C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO.:

S U P E R I O R C O U R T
(Class Action)

VIRGINIA NELLES, residing and domiciled at 30, Thornhill Avenue, Montreal, Province of Quebec, H3Y 2E2

Petitioner

-vs-

ROYAL BANK OF CANADA, a bank duly incorporated and constituted in accordance with the Bank Act, having a branch at 106, Beaurepaire Drive, Beaconsfield, Quebec, H9W 0A1

Respondent

MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (Articles 1002 et seq. C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN PRACTICE DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

1. **THE PETITIONER WISHES TO INSTITUTE A CLASS ACTION ON BEHALF OF THE CLASS OF PERSONS HEREINAFTER DESCRIBED, NAMELY:**

   All persons, and estates of deceased persons, trustees, es qualité trusts and corporations whose funds were deposited to the account "Earl Jones In Trust, number 00361-5266622" (the "Earl Jones In Trust Account") at the Royal Bank of Canada, Beaconsfield Branch, between the period October 22, 1981 and August 28, 2008, and who did not receive reimbursement of the total funds deposited therein.

2. **THE PETITIONER'S PERSONAL CLAIM AGAINST THE RESPONDENT IS BASED ON THE FOLLOWING FACTS:**

   Background Information

   2.1. At all relevant times, Mr. Earl Jones held himself out to be a businessman

of the highest integrity who administered funds on behalf of individuals, corporations, estates of deceased persons and trusts;

2.2. Over the period from October 22, 1981 to August 28, 2008 (the "Period"), it is estimated that Earl Jones collected approximately $70 million from in excess of 150 members of the Class for purposes of administering funds on their behalf;

2.3. At all relevant times, Earl Jones represented to the members of the Class that the funds he administered on their behalf would be deposited in a trust account at the Royal Bank of Canada, and would be invested to generate returns;

2.4. Earl Jones' representations were false. Earl Jones never invested any of the funds that he collected from the members of the Class, and the funds never generated any investment returns; instead, throughout the Period, Earl Jones operated a fraudulent ponzi scheme;

2.5. A ponzi scheme is a fraudulent investment operation that ostensibly pays "returns" to investors (depositors), but the "returns" are in fact payments from the investors' own money or from money paid by subsequent investors (depositors), rather than from any actual investment returns earned;

2.6. A ponzi scheme requires a continuously increasing flow of money from investors (depositors) in order to continue;

2.7. Earl Jones was able to collect an increasing flow of funds from investors (depositors) and to perpetrate a ponzi scheme for a period of approximately 27 years;

2.8. In order to carry out his fraudulent ponzi scheme, Earl Jones deposited the funds collected from the members of the class into, and paid funds out of, a bank account that the Royal Bank of Canada, Beaconsfield Branch, opened in the name of "**Earl Jones In Trust**", but which turned out to be treated as nothing more than a **personal** bank account of Earl Jones, as opposed to a trust account;

2.9. On July 29, 2009, Earl Jones Consultant and Administration Corporation, a corporation belonging to Earl Jones, was declared Bankrupt, and on August 10, 2009, Earl Jones was declared Bankrupt;

2.10. To date, creditors have made claims to the Trustee in Bankruptcy of Earl Jones and his company in the collective amount of approximately $70 million;

2.11. The Trustee in Bankruptcy has also determined that approximately $1 million per year was withdrawn from the Earl Jones In Trust Account at the Royal Bank of Canada to pay for personal expenses of Earl Jones and his family, such as mortgage payments and credit card bills, the whole as appears from a summary report prepared by the Trustee in Bankruptcy, a copy of which is produced herewith as **Exhibit P-1**;

2.12. The Trustee in Bankruptcy believes that it is highly unlikely that any of the members of the Class will be paid a dividend out of the bankruptcy, such that all of the Class members have lost their money, and many of the Class members are now destitute;

2.13. On January 15, 2010, Earl Jones pleaded guilty to having perpetrated the fraud set forth herein;

2.14. The Petitioner submits that Earl Jones could not and would not have been able to carry out a ponzi scheme to the detriment of the members of the Class were it not for the negligence and willful blindness of the Royal Bank of Canada, such that the Respondent is liable for the losses sustained by the members of the Class;

Royal Bank of Canada

2.15. The Earl Jones In Trust Account was opened by the Royal Bank of Canada in or about 1981, in the name of Earl Jones "In Trust", account number 00361 - 526 6622, the whole as appears from a copy of a profile, purportedly printed by Respondent on or about May 12, 1993, produced herewith as **Exhibit P-2** (Respondent has advised that it cannot find its original account opening records of 1981);

2.16. As confirmed by a sales platform profile from the Royal Bank of Canada, a copy of which is produced herewith as **Exhibit P-3**, the Respondent knew that the Earl Jones In Trust Account was supposed to be used for the sole purpose of carrying on the business of administering funds belonging to third parties, such as estates of deceased persons and trusts. In other words, the Royal Bank of Canada knew that the Earl Jones In Trust Account was **not** supposed to be a personal bank account for Earl Jones;

2.17. The Royal Bank of Canada provided cheques to Earl Jones, containing the inscription "Earl Jones In Trust", knowing that such cheques would be issued to third parties who would believe that the cheques had been drawn upon a *true* trust account;

2.18. Although the Royal Bank of Canada knew that Earl Jones was supposedly engaged in the business of administering funds on behalf of third parties, and although the Royal Bank of Canada provided cheques to Earl Jones

containing the inscription "Earl Jones In Trust", in fact, the Earl Jones In Trust account opened by the Royal Bank of Canada was **not** a trust account; on the contrary, the Royal Bank of Canada considered the Earl Jones In Trust Account to be a **personal** account belonging to Earl Jones;

2.19. As appears from the bank statements for the Earl Jones In Trust Account annexed to Exhibit P-2, Royal Bank of Canada considered the Account to be the "**Personal Chequing Account**" of Earl Jones;

2.20. As a result of the Respondent's treatment of the Earl Jones In Trust Account as a personal account belonging to Earl Jones, and given the large monthly balances in the Earl Jones In Trust Account, the Royal Bank of Canada attributed a VIP client status to Earl Jones, such that he was afforded numerous privileges, which are irregular and inappropriate for such an account, including:

a) On numerous occasions Earl Jones sought to deposit cheques into the Earl Jones In Trust Account that were payable to third parties, but which stated on the back of the cheques "pay over to Earl Jones In Trust", and which contained the purported signature of the beneficiary of the cheque. The Respondent continuously accepted the deposit of such cheques into the Earl Jones In Trust Account, in the collective amount of approximately $8 million, without ever verifying whether the "endorsement" on the back of the cheque was authentic. In fact, substantially all of the "endorsements" were forgeries, which the Royal Bank would have easily uncovered had it made elementary verifications. Samples of cheques endorsed as aforesaid on behalf of various members of the Class are produced herewith as **Exhibit P-4** en liasse;

b) The Respondent permitted Earl Jones to co-mingle funds that the Respondent knew had been collected from various different estates of deceased persons, trusts and third parties into the single Earl Jones In Trust Account;

c) The Respondent knew that the Earl Jones In Trust account was not in fact being operated as a true trust account, and the Respondent itself treated the Account as Earl Jones' personal account, yet the Respondent continuously provided Earl Jones with cheques containing the inscription "Earl Jones **In Trust**", and thereby assisted Earl Jones in falsely holding out to his clients that the Account was a true trust account;

d) The Respondent also knew that substantial amounts of money were being withdrawn from the Earl Jones In Trust Account to pay for personal expenses of Earl Jones and his family, yet the Respondent

turned a blind eye;

e) Furthermore, the Respondent provided Earl Jones with a debit card, and provided Earl Jones and his family members with credit cards, thereby permitting the withdrawal of money from the Earl Jones In Trust Account to pay for personal expenses of Earl Jones and his family, notwithstanding that the Respondent knew that the Account consisted of money belonging to third parties;

2.21. The Respondent knew about and permitted the Earl Jones In Trust Account to be operated in an irregular fashion;

2.22. On or about November 7, 2001, the Respondent specifically identified the irregular operation of the Earl Jones In Trust Account in a note summarizing the account, a copy of which is produced herewith as **Exhibit P-5**, namely:

> "Mr. Jones returned my call. I offered him our ratelink essential package service because his fees are over $150.00 every month. **He is using this account for business purposes as an In Trust account, however, I told him this is not a formal trust account and he could get himself in trouble because this is just a personal account in his name alone, the In Trust does not mean anything in this case.** He said his company is in the process of making big changes and he will look into it ..."
>
> (Emphasis ours)

2.23. Notwithstanding the Respondent's identification of the irregular operation of the Earl Jones In Trust Account, the Respondent did not close the account, and allowed Earl Jones to continue operating the Earl Jones In Trust Account in the identical irregular fashion for in excess of 6 more years;

2.24. During that time, millions of dollars were "invested" by members of the Class and deposited into the Earl Jones In Trust Account, and millions of dollars were withdrawn from the Earl Jones In Trust Account to fund the personal expenses of Earl Jones and his family;

2.25. In January 2008, the Respondent again raised questions about the Earl Jones In Trust Account. In particular, on January 24, 2008, the Respondent's Salvatore Micielli sent an email, a copy of which is produced herewith as **Exhibit P-6**, stating:

> "... The client has listed himself as self-employed and has no identification on file. The client has one CDN account and no other products with RBC. **Notes on the account indicate there was prior knowledge in 2001 that the client was operating business through**

the personal account, the client was notified and stated that he would look into it.

A 90-day review was conducted on the account; at present time there has been activity which is consistent with the client operating a trust business account. The information on the account however may be encoded incorrectly, since all the information on the account points to it being a personal account rather than a lawyer's trust account. A KYC will be sent to determine this."

2.26. On July 23, 2008 Earl Jones wrote Respondent in reply to Respondent's suggested changes to the Earl Jones In Trust Account wherein he stated:

"It is most advantageous for me to operate an "In Trust Account". We understand the rules and regulations that you have given my assistant Debra Stewart and certainly will abide by them. It is my understanding that an "In Trust Account" can be operated, however, the account must be set up under a new account number for specific classifications in the records of the Royal Bank. I certainly will concur with this necessity and would ask that this change be made.

As for an account that we would require pertaining to, for example, our estates and our trusts that we administer to, I would like to know and set up the type of account that will allow us to deposit and withdraw transactions relating to the various trusts and estates that we have under our administration. In all cases, I am either a Trustee and/or Executor and/or officially appointed the administrator for the Trustees and/or the Executors. Documentation is held at our office. One specific account would be required as we do at any one time administer to some twenty-five to thirty estates and have well over fifty trusts that we are administering to at any one time. Our Debra Stewart advised me that you felt a specific type of account could be opened, however, when depositing cheques payable to a specific estate, a special notation would have to be placed on the reverse side of the cheque.

We do receive cheques from our clients payable to themselves and we have commenced working with them to have these cheques made payable to Earl Jones In Trust and/or to the name of the new account that would be opened as requested above."

A copy of this letter and the transmittals sent with same are produced herewith as **Exhibit P-7** en liasse;

2.27. On July 24, 2008, the Respondent simply opened a **Business** Deposit Account in the name of Earl Jones Consultant & Administration Corporation, the account bearing number 00361-003-1012350, and on August 28, 2008, at the request of the Respondent, Earl Jones simply transferred the money in the Earl Jones In Trust Account to the Earl Jones Consultant & Administration Corporation Account, permitting Earl Jones to continue the same "trust business", only out of a different account. A copy of the Client Agreement dated July 24, 2008 and Certificate of Incorporation for Earl Jones Consultant & Administration Corporation of May 16, 1984 are produced herewith en liasse as **Exhibit P-8**. Copies of statements for both accounts from August 2008, together with the cheque drawn upon the Earl Jones In Trust Account, payable to Earl Jones Consultant & Administration Corporation, are produced herewith en liasse as **Exhibit P-9**;

2.28. The Petitioner submits that the Respondent was negligent in the opening, operation and supervision of the Earl Jones In Trust Account, and that the Respondent was willfully blind to the fraudulent operation of the account by Earl Jones. Without limiting the generality of the foregoing, the Respondent was negligent and willfully blind in that:

a) The Respondent treated, and permitted Earl Jones to treat, the funds in the Earl Jones In Trust Account as funds belonging to Earl Jones personally, notwithstanding that Respondent knew that the funds in said account belonged to third parties, and were to be administered on their behalf;

b) The Respondent set up an irregular banking operation for the Earl Jones In Trust Account, by accepting for deposit cheques on the basis of endorsements that the Respondent failed to verify as to their authenticity, and which were in fact forgeries;

c) The Respondent turned a blind eye to the payment of millions of dollars of personal expenses of Earl Jones and his family out of the Earl Jones In Trust Account, notwithstanding that the Respondent knew that the funds deposited therein belonged to third parties, and the Respondent facilitated the foregoing by providing a debit card and credit cards to Earl Jones and members of his family;

d) The Respondent assisted Earl Jones in holding out to the members of the Class that their funds were being held in a true trust account, by providing Earl Jones with cheques inscribed "Earl Jones In Trust", when the Respondent treated the account as a personal account of Earl Jones, and although the Respondent knew that Earl Jones was using the funds in the account to pay for personal expenses;

e) The Respondent permitted Earl Jones to carry out his trust business out of a single personal account, which co-mingled the funds of numerous third party estates and trusts;

f) The Respondent did not require Earl Jones to have an operating account and a true trust account;

g) The irregular operation of the Earl Jones In Trust Account demonstrates that the Respondent completely disregarded the interests of the members of the Class;

h) Had Respondent acted in a prudent, reasonable and vigilant manner, Earl Jones would not have been able to perpetrate the fraud he has perpetrated in the use of the Earl Jones In Trust Account;

2.29. The foregoing conduct of the Respondent contributed to the losses sustained by the members of the Class by enabling Earl Jones to perpetrate a massive fraud;

2.30. The foregoing conduct of the Respondent also enabled Earl Jones to deceive the members of the Class into believing that the Earl Jones In Trust Account was a formal trust account, that their funds were being deposited to a formal trust account, and that they had no reason to fear that Earl Jones could withdraw millions of dollars from the said account for his own personal benefit and that of his family, and operate a ponzi scheme with their funds;

2.31. The Respondent is accordingly liable to the members of the Class for the damages that they have suffered as a result of the ponzi scheme;

2.32. As appears from a preliminary report of the Trustee to the Bankruptcy of Earl Jones, a copy of which is produced herewith as **Exhibit P-10**, the creditors of Earl Jones, who include Petitioner and the members of the Class, whose funds were deposited to the Earl Jones In Trust Account, have filed proofs of claims totaling approximately $74,500,000.00;

2.33. It is accordingly conservatively estimated at this time that the capital losses sustained collectively by the members of the class total $40,000,000.00, the whole subject to the Petitioner's right to amend, based on the proof adduced during the merits stage of the present class action;

Petitioner

2.34. Petitioner is the daughter of the late John Edward Talbot Nelles, who died on May 15, 2004, and was one of the liquidators under the Will of her late father, a copy of the Will is produced herewith as **Exhibit P-11**;

2.35. Earl Jones was a friend of the Nelles's family who had worked at Montreal Trust with the late John Edward Talbot Nelles;

2.36. Prior to the decease of John Edward Talbot Nelles, his funds and investments were primarily held at the Bank of Nova Scotia and BMO Nesbitt Burns;

2.37. Earl Jones approached Petitioner and her brother and stated to them that their late father had helped him during his lifetime, and particularly when they had worked together at Montreal Trust in its estate planning department;

2.38. Earl Jones advised Petitioner and her brother that he wished to help them settle and wind up their late father's Estate, manage the funds derived from same, and invest same In Trust with the Royal Bank of Canada;

2.39. Earl Jones advised Petitioner and her brother that the funds from their late father's Estate would be deposited to a specific In Trust account at the Royal Bank of Canada;

2.40. On May 20, 2004, Earl Jones prepared a letter which Petitioner and her brother signed appointing Earl Jones to act as agent in the administration of the above Estate, a copy of the letter is produced herewith as **Exhibit P-12**;

2.41. Thereafter Earl Jones set about collecting all funds which belonged to the late John Edward Talbot Nelles, obtaining cheques made out to the order of the said Estate, and having same sent to his office located in Pointe Claire;

2.42. Earl Jones thereafter forged an endorsement of the cheques made to the name of the Estate John Edward Talbot Nelles, marked the rear of the cheques with the notation "Pay over to Earl Jones In Trust", and the Respondent accepted the deposit of the cheques to the Earl Jones In Trust Account. Examples of the forged cheques are produced herewith as **Exhibit P-13** en liasse;

2.43. Respondent accepted the "endorsed" cheques into the Earl Jones In Trust Account without first making any elementary verification to determine whether the endorsement was valid or whether it was a forgery;

2.44. Earl Jones provided Petitioner with various statements indicating that the funds of her late father's Estate were being deposited to an In Trust account at the Respondent Bank, and in fact the funds were deposited to the Earl Jones In Trust Account. A copy of a sample of the statements is produced herewith as **Exhibit P-14**;

2.45. Earl Jones was aware that Petitioner's grandfather, the late William Thomas Whitehead (deceased November 13, 1952) had left a Will whereby a trust had been created for Petitioner's mother (Wendy Nelles) during her lifetime, and after her decease the Estate was to devolve to Petitioner and her brother on an equal basis;

2.46. Earl Jones advised Petitioner, her brother and mother that he could have proceedings prepared to terminate the trust and distribute the proceeds of the Estate William Thomas Whitehead to Petitioner and her brother and invest the proceeds in an In Trust account at the Royal Bank of Canada;

2.47. Earl Jones then communicated with his lawyer, who prepared a motion to terminate the said trust and who thereafter obtained judgment to that effect. A copy of said Motion and Judgment are produced herewith as **Exhibit P-15** en liasse;

2.48. Thereafter, Earl Jones prepared a letter dated June 6, 2007 for Petitioner and her brother which directed the Royal Trust Company, the administrator of the trust funds for the trust created by the Will of the late William Thomas Whitehead, to pay the proceeds of the Estate and trust to Petitioner and her brother, and to remit same to the office of Earl Jones. A copy of this letter is produced herewith as **Exhibit P-16**;

2.49. A copy of the cheques drawn by the Royal Trust Company to the order of Petitioner and sent to Earl Jones's office are produced herewith as **Exhibit P-17** en liasse;

2.50. As appears from the reverse side of the aforesaid cheques, Exhibit P-17, same were accepted for deposit into the Earl Jones In Trust Account on the basis of endorsements, which the Respondent did not verify as to their authenticity, and which, in fact, were forgeries. Certain other cheques were accepted for deposit by the Respondent even though they did not contain any endorsement;

2.51. Petitioner did not receive full reimbursement of the funds deposited on her behalf to the Earl Jones In Trust Account. Petitioner has filed a proof of claim within the bankruptcy of Earl Jones, in the approximate amount of $400,000, the whole as appears from a copy of the Proof of Claim, produced herewith as **Exhibit P-18**;

3. **THE PERSONAL CLAIMS OF EACH OF THE MEMBERS OF THE CLASS AGAINST RESPONDENT ARE BASED ON THE FOLLOWING FACTS:**

3.1. The claims of each of the members of the Class are based on the same facts as those upon which the claim of Petitioner is based, as set forth

above. More specifically, they have each deposited, or had funds of which they are beneficiaries deposited, to the Earl Jones In Trust Account for administration by Earl Jones, and have lost their funds due to Respondent's negligence and willful blindness in respect of the opening, operation and supervision of the Earl Jones In Trust Account, which Earl Jones used to operate a ponzi scheme, as set forth herein;

4. **THE COMPOSITION OF THE MEMBERS OF THE CLASS MAKES THE APPLICATION OF ARTICLES 59 AND 67 C.C.P. DIFFICULT AND/OR IMPRACTICAL FOR THE FOLLOWING REASONS:**

4.1. Based on the claims filed in the Bankruptcy of Earl Jones to date, there are in excess of 150 members of the Class. This amount could increase as claims can be filed at any time until the bankrupt estate is closed or pays a dividend;

4.2. A number of victims of the ponzi scheme have not yet filed proofs of claims and have not come forward;

4.3. It would be impractical for the Petitioner to obtain a mandate from all members of the Class, who reside throughout Quebec, Ontario and the United States, many of whom are quite elderly, and many of whom are unsophisticated;

4.4. A class action will ensure the most efficient use of judicial resources;

5. **THE IDENTICAL, SIMILAR OR RELATED QUESTIONS OF LAW OR OF FACT BETWEEN EACH MEMBER OF THE CLASS AND THE RESPONDENT, WHICH PETITIONER WISHES TO HAVE DECIDED BY THIS CLASS ACTION ARE:**

5.1. Did Respondent commit a fault by allowing the Earl Jones In Trust Account to be operated as the personal account of Earl Jones, when it knew that the funds in the account belonged to and were to be administered on behalf of third parties?

5.2. Did Respondent commit a fault by failing to make verifications as to the authenticity of endorsements in respect of cheques deposited into the Earl Jones In Trust Account?

5.3. Did Respondent commit a fault by permitting Earl Jones to operate a trust business, which entailed co-mingling funds belonging to numerous third parties, estates and trusts, out of a single "personal" account?

5.4. Did Respondent commit a fault by facilitating Earl Jones to hold out to the members of the Class that their funds had been deposited into a true trust account?

5.5. Did Respondent fail to act as a prudent, vigilant and reasonable banker would have in the circumstances?

5.6. Was Respondent negligent and/or willfully blind in allowing Earl Jones to perpetrate a ponzi scheme, using the Earl Jones In Trust account, for approximately 27 years?

5.7. Did Respondent fail to put an end to the irregular operation of the Earl Jones In Trust Account in a timely manner?

5.8. Did the Respondent fail to make appropriate verifications throughout the operation of the Earl Jones In Trust Account in respect of knowing its client and his business?

5.9. Did the Respondent fail to consider that there was a conflicted situation between Earl Jones's personal interests and those of the beneficiaries of the funds deposited to the Earl Jones In Trust Account?

5.10. Did Respondent act in a wrongful manner in August 2008, knowing the funds deposited in the Earl Jones In Trust Account belonged to members of the Class and constituted funds from a "Trust Business", by requesting and allowing Earl Jones to transfer the balance of funds in the Earl Jones In Trust Account to a new account opened in the name of Earl Jones Consultant & Administration Corporation?

5.11. If the answer to any of the foregoing questions is "yes", is the Respondent liable for the damages sustained by the members of the Class, collectively, as a result of the ponzi scheme?

5.12. What is the amount of damages sustained by the Class, collectively, as a result of the fault(s) of the Respondent?

6. **THE QUESTIONS OF LAW OR OF FACT WHICH ARE PARTICULAR TO EACH OF THE MEMBERS OF THE CLASS ARE:**

6.1. Out of the damages recovered by the Class, collectively, from the Respondent, what amount of damages is each member of the Class entitled to?

7. **IT IS EXPEDIENT THAT THE INSTITUTION OF A CLASS ACTION FOR THE BENEFIT OF THE MEMBERS OF THE CLASS BE AUTHORIZED FOR THE FOLLOWING REASONS:**

7.1. The Class action is the best procedural vehicle available to members of the Class in order to protect and enforce their rights herein;

7.2. While the amount of the damages and loss sustained by each member of the Class will differ, all of the legal and factual issues surrounding the Respondent's conduct and its liability therefor are identical for each member of the Class;

7.3. Members of the Class who have lost their life savings as a result of the Respondent's conduct could, in the absence of a Class Action, be prevented from instituting a separate recourse against the Respondent in view of the costs involved to enforce their rights;

7.4. Members of the Class who have suffered relatively minimal damages as a result of the Respondent's conduct could, in the absence of a Class Action, be prevented from instituting a separate recourse against the Respondent in view of the costs involved to enforce their rights versus the damages that they have sustained;

7.5. In the absence of a class action, there is a real possibility of numerous individual actions against the Respondent that will involve an analysis of the same legal and factual issues, which will entail an inefficient use of the resources of the judicial system, as well as the possibility of contradictory judgments on questions of fact or of law which are identical for each member of the Class;

7.6. It is in the interests of justice that members of the Class be given the opportunity to participate in the institution of a Class Action that would benefit all those who have sustained damages as a result of the Respondent's conduct;

8. **THE NATURE OF THE RECOURSE WHICH THE PETITIONER WISHES TO EXERCISE ON BEHALF OF THE MEMBERS OF THE CLASS IS:**

8.1. An action in compensatory damages against the Respondent to sanction its negligence and willful blindness in facilitating the irregular and unlawful operation of the Earl Jones In Trust Account during the Period;

9. **THE CONCLUSIONS SOUGHT BY PETITIONER AGAINST THE RESPONDENT ARE AS FOLLOWS:**

GRANT the Class Action against the Respondent;

CONDEMN the Respondent to compensate the Class for their collective loss, namely the total amount of funds deposited to the Earl Jones In Trust Account during the period October 22, 1981 to August 28, 2008 less the amount(s) received therefrom, the whole with interest and additional indemnity provided by law, calculated from the date of service of the present Motion;

DECLARE that Respondent is liable for the costs of judicial and extrajudicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of Petitioner and the members of the Class;

ORDER collective recovery of the total amount of the claims herein;

ORDER that the claims of the members of the Class be the object of individual claims in accordance with Articles 1037 to 1040 C.C.P. or, if impractical or inefficient, order the Respondent to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

ORDER the Respondent to advise all members of the Class of the present Class Action lawsuit;

CONDEMN the Respondent to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, reports, expertise and publication of notices.

10. **PETITIONER REQUESTS THAT SHE BE ASCRIBED THE STATUS OF REPRESENTATIVE;**

11. **PETITIONER IS IN A POSITION TO REPRESENT THE MEMBERS OF THE CLASS ADEQUATELY FOR THE FOLLOWING REASONS:**

11.1. Petitioner is 42 years old, and works as a marketing professional;

11.2. Petitioner is a university graduate, having earned a degree in Art History from McGill University in 1991; Petitioner also has a certificate in public relations from McGill University;

11.3. Petitioner's personal funds and funds from her late father's Estate, of which she was a Liquidator and Executor, were deposited to the Earl Jones In Trust Account during the period October 22, 1981 to August 28, 2008, and she has suffered a loss as a result of the ponzi scheme;

11.4. Petitioner has been actively engaged since the Bankruptcy of Earl Jones and Earl Jones Consultant & Administration Corporation in respect of the organizational committee formed to support the victims of this massive fraud, and as a result of same, is aware of the situations suffered by many of the members of the Class;

11.5. Petitioner has met individually and collectively as a member of the organizational committee for the victims of this massive fraud, with many of the victims;

11.6. Petitioner has participated in the arranging of informational meetings and support meetings for the victims of this massive fraud and has the support and confidence of the said victims;

11.7. Petitioner has participated in the organization of and obtaining of documents necessary from victims to prosecute Earl Jones on a criminal basis for the fraud described herein, and to produce proofs of claim in the Bankruptcies of Earl Jones and Earl Jones Consultant & Administration Corporation for the losses described herein;

11.8. Petitioner has participated in putting together a book on the pain and suffering suffered by the victims of this massive fraud;

11.9. Petitioner has demonstrated a sincere interest in obtaining justice for all members of the Class;

11.10. Petitioner is informed of and understands the facts giving rise to the present action and nature of the action;

11.11. Petitioner is actively interested in and involved in the present matter and will undertake positive steps on behalf of all members of the Class that she intends to represent;

11.12. Petitioner has hired competent counsel with experience in class actions, banking and bankruptcy matters;

11.13. Petitioner has fully cooperated with counsel, including answering intelligently to their questions, and there is every reason to believe that she will continue to do so;

11.14. Petitioner has spoken to other members of the Class regarding the present action, and members of the Class have expressed their agreement to have the Petitioner act as the Class representative;

11.15. Petitioner is prepared to dedicate the time required to be the representative of the Class, and she will fairly and adequately represent and protect the interests of the members of the Class;

11.16. Petitioner is prepared to take the necessary steps to attempt to uncover facts relating to this action;

11.17. Petitioner is in at least as good a position as any other member may be to represent the Class in this action;

12. **PETITIONER SUGGESTS THAT THE CLASS ACTION BE BROUGHT BEFORE THE SUPERIOR COURT FOR THE DISTRICT OF MONTREAL FOR THE FOLLOWING REASONS:**

12.1. Petitioner and the vast majority of the members of the Class reside in the judicial District of Montreal;

12.2. The Earl Jones In Trust Account was at all times situated in the judicial District of Montreal and the Respondent's negligence and willful blindness took place in the judicial District of Montreal;

12.3. The Trustee to the Bankruptcies of Earl Jones and Earl Jones Consultant & Administration Corporation is situated in the District of Montreal;

12.4. The legal counsel for Petitioner and Respondent both practice in the judicial District of Montreal;

13. The present Motion is well -founded in fact and in law;

14. A draft notice to members of the Class in accordance with form VI of the Rules of Practice of the Superior Court of Quebec is annexed hereto.

WHEREFORE THE PETITIONER PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN;

a) The present Motion be granted;

b) That the institution of a Class action be authorized as follows:

An action in compensatory damages against the Respondent to sanction its negligence and willful blindness in facilitating the irregular and unlawful operation of the Earl Jones In Trust Account during the Period;

c) That the status of representative be granted to Virginia Nelles for the purpose of instituting the said Class action for the benefit of the following group of persons, namely:

All persons, and estates of deceased persons, trustees, es qualité trusts and corporations whose funds were deposited to the account "Earl Jones In Trust, number 00361-5266622" (the "Earl Jones In Trust Account") at the Royal Bank of Canada, Beaconsfield Branch, between the period October 22, 1981 and August 28, 2008, and who did not receive reimbursement of the total funds deposited therein.

d) That the principal questions of law and of fact to be dealt with collectively be identified as follows:

1. Did Respondent commit a fault by allowing the Earl Jones In Trust Account to be operated as the personal account of Earl Jones, when it knew that the funds in the account belonged to and were to be administered on behalf of third parties?

2. Did Respondent commit a fault by failing to make verifications as to the authenticity of endorsements in respect of cheques deposited into the Earl Jones In Trust Account?

3. Did Respondent commit a fault by permitting Earl Jones to operate a trust business, which entailed co-mingling funds belonging to numerous third parties, estates and trusts, out of a single "personal" account?

4. Did Respondent commit a fault by facilitating Earl Jones to hold out to the members of the Class that their funds had been deposited into a true trust account?

5. Did Respondent fail to act as a prudent, vigilant and reasonable banker would have in the circumstances?

6. Was Respondent negligent and/or willfully blind in allowing Earl Jones to perpetrate a ponzi scheme, using the Earl Jones In Trust account, for approximately 27 years?

7. Did Respondent fail to put an end to the irregular operation of the Earl Jones In Trust account in a timely manner?

8. Did the Respondent fail to make appropriate verifications throughout the operation of the Earl Jones In Trust Account in respect of knowing its client and his business?

9. Did the Respondent fail to consider that there was a conflicted situation between Earl Jones's personal interests and those of the beneficiaries of the funds deposited to the Earl Jones In Trust Account?

10. Did Respondent act in a wrongful manner in August 2008, knowing the funds deposited in the Earl Jones In Trust Account belonged to members of the Class and constituted funds from a "Trust Business", by requesting and allowing Earl Jones to transfer the balance of funds in the Earl Jones In Trust Account to a new account opened in the name of Earl Jones Consultant & Administration Corporation?

11. If the answer to any of the foregoing questions is "yes", is the Respondent liable for the damages sustained by the members of the Class, collectively, as a result of the ponzi scheme?

12. What is the amount of damages sustained by the Class, collectively, as a result of the fault(s) of the Respondent?

e) That the conclusions sought by the Petitioner in relation to such questions are as follows:

GRANT the Class Action against the Respondent;

CONDEMN the Respondent to compensate the Class for their collective loss, namely the total amount of funds deposited to the Earl Jones In Trust Account during the period October 22, 1981 to August 28, 2008 less the amount(s) received therefrom, the whole with interest and additional indemnity provided by law, calculated from the date of service of the present Motion;

DECLARE that Respondent is liable for the costs of judicial and extrajudicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of Petitioner and the members of the Class;

ORDER collective recovery of the total amount of the claims herein;

ORDER that the claims of the members of the Class be the object of individual claims in accordance with Articles 1037 to 1040 C.C.P. or, if impractical or inefficient, order the Respondent to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

ORDER the Respondent to advise all members of the Class of the present Class Action lawsuit;

CONDEMN the Respondent to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, reports, expertise and publication of notices.

f) That it be declared that any member of the Class who has not requested his/her exclusion from the Class be bound by any judgment to be rendered on the Class action, in accordance with law;

g) That the delay for exclusion from the Class be fixed at sixty (60) days from the date of notice to the members, and at the expiry of such delay, the members of the Class who have not requested exclusion be bound by any such judgment;

h) That it be ordered that a notice to the members of the Class be drafted according to the terms of form VI of the Rules of Practice of the Superior Court of Quebec and that it be made public within fifteen (15) days of judgment to intervene in the present Motion in the following manner:

1. By publication of a notice to members of the Class in the Gazette and La Presse newspapers on a Saturday, one time, in accordance with the model notice provided for as form VI of the Rules of Practice of the Superior Court of Quebec;

2. By publication of the notice to members of the Class on the internet site of the Respondent and the internet site of the attorneys for Petitioner with a hypertext entitled "Avis aux members de recours collectives, Notice to all Class Action Members" prominently displayed on Respondent's internet site and to be maintained thereon until the Court orders publication of another notice to members by final judgment in this instance or otherwise;

i) That the record be referred to the Chief Justice so that he may fix the district in which the Class action is to be brought and the Judge before whom it will be heard;

j) That in the event that the Class action is to be brought in another district, the Clerk of this Court be ordered upon receiving the decision of the Chief Justice, to transmit the present record to the Clerk of the district so designated.

k) That in the event a Class action is to be instituted, notice of same be published on the Class Action Registry maintained for said purposes in the Province of Quebec.

THE WHOLE with costs, including the costs of all publications of notices.

Montreal, February 5, 2010

(SGD) STEIN & STEIN INC.

STEIN & STEIN INC.

(SGD) KUGLER KANDESTIN, LLP

KUGLER KANDESTIN, L.L.P.

Attorneys for Petitioner

NOTICE OF PRESENTATION

TO: **ROYAL BANK OF CANADA**
106, Beaurepaire Drive
Beaconsfield, Quebec
H9W 0A1

TAKE NOTICE of the foregoing *Motion for Authorization to Institute a Class Action and to Obtain the Status of Representative* attached hereto and that same will be presented for proof and hearing before one of the Judges of this Honorable Court, sitting in the Civil Division or to the Registrar thereof, in **Room 2.16** of the Court House, **10 St. Antoine Street East**, Montreal, on the **26th** day of **February, 2010** at 9:00 a.m. or so soon thereafter as counsel may be heard.

MONTREAL, February 5, 2010

(SGD) STEIN & STEIN INC.

STEIN & STEIN INC.

(SGD) KUGLER KANDESTIN, L.L.P.

KUGLER KANDESTIN, L.L.P.

Attorneys for Petitioner

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO.:

S U P E R I O R C O U R T
(Class Action)

VIRGINIA NELLES, residing and domiciled at 30, Thornhill Avenue, Montreal, Province of Quebec, H3Y 2E2

Petitioner

-vs-

ROYAL BANK OF CANADA, a bank duly incorporated and constituted in accordance with the Bank Act, having a branch at 106, Beaurepaire Drive, Beaconsfield, Quebec, H9W 0A1

Respondent

LIST OF PETITIONER'S EXHIBITS

Exhibit P-1	Summary Report prepared by the Trustee in Bankruptcy to Earl Jones and Earl Jones Consultant & Administration Corporation;
Exhibit P-2	Copy of Royal Bank of Canada's client profile of the Earl Jones In Trust Account printed on or about May 12, 1993;
Exhibit P-3	Sales Platform Profile from the Royal Bank of Canada;
Exhibit P-4 "en liasse"	Copy of samples of cheques endorsed on behalf of various members of the Class;
Exhibit P-5	Copy of Royal Bank of Canada note prepared on or about November 7, 2001;
Exhibit P-6	Copy of email correspondence between Salvatore (Sam) Micielli and Branch Manager of Royal Bank of Canada in Beaconsfield;
Exhibit P-7 "en liasse"	Copy of letter dated July 23, 2008 from Earl Jones to Royal Bank of Canada, and transmittals;

Exhibit P-8 "en liasse"	Copy of Royal Bank of Canada Client Agreement dated July 24, 2008 and Certificate of Incorporation for Earl Jones Consultant & Administration Corporation;
Exhibit P-9 "en liasse"	Copies of statements for both accounts from August 2008, and copy of cheque drawn upon the Earl Jones In Trust Account payable to Earl Jones Consultant & Administration Corporation;
Exhibit P-10	Copy of Preliminary Report of the Trustee to the Bankruptcy of Earl Jones;
Exhibit P-11	Copy of the Will of the Late John Edward Talbot Nelles;
Exhibit P-12	Copy of the letter prepared by Earl Jones on May 20, 2004;
Exhibit P-13 "en liasse"	Copy of examples of forged cheques with notation "Pay over to Earl Jones In Trust";
Exhibit P-14	Statement given to Petitioner from Earl Jones indicating sums deposited to the Earl Jones In Trust Account;
Exhibit P-15 "en liasse"	Copy of Motion and Judgment obtained to terminate trust in the Estate of William Thomas Whitehead;
Exhibit P-16	Copy of letter from Earl Jones dated June 6, 2007 to the Royal Trust Company;
Exhibit P-17 "en liasse"	Copy of the cheques made by the Royal Trust Company to the order of Virginia Nelles;
Exhibit P-18	Petitioner's Proof of Claim.

Montreal, February 5, 2010

(SGD) STEIN & STEIN INC.

STEIN & STEIN INC.

(SGD) KUGLER KANDESTIN, L.L.P.

KUGLER KANDESTIN, L.L.P.

Attorneys for Petitioner

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO.:

SUPERIOR COURT
(Class Action)

VIRGINIA NELLES, residing and domiciled at 30 Thornhill Avenue, Montreal, Province of Quebec, H3Y 2E2

Petitioner

-vs-

ROYAL BANK OF CANADA, a bank duly incorporated and constituted in accordance with the Bank Act, having a branch at 106 Beaurepaire Drive, Beaconsfield, Quebec, H9W 0A1

Respondent

NOTICE TO MEMBERS

1. TAKE NOTICE that the bringing of a class action has been authorized on the _____ day of _____ 20___ by judgment of the Honourable Mr./Mrs. Justice _____, of the Superior Court, for the benefit of the natural persons forming part of the group hereinafter described, namely:

   All persons, and estates of deceased persons, trustees, es qualité trusts and corporations whose funds were deposited to the account "Earl Jones In Trust, number 00361-5266622" (the "Earl Jones In Trust Account") at the Royal Bank of Canada, Beaconsfield Branch, between the period October 22, 1981 and August 28, 2008, and who did not receive reimbursement of the total funds deposited therein.

2. The Chief Justice has ordered that the class action authorized by the said judgment shall be brought in the District of Montreal;

3. The address of the Petitioner **Virginia Nelles** is as follows:

   30 Thornhill Avenue
   Montreal, Quebec
   H3Y 2E2

The address of the Respondent is as follows:

ROYAL BANK OF CANADA
106 Beaurepaire Drive
Beaconsfield, Quebec
H9W 0A1

4. For the purposes of the class action, the status of representative has been ascribed to **Virginia Nelles**, 30 Thornhill Avenue, Montreal, Quebec, H3Y 2E2;

5. The principal questions of law or fact to be dealt with collectively are as follows:

   a) Did Respondent commit a fault by allowing the Earl Jones In Trust Account to be operated as the personal account of Earl Jones, when it knew that the funds in the account belonged to and were to be administered on behalf of third parties?

   b) Did Respondent commit a fault by failing to make verifications as to the authenticity of endorsements in respect of cheques deposited into the Earl Jones In Trust Account?

   c) Did Respondent commit a fault by permitting Earl Jones to operate a trust business, which entailed co-mingling funds belonging to numerous third parties, estates and trusts, out of a single "personal" account?

   d) Did Respondent commit a fault by facilitating Earl Jones to hold out to the members of the Class that their funds had been deposited into a true trust account?

   e) Did Respondent fail to act as a prudent, vigilant and reasonable banker would have in the circumstances?

   f) Was Respondent negligent and/or willfully blind in allowing Earl Jones to perpetrate a ponzi scheme, using the Earl Jones In Trust account, for approximately 27 years?

   g) Did Respondent fail to put an end to the irregular operation of the Earl Jones In Trust Account in a timely manner?

   h) Did the Respondent fail to make appropriate verifications throughout the operation of the Earl Jones In Trust Account in respect of knowing its client and his business?

   i) Did the Respondent fail to consider that there was a conflicted situation between Earl Jones's personal interests and those of the beneficiaries of the funds deposited to the Earl Jones In Trust Account?

j) Did Respondent act in a wrongful manner in August 2008, knowing the funds deposited in the Earl Jones In Trust Account belonged to members of the Class and constituted funds from a "Trust Business", by requesting and allowing Earl Jones to transfer the balance of funds in the Earl Jones In Trust Account to a new account opened in the name of Earl Jones Consultant & Administration Corporation?

k) If the answer to any of the foregoing questions is "yes", is the Respondent liable for the damages sustained by the members of the Class, collectively, as a result of the ponzi scheme?

l) What is the amount of damages sustained by the Class, collectively, as a result of the fault(s) of the Respondent?

6. The conclusions sought with relation to such questions are as follows:

a) **GRANT** the Class Action against the Respondent;

b) **CONDEMN** the Respondent to compensate the Class for their collective loss, namely the total amount of funds deposited to the Earl Jones In Trust Account during the period October 22, 1981 to August 28, 2008 less the amount(s) received therefrom, the whole with interest and additional indemnity provided by law, calculated from the date of service of the present Motion;

c) **DECLARE** that Respondent is liable for the costs of judicial and extrajudicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of Petitioner and the members of the Class;

d) **ORDER** collective recovery of the total amount of the claims herein;

e) **ORDER** that the claims of the members of the Class be the object of individual claims in accordance with Articles 1037 to 1040 C.C.P. or, if impractical or inefficient, order the Respondent to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

f) **ORDER** the Respondent to advise all members of the Class of the present Class Action lawsuit;

g) **CONDEMN** the Respondent to any further relief as may be just and proper;

h) **THE WHOLE** with costs, including the costs of all exhibits, reports, expertise and publication of notices.

7. The class action to be brought by the representative for the benefit of the group will be as follows:

   An action in compensatory damages against the Respondent to sanction its negligence and willful blindness in facilitating the irregular and unlawful operation of the Earl Jones In Trust Account during the Period;

8. Any member of the group who has not requested his exclusion in the manner hereinafter indicated, will be bound by any judgment to be rendered on the class action;

9. The date after which a member can no longer request his exclusion without special permission, has been set at _____ _____, 20___;

10. A member who has not already brought a suit in his own name, may request his exclusion from the group by advising the clerk of the Superior Court of the District of Montreal by registered or certified mail, before the expiry of the delay for the exclusion;

11. Any member of the group who has brought a suit which the final judgment on the class action would decide, is deemed to have requested his exclusion from the group if he does not, before the expiry of the delay for exclusion, discontinue such suit;

12. A member of the group other than the representative or any intervenant cannot be condemned to pay the costs of the class action;

13. The Court may permit a member to intervene in the class action if it considers such intervention useful to the group. An intervening member may be bound to submit to examination on discovery or a medical examination, or both, at the request of the Respondent. A member who does not intervene in the class action only be required to submit to an examination on discovery, if the Court considers it useful.

MONTREAL, February ____, 2010

_____

STEIN & STEIN INC.

_____

KUGLER KANDESTIN, L.L.P.

Attorneys for Petitioner