital. On February 10, 2011, Central 1 spontaneously and without warning decided that it would no longer allow for further renewals of the mortgages of each Class Member when those mortgages came due.

117. Central 1 then took the position that 26 Class Member mortgages, then awaiting renewal, would not be renewed. Therefore, Central 1 concluded, UM Financial/UM Capital now owed Central 1 in excess of \$3,000,000 immediately.

118. Central 1 had since 2007 routinely granted mortgage renewal requests which were presented to them with respect to the Mortgage Portfolio.

119. It is transparent that Central 1 took this position in its February 10th letter to manufacture another after-the-fact default to retroactively lend credibility to their demand letter and to pressure UM Financial/UM Capital.

120. Despite this action from Central 1, UM Financial/UM Capital continued to service those Class Members awaiting renewal of their mortgages. Those Class Members continued to make payments when due, pending a resolution to the issues between Central 1 and UM Financial/UM Capital. The number of parties with mortgages awaiting renewals in 2011 was approximately 100 and increased.

121. Central 1 was unwilling to reach a resolution with Pharos. On March 18, 2011, Central 1 issued an application for the appointment of a receiver over UM Financial/UM Capital.

122. UM Financial brought an action against Central 1/Credit Union for \$50 million, which is amount of the financing agreement.

123. At the receivership hearing, which UM Financial/UM Capital contested, the Court ordered Grant Thornton to be the receiver and approximately one month later, they assign UM Financial/UM Capital into bankruptcy. Grant Thornton was also appointed by the court as Trustee in Bankruptcy, which creates a conflict of interest.

124. Central 1/Credit Union did initially want to hire Deloitte Touche as receiver, but Deloitte Touche refused the retainer because they had Islamic finance clients and understood that Central 1/Credit Union wanted to pursue a course of action against Islamic finance. Once Deloitte Touche refused, they approached Grant Thornton, who was willing to participate in the illegal scheme for fees.

125. The Islamic Scholars also retained counsel and were advised to issue an invoice to UM Financial for the \$2.7 million outstanding. A motion to intervene in the receivership hearing was denied and there was no appeal. A law society hearing against the lawyer for negligence is pending.

126. Grant Thornton as the receiver drafted a report, which was later billed to Credit Union for approximately \$2 million. This report completely omitted or ignored to consider the Islamic characteristics of the deal and treated the relationship as an ordinary lender/borrower, which it was not.

127. Grant Thornton, as a trustee in bankruptcy, wanted to realize on the assets in their capacity as trustee in bankruptcy, not as a receiver. The trustee in bankruptcy has an obligation to realize on the assets of the bankrupt to pay the creditors – except here, the only creditors was Credit Union. And its investigation, Grant Thornton decided that the only asset remaining against UM Financial was their cause of action for \$50 million.

128. Given that the only asset was the cause of action, Grant Thornton proceeded to the bankruptcy court and obtained an order from the court, allowing them to auction off the cause of action, which is the only asset left. Of course, the only beneficiary of any significance is Credit Union – who appointed Grant Thornton as receiver and is also the trustee.

129. With only two bids for the cause of action made, Central 1/Credit Union offered \$35,000 and was granted an order approving the sale to Central 1/Credit Union against itself. Credit Union/Central 1 then paid \$35,000 to Grant Thornton, in addition to the \$2 million in fees.

130. Central 1/Credit Union having purchased the cause of action against itself, discontinues it. Central 1/Credit Union effectively was able to buy its way out of the lawsuit for \$35,000.

131. There was no one around to dispute the order because with a trustee in bankruptcy in place, Minden Gross (UM Financials' counsel) having already been paid, does nothing further, and Grant Thornton who is now the receiver, fires Minden Gross.

132. Grant Thornton prepared reports to the Court as receiver and was the L.I.T ("licensed insolvency trustee") who sought the appointment as the bankruptcy trustee of UM Financial/UM Capital, in obvious conflict with its role as receiver.

133. There were several press releases, which Credit Union Central of Ontario (a predecessor entity) and Grant Thornton encouraged by cooperating and providing documents - in furtherance of their conspiracy and their effects to conceal their misfeasances including their silence in the face of false defamatory media publication (some of which are the subject of various Omar Kalair defamation suits) and only further concerns of fraudulent concealment.

134. Once in bankruptcy, nothing further happened even though there were other offers to purchase the mortgages and keep them Halal compliant.

135. The receiver is an officer of the Court and has a duty to consider the interests of all stakeholders. However, the primary interest to be considered is that of the secured creditor, while the interests of other parties may be compromised and, in this case, Central 1 was the secured creditor and the interests of the Class, including UM Financial were compromised.

136. Class Member interests should have been given considerable weight given the special circumstances – that the homeowners/Class Members had Halal-compliant mortgages with UM Financial is a special circumstance, which also gives rise to *Charter* considerations and public policy issues.

Criminal proceedings

137. While the receivership proceedings were ongoing, Kalair used funds from UM Financials' bank account to purchase precious metals valuing over \$2 million to satisfy the legitimate monies owed to the Islamic scholars and their incorporated entity, which among other matters led to improper criminal proceedings against Kalair and Panchbhaya. The Defendants were instrumental in causing these criminal charges to be laid and prosecuted and the Defendants did this by providing false and incorrect information to police authorities and encouraging the charges to be laid, while being aware that the police were incapable of appreciating the true facts which the Defendants concealed from them.

138. Kalair and Mr. Panchbhaya were charged as follows:

- a. They were jointly charged with three Criminal Code, R.S.C. 1985, c. C-46 ("CC") offences of (i) theft; (ii) fraud; and (iii) money laundering; and one *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") offence of fraudulent disposal of property. These offences related primarily to the precious metals.

- b. Kalair was individually also charged with two additional CC offences of (i) theft and (ii) fraud, and two additional BIA offences of (i) failure to perform duties of a bankrupt and (ii) unlawful refusal to answer fully and truthfully. The CC offenses relate primarily to the mortgage payments (prepayments and paid off mortgages). The BIA offences arise out of Kalair's obligations as president and CEO of UM upon its bankruptcy.

139. The charges were later dismissed and effectively the lives of Kalair and Panchbhaya were destroyed. Class Member lives were also destroyed. The Muslim community suffered greatly, while the Credit Union Defendants and the Grant Thornton Defendants moved forward, richer, and unaffected.

RIGHTS OF ACTION

BREACH OF CONTRACT

The contract

140. The Security and Lending documents set out the terms of the contract entered into by the Class with UM Financial and the Credit Union Defendants. The details of the Security and Lending document are set out above in paragraphs 35 to 51.

141. Class Members had a direct and specific understanding that they would receive a Halal compliant mortgage that provided interest-free mortgages and Halal renewals of their mortgages.

142. It was an express, or in the alternative, an implied term of the contract with the Credit Union Defendants, that all Class Members would receive a Halal compliant mortgage, including providing Halal renewals of their mortgages, as stated in the Security and Lending Documents. It was also an implied term that Class Members would not be charged penalty or late fees, which they were by the Credit Union Defendants once the mortgages were converted into non-Halal compliant mortgages.

143. The Credit Union Defendants fundamentally and materially breached the terms of their contracts with Class Members. The substitution and/or conversion into interest bearing, non-Halal compliant mortgages by Credit Union and its conspiracy with the Grant Thornton Defendants, led to the breach of the terms of Class Members contracts with the Credit Union Defendants.

144. Central 1 and Credit Union are parties, either expressly or impliedly, not only to the direct Lending and Security Agreements between themselves and UM Financial/UM Capital but to the overall contractual structure of the contracts, agreements, and arrangements between Central 1, UM Financial/UM Capital, and the various Class Members who received funds from Central 1 through this method.

145. The Plaintiff and the Class Members have therefore been damaged in their ability to make payments on their mortgage, renew their mortgage, and in some cases, have lost their homes, were forced to sell their homes quickly to make payments, and/or the interest and penalties assessed by the Credit Union Defendants once the mortgages were converted; each a direct result

of the decision made by the Credit Union Defendants to not honour the Security and Lending Agreements and to convert the Halal compliant mortgages into non-Halal compliant mortgages. Any special damages the Plaintiff and Class have incurred as a result thereof, are also a direct result of the Credit Union Defendants breach of contract.

CONSPIRACY

146. The Credit Union Defendants and the Grant Thornton Defendants, engaged in a conspiracy to cause harm to the Class and the Plaintiff, and for their own financial benefit.

147. The Credit Union Defendants and the Grant Thornton Defendants agreed to act unlawfully, the predominant purpose of which was to cause injury to the Plaintiff and the Class Members, and which ultimately did cause injury to the Plaintiff and the Class Members. The Credit Union Defendants and the Grant Thornton Defendants together agreed to make the fraudulent or negligent misrepresentations about the mortgages (and security and lending structure) and participated in fraud to dupe the Class Members of their non-interest-bearing Halal compliant mortgages.

148. Further, or in the alternative, the agreement between the Credit Union Defendants and the Grant Thornton Defendants was an agreement to engage in unlawful conduct directed toward the Class and the Plaintiff, which caused injury to the Class and the Plaintiff, and the likelihood of the

Plaintiff and the Class suffering injury was known to these defendants or should have been known to them in the circumstances.

149. The Credit Union Defendants and the Grant Thornton Defendants agreed to create a plan to deceive the Class Members into believing that they would receive non-interest-bearing Halal compliant mortgages. As a result of this, the Class suffered the loss of their non-interest-bearing mortgages, and their rights were not recognized by Grant Thornton Defendants as plead herein. The purpose of the agreement between these defendants was to cause the Class Members to suffer economic loss and injury while some or all of these defendants received a financial gain. The conversion and/or substitution of Halal compliant mortgages into non-Halal compliant mortgages were fraudulent and therefore unlawful.

150. The Credit Union Defendants in creating, controlling, promoting, marketing, administering, operating, participating, approving, financing, and finally discharging the Halal compliant mortgages to the Class, by agreement, participated in a scheme designed to create the illusion that the mortgages were Halal compliant mortgages and would always be Halal compliant mortgages.

151. The object of the conspiracy was the financial benefit of the Credit Union Defendants and Grant Thornton Defendants who participated in the conspiracy. The Plaintiffs and the proposed Class members rely on the following facts:

- i. The facts set forth in the paragraph above;

- ii. The allegations of fraud set forth in paragraphs above; and
- iii. The substitution and/or conversion into interest bearing, non-Halal compliant mortgages, which was designed to deceive and harm the Class who believed they had non-interest-bearing Halal compliant mortgages. Credit Union Defendants and Grant Thornton Defendants knew or ought to have known that this was fraud.

152. The Credit Union Defendants and Grant Thornton Defendants knew or were willfully blind that the Class Members would suffer losses.

153. The Credit Union Defendants and Grant Thornton Defendants conspired to commit a fraud. These Defendants knew or were willfully blind to the fact that the Class would lose their entire investment in their mortgage and/or properties, that they would not be able to renew their mortgage, and in some cases, would lose their homes, while allowing these Defendants to receive millions of dollars from the fraudulent scheme.

154. As a result of the conspiracy to substitute and/or convert the Halal compliant mortgages into non-Halal compliant mortgages, the Plaintiff and proposed Class Members have suffered damages for which they seek compensation.

155. The losses suffered by the Plaintiff and the Class are the loss of the sums they paid into their mortgages and any special damages, being out-of-pocket expenses, including professional

accounting and legal fees and consulting fees, incurred as a result of the mortgage substitution and/or conversion scheme.

156. The Credit Union Defendants and Grant Thornton Defendants received, directly or indirectly virtually all of the cash payments paid into the mortgages by the Plaintiff and the Class, and were thereby enriched, and the Plaintiffs and the Class were damaged by the loss of their cash payments and loss of their Halal compliant mortgages.

FRAUD AND DECEIT

Fraud

157. The Credit Union Defendants and Grant Thornton Defendants fraudulently substituted and/or converted the non-interest-bearing Halal compliant mortgages into interest bearing mortgages for their purpose of their own profit and defrauded the Class. The facts setting forth how the Class was defrauded are set forth above.

158. The conversion and/or substitution of the mortgages were a fraud, and the Credit Union Defendants and Grant Thornton Defendants knew that they were perpetuating the fraud against the Plaintiff and the Class, or they were reckless with respect thereto.

159. The Credit Union Defendants and Grant Thornton Defendants knew that substituting and/or converting the non-interest-bearing Halal compliant mortgages violated the Islamic laws and mortgages documents, and they knew that the real purpose and intent of the substitution

and/or conversion of the mortgages was to defraud the Class and the Plaintiff of their mortgages, their cash payments, which the Class and Plaintiff intended to be paid to their non-interest bearing Halal compliant mortgages.

Fraudulent Misrepresentation/Deceit

160. It was a fundamental express or an implied term going to the root of the security and lending agreement that the mortgages would be non-interest bearing and Halal compliant. The Credit Union Defendants purposely omitted from the contract documents the fundamental and material fact that the mortgages would be substituted and/or converted into interest bearing non-Halal compliant mortgages, and that the funds would be paid to them.

161. The Credit Union Defendants intentionally withheld from the Plaintiff and the Class the material fact that the structure of the mortgages and obligations imposed on the Credit Union Defendants would result in the mortgages being substituted and/or converted into non-interest-bearing mortgages, which would instead end up in the hands of the Grant Thornton Defendants. These material omissions were intentional and excluded from the contract documents solely for the purpose of deceiving the Plaintiffs and Class Members.

162. Had these material omissions been disclosed to the Plaintiff and the Class, they would never have entered into the security and lending agreement with the Credit Union Defendants.

163. The Credit Union Defendants committed the tort of deceit by fraudulently misrepresenting to the Plaintiff and the Class that they would receive from the security and lending agreement a Halal compliant non-interest-bearing mortgage, when the Credit Union Defendants knew or ought to have known that the Class Members would later face the destruction of their Halal compliant mortgages by substituting and/or converting them into interest bearing mortgages, which of course, prohibited Halal renewals.

NEGLIGENCE

Negligence of the Credit Union Defendants

164. All the Credit Union Defendants were negligent in the performance of their functions under the lending and security agreement, as particularized above and below.

165. The Credit Union Defendants owed the Class a duty of care to create, structure, design, and implement a valid and legitimate lending and security agreement that would be approved by Islamic law, which they breached.

166. Each of the Credit Union Defendants was in a proximate position with the Plaintiff and the Class such that they knew or ought reasonably to have known that their acts or omissions in respect of their roles in the mortgage substitution and/or conversion could cause injury or damage to the Plaintiff and the Class if they failed to take reasonable care.

167. The Credit Union Defendants owed the Class Members a duty of care based, *inter alia*, on the special relationship between them and the members of the Class. The special relationship between the Credit Union Defendants and the Class Members arose from the Defendants' knowledge that they were participating in mortgages on the assumption that they were properly structured, Halal compliant mortgages, which they were not. The Defendants had a duty to ensure that the security and lending documents were accurate, the mortgages were non-interest bearing, and that none of the security and lending documents were deceptive or misleading, and to ensure that the documents contained all material facts relevant to the Class Members' decision to agree to the mortgages.

168. Credit Union Defendants negligently created, reviewed, drafted, supervised, approved, and authorized the preparation, substitution and/or conversion of the security and lending documents. They knew or ought to have known that the Class Members would be receiving these documents and relying upon the accuracy and completeness of the information in the documents in making the decision to take out a mortgage.

169. The Credit Union Defendants knew or ought to have known that the [substitution and/or conversion] was inaccurate, false, deceptive, and misleading, and yet these Defendants negligently substituted and/or converted the non-interest-bearing mortgages into interest bearing mortgages, and negligently authorized the [what did they do with Grant Thornton/receivership?], and did not take steps to halt the substitution and/or conversion or correct the information the Security and Lending documents contained when they had the authority, capacity, and means to do so.

170. The particulars of the Defendants' negligence are:

(A) as against the Credit Union Defendants:

- (a) They created and disseminated the Security and Lending Documents, which were inaccurate, false, deceptive, misleading, and failed to contain material information, and which were designed to convince Class Members that the mortgages were Halal compliant, which the Credit Union Defendants knew or ought to have known would not be ultimately realized;
- (b) They failed to provide Class Members amended and accurate documents or updated disclosure to fairly warn them of the truth of the mortgages when those facts became known to them;
- (c) They knew, or ought to have known, that the conversion and/or substitution of the Halal compliant mortgages would infringe on the rules of the Class Members' faith, and that the Security and Lending Documents were misleading in stating that the mortgages were Halal compliant when in fact they had no interest in maintaining that promise or term of the agreement.
- (d) They preferred their own interests and those of the co-Defendants to those of the Class Members and failed to advise the Class that they were making this preference, and

- (e) They negligently failed to ensure the duties owed to the Class Members pursuant to the provisions of the Lending and Security Agreements.

Negligent misrepresentation

171. The class relied, to their detriment, upon the inaccurate, false, deceptive, and misleading security and lending documents, and the Class believed and were promised, that they would receive Halal compliant mortgages that were non-interest bearing. The Class's reliance on the Credit Union Defendants representations was reasonable, and their participation in the mortgages was to the Credit Union Defendants' benefit, and the Class's detriment.

172. At all times, the Credit Union Defendants were in a relationship of proximity with the Plaintiff and the Class such that they owed them a duty of care. The proximate relationship arose from the Credit Union Defendants either communicating directly with the Plaintiff and the Class about the Halal compliant mortgage arrangement or through their designated agents, with the intent the Plaintiff and the Class would rely upon their representations.

173. At all times the Credit Union Defendants owed a duty of care to the Plaintiff and the Class members. In particular, they owed the Plaintiff and the Class members the duty to be truthful about the conversion/substitution into non-Halal compliant, not to withhold material information about how the mortgages were to be converted/substituted at a later date, and not to provide the Plaintiff and the Class with false information about the validity of the joint partnership. The Credit Union Defendants breached that duty of care.

174. The security and lending documents created and disseminated by the Credit Union Defendants and UM Financial contained false representations about the mortgage being non-interest bearing and Halal compliant. Particularly, the security and lending documents omitted material facts regarding the fact that the mortgages would be converted/substituted into interest bearing mortgages and that the Class would be unable to renew their Halal compliant mortgages.

175. The Credit Union Defendants knew or ought to reasonably have known that the security and lending documents contained false information and omitted material facts about the true nature of the mortgage arrangement and were negligent in disseminating the security and lending documents to the Plaintiff and the Class. The intended purpose of the security and lending Documents was to induce the Plaintiff and the Class members to sign up and take up mortgages with UM Financial, based upon their reliance on the facts contained herein.

176. The Plaintiff and the Class Members did rely upon the security and lending documents in entering into a Halal compliant mortgage with UM Financial and Central 1/Credit Union, to their detriment. They were damaged as a result thereof and were unable to renew their mortgages, have lost their homes, or were forced to sell their homes. Due to the actions of Central 1/Credit Union, UM Financial also was forced to increase posted rates by 2%, which cost Class Members approximately \$20,000 more than initially estimated.

177. But for the negligent misrepresentation of the Credit Union Defendants in converting/substituting the Halal compliant mortgages into interest-bearing non-Halal compliant mortgages, the Plaintiff and the Class would not have taken out a mortgage with the Credit Union

Defendants, would not have defaulted on their mortgages, would not have failed to be able to renew their mortgages, and they would not have suffered the corresponding losses.

178. The Plaintiff and Class members did rely upon the misrepresentations of the Credit Union Defendants to their detriment and were damaged as a result thereof.

Unjust Enrichment

179. The acts, omissions, and misconduct of the Credit Union Defendants and Grant Thornton as set out herein were designed to induce the Plaintiff and the Class Members to take out a mortgage under the assumption that they would receive non-interest-bearing mortgages for the entire term of their mortgage. Directly or indirectly, the Credit Union Defendants and Grant Thornton Defendants have received some or all of the cash payments.

180. The security and lending arrangement and the conversion/substitution thereof was a fraud, and the Plaintiff and Class Members' mortgages failed to operate as promised, losing their non-interest-bearing feature, while some lost their homes/properties and others were unable to obtain second mortgages, and others were forced to sell their properties, or were unable to purchase a property, and the Plaintiff and the Class Members will not receive the Halal compliant benefits as promised. Consequently, the following has occurred:

- i. these Defendants have been unjustly enriched;
- ii. the Plaintiff and Class Members have suffered a corresponding deprivation; and

iii. there is no juristic reason for this enrichment.

181. Even if the Class did not rely upon the security and lending documents, the Credit Union Defendants have obtained directly or indirectly from the Class a benefit, as the entire mortgage arrangement was a fraud. The Class received no benefits from the conversion and/or substitution of their non-interest-bearing Halal compliant mortgages. There is no juristic reason for the Credit Union Defendant's betterment. Accordingly, the Class claims damages on the basis of enrichment.

Breach of fiduciary duty

182. UM Financial advised Central 1 at the time the receivership materials were filed on March 14, 2011, that Central 1's demands were inappropriate, and they knew or ought to have known of the negative impact this action would have on the efforts of UM Financial/UM Capital to refinance and in turn negatively impacted Class Members.

183. The Credit Union Defendants were advised at that time of several pending refinancing opportunities that would be so affected by the receivership, including the opportunity with the above-mentioned chartered bank. Central 1 filed and served their materials notwithstanding this warning, reckless of the danger it would cause to the Class and in breach of their fiduciary duty and their duty to act in good faith.

184. In bringing forth the receivership proceedings in the absence of material default, the Credit Union Defendants knowingly undermined the refinancing efforts of UM Financial/UM Capital, damaging the ability of the Class to renew their mortgages, among other harms to the Class including forcing various class members into non-Hallal mortgages contrary to their religious convictions that led them to these mortgages in the first place, and are in breach of their fiduciary duties owed to the Class.

Discrimination

185. The actions of all the Defendants in singling out and ejecting devout Muslims – the Class Members – from the credit union system constitutes discrimination on the basis of religion.

186. All of the Class Members are Muslims, many of whom are devout Muslims who often dress and appear in traditional Muslim attire and are readily identifiable as Muslims.

187. Through the credit union system and through UM Financial as their intermediary, the Credit Union Defendants had a duty of care to their credit union members, including all Class Members.

188. Since the acquisition of Credit Union by Central 1, the Credit Union Defendants have demonstrated that they are uncomfortable with and not supportive of those members of the Credit Union who are clients of UM Financial/UM Capital, or with the religious requirements of the

Class. Central 1 never exhibited the same enthusiasm about this industry as was exhibited by Credit Union.

189. This antipathy on the part of Central 1 with respect to the difficulties which they perceive in providing lending facilities to Class Members (clients) and UM Financial/UM Capital had transformed into open hostility against their devout Muslim clients and/or the Class Members and UM Financial/UM Capital.

190. This discrimination impacted the Class and UM Financial/UM Capital, an organization owned and operated by a devout Muslim.

191. Central 1/Credit Union deliberately decided that they would not do business with Muslims, including UM Financial/UM Capital and the Class, whose religious beliefs only permit them to enter into financing arrangements which have received the approval of a Shariah Board of Scholars, who specialize in declaring whether an action is permissible (halal).

192. The actions of the Credit Union Defendants in deciding to convert to interest-bearing mortgages forced the Class to choose between owning a home/property in Canada as granted under the terms of the Lending and Security Documents or comply with the requirements of their faith.

193. The Defendants singled out those Muslims that required that their lending facilities be Halal compliant, with reckless disregard to and full knowledge of the upheaval and damage it would and did cause to the Class.

194. By engaging in this discriminatory practice, the Credit Union Defendants required that UM Financial repay the entirety of the loan portfolio, thereby attempting to force Class Members to seek funding elsewhere, thus ensuring that there would no longer be any devout Muslim clients at Central 1.

195. This decision to discriminate against devout Muslims harmed the Class and led to the financial ruin of UM Financial/UM Capital, whose business relied on the financing of the Class through the Credit Union Defendants.

196. Central 1 has admitted that its true motivation for pursuing the enforcement of its security against UM Financial/UM Capital (and in turn against the Class) was based on its desire to disconnect itself from the Islamic finance business.

197. But for these discriminatory practices, UM Financial would continue to be a profitable entity and thus, the Class Members would still be enjoying the benefits of Halal compliant mortgages.

Professional negligence

198. Grant Thornton did not examine, check, interrupt, and ignored their responsibility. They knew the arrangement was fraudulent and then followed instructions to auction off the only asset - the cause of action. They knew that the deal between Central 1/Credit Union and UM Financial was a Mudarabah, not a partnership, and yet they ignored that fact. They provided false reports to the court and charged the Credit Union over \$2 million in fees, which they were not entitled to because they were not performing.

199. Creber, the then CEO and now chairman of the board, directed all the events knowing that it was illegal and false, including drafting false reports. Grant Thornton is both the receiver and trustee in bankruptcy, thus acting as trustee in bankruptcy when they were in conflict with themselves, as receiver.

200. Grant Thornton ignored the fact that the mortgages were Halal compliant, and the Class Members had no choice but to comply with Grant Thornton resuming non-Halal compliant mortgages or sell their houses.

201. The Class Member's Halal compliant mortgages were destroyed, and it was impossible to renew their mortgages, which forced Class Members to sell their properties and lose deposits. It also exposed them to the risk of power of sale and foreclosure, as it is against the Class Member's religion to pay interest.

Abuse of process

202. The Credit Union Defendants began in or around November 2010 with threats of assigning UM Financial into receivership. Threats that a receiver would be appointed were sent on an ongoing basis to Minden Gross. The initial notice of bankruptcy was a notice that UM Financial would be put into bankruptcy in 10 days, which was aggressive considering UM Financial did not owe Central 1/Credit Union any funds and it never defaulted on a payment. The receivership was a tactical method employed by all the Credit Union Defendants to relieve themselves of UM Financial/UM Capital, the Class, and their involvement with the Islamic community. A tactical method that the Grant Thornton Defendants were more than happy to assist with.

203. These threats included defamations that Central 1/Credit Union and Grant Thornton participated in with various media outlets by having them smear UM Financial and Kalair, and continued until RCMP laid the criminal charges after consulting with Grant Thornton and Central 1/Credit Union.

204. The assignment into bankruptcy when Grant Thornton was already the receiver only to sell the sole asset – the cause of action against Grant Thornton’s client, Central 1/Credit Union, is an abuse of process. Grant Thornton then proceeded to bill Central 1/Credit Union over \$2 million, to do nothing but eliminate the \$50 million Statement of Claim brought by Minden Gross on behalf of UM Financial/UM Capital, and this harmed Class Members by destroying their Halal-compliant mortgages, including by not providing Halal renewals of their mortgages.

205. Grant Thornton in cooperation with Central 1/Credit Union, abused the receivership and bankruptcy process of the Court by utilizing it for a purpose for which it was not intended, namely to eliminate UM Financial/UM Capital's cause of action set out in the Minden Gross Statement of Claim for \$50 million, while knowing that no party and no Islamic mortgage client were owed anything by UM Financial/UM Capital and that Central 1/Credit Union was not a lender to UM Financial/UM Capital but a mudabarah partner. These defendants, instead of defending the Minden Gross Statement of Claim, sought to wrongly expropriate the cause of action by obtaining orders to auction the Minden Gross cause of action and obtaining court approval by false representations to the Courts to sell the cause of action which was UM Financial/UM Capital's asset to Credit 1/Central Union in order to discontinue it.

206. Also, Grant Thornton knew or ought to have known that the financial statements they were filing were false because of the mudabarah nature of the Central 1/Credit Union – UM Financial arrangement, and that it was not a lender-borrower relationship, which they misrepresented to the Court to do their client's bidding and get their exaggerated fees (the quantum of which was entirely not justified and a fraud ultimately on the Class Members, on which Central 1/Credit Union sluffed off the legal costs they paid Grant Thornton.

Breach of Fiduciary duty and obligations as Trustee in Bankruptcy

207. Central 1/Credit Union had Grant Thornton appointed through Court Order as its receiver pursuant to their Application. As the receiver, Grant Thornton's obligations are to their client, Central 1/Credit Union, and Grant Thornton was to act on their client's instructions. Shortly after

being appointed receiver through the Court Order it obtained, Grant Thornton brought a bankruptcy application to assign UM Financial/UM Capital into bankruptcy and obtained Orders placing UM Financial/UM Capital into bankruptcy, with Grant Thornton as Licensed Insolvency Trustee (“L.I.T.”) to be their bankruptcy Trustee.

208. To obtain its bankruptcy appointment, Grant Thornton did not disclose this conflict of interest to the Court at any time, or that Grant Thornton would be unable to properly carry out its duties as an L.I.T. in the UM Financial/UM Capital bankruptcies.

209. Grant Thornton, in their function as the receiver, has a fiduciary and contractual duty to Credit Union/Central 1 but once they became the trustee in bankruptcy, their fiduciary and contractual duties was to the entire body of creditors and their obligations were as L.I.T.’s under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (“BIA”). Grant Thornton breached their duties to the creditors by destroying the halal mortgages enterprise built by UM Financial/UM Capital, ignoring all the creditors except for their client Central 1/Credit Union, and failing to challenge UM Financial/UM Capital’s assertion of having a lender/borrower secured relationship, which they knew or ought to know was false and incorrect, as Grant Thornton and in particular their executives Michael Creber and Mark Thomson were aware it was a partnership where Central 1/Credit Union was the passive partner and UM Financial/UM Capital was the active partner, and knowing Central 1/Credit Union had no valid claim as a creditor or as a secured party.

210. This amounted to a fraud upon the Court committed by Grant Thornton under the direction of Michael Creber and Mark Thomson in collaboration, collusion, and on the instructions of its client, Central 1/Credit Union, the main purpose of which was to stop the UM Financial/UM Capital claim against Central 1/Credit Union for \$50 million which Grant Thornton obtained by auctioning this cause of action to their own client Central 1/Credit Union in order to dismiss it, to the detriment of the other creditors. In breach of their duties as L.I.T.'s under the BIA including its regulations, Grant Thornton did this just to obtain fees from Central 1/Credit Union, which amounted to a breach of their fiduciary and other duties to the actual creditors of UM Financial/UM Capital and their duties as L.I.T. to the Court and the Office of Superintendent of Bankruptcy.

Breach of implied and express warranty

211. The Credit Union Defendants expressly warranted and implied through their Security and Lending Documents, marketing, meetings, attendances, and representatives, that the mortgages would be Halal compliant, and that UM Financial/UM Capital and Central 1/Credit Union were in a partnership or Mudarabah. The Halal compliant nature of the mortgage arrangement is a material fact in connection with the marketing, promotion, and entering into of the mortgage arrangement.

212. The mortgages did not conform to these express and implied representations because it caused serious harm to the Class when the mortgages were converted and/or substituted into non-Halal compliant mortgages. The Credit Union Defendants breached their implied warranties of

the Halal compliant mortgages sold to Class Members because the mortgages were not fit for its common, ordinary, and intended use.

213. As a direct and proximate result of the Credit Union Defendants' breach of warranty, the Plaintiff and Class have suffered harms, damages, and economic loss and will continue to suffer such harm, damages, and economic loss in the future.

DAMAGES

214. As a result of the Defendant's conduct, the Plaintiff and the Class Members have suffered the following damages and losses including, but not limited to:

- a. loss of monies paid into mortgages;
- b. liability to the Credit Union Defendants for payment of interest and penalties;
- c. loss of potential capital gains and/or increased equity;
- d. pain and suffering; and
- e. special damages, being out-of-pocket expenses, including losses incurred as a result of the inability to obtain a Halal renewal or second mortgage.

PUNITIVE AND EXEMPLARY DAMAGES

215. The conduct of all the Defendants is such as to justify an award of punitive and exemplary damages. The Defendant's conduct has been a breach of duty of good faith and separate actionable wrongs.

216. The Defendants breached their obligations to the Plaintiffs and Class Members because of their desire to maximize their profits and financial gain, causing them to harm the Plaintiff and Class Members, with that regard to the damages and injuries they would cause the Class to suffer if the converted and/substituted their Halal complaint mortgages.

217. The Defendants have behaved with arrogance and high-handedness, have shown a callous disregard and complete lack of care for the Plaintiff and Class Members and the rights of the Plaintiff and Class Members, as well as abusing the Islamic community, and the understanding of Halal compliant mortgages.

218. The Defendant's conduct was sufficiently harsh, vindictive, reprehensible, and malicious, so as to justify an award of punitive, exemplary, and aggravated damages. The Defendants were, or ought to have been, aware of the probable consequences of their conduct and the damage such conduct would cause to the Plaintiff and Class Members.

219. The Defendants continue to be major participants in Canadian businesses. These Defendants have considerable assets. An award of \$50 million for punitive and exemplary damages is justified and required to punish the Defendants and deter their inappropriate conduct in the future.

ONTARIO IS THE PROPER FORUM

220. The Plaintiff is a resident of Ontario, and the Class Members are residents of Ontario and other parts of Canada or were residents of Canada when being approved for a Halal compliant mortgage.

221. The Plaintiff and Class Members were provided with the security and lending documents, which were authorized in Ontario. The transactions were negotiated and documents were signed in Canada, and relate to a Canadian mortgage compliant agreement made in respect of Canadian mortgages.

222. The Defendants promoted the mortgages as Halal compliant and non-interest bearing throughout Canada, including Ontario, and accepted funds that were collected from the Plaintiff and Class Members in Canada by Canadian entities, which held themselves out as offering mortgages that were Halal compliant. All the Defendants carried on business in Ontario at all relevant times.

223. Mark Thomson and Michael Creber are residents of and/or carry-on business in Ontario.

224. In circumstances, there is a real and substantial connection between this claim and the Province of Ontario, entitling the Plaintiff and the Class Members to bring this action in Ontario. Ontario is the most convenient forum for the trial of the action.

225. The Plaintiff proposes that this action be tried in Toronto.

Date of issue: December 23, 2021.

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IMAM YUSUF PANCHBHAYA
Plaintiff

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and

CENTRAL 1 CREDIT UNION et al
Defendants
Court File No. CV-21-00673261-00CP

**ONTARIO SUPERIOR
COURT OF JUSTICE**

Proceeding under the *Class Proceedings
Act, 1992*

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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