

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

FRIDAY, THE 17<sup>th</sup>

JUSTICE G. STRATHY

DAY OF SEPTEMBER, 2010

A large, dark red circular stamp with a serrated edge is positioned on the left side of the page, partially overlapping the text of the plaintiffs and defendants.

E N

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP  
INC., PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE  
FOUNDATION and FRASER MILNER CASGRAIN LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER RE: OPT-OUT FORMS**

THIS MOTION, made by the plaintiffs, seeking an order declaring certain Opt-Out Forms received by Nicholas Mastroluisi ("Opt-Out Administrator") to be invalid, as well as other relief, was heard September 10, 2010, at Osgoode Hall in Toronto, with decision being reserved until September 17, 2010.

ON READING the Motion Record of the plaintiffs including the affidavit of Nicholas Mastroluisi and exhibits sworn July 23, 2010, the affidavit of Michael B. Stanton and exhibits sworn July 23, 2010, the Supplementary Motion Record including the revised Notice of Motion and supplementary affidavit of Michael B. Stanton and

exhibits sworn August 30, 2010, and the supplementary affidavit of Nicholas Mastroluisi and exhibits sworn September 8, 2010, the Factum and Brief of Authorities of the plaintiffs, and the responding affidavit of Robert Thiessen and exhibits sworn September 9, 2010, and upon hearing the submissions of counsel for the parties;

1. THIS COURT ORDERS that all Opt-Out Forms received by the Opt-Out Administrator as identified in Appendix A are invalid and do not constitute proper opt-outs;

2. THIS COURT ORDERS that the opt-out deadline will be extended in respect of the 209 affected individuals identified in Appendix A, to a date 45 days after mailing of a new Notice and Opt-out Form, both to be approved at a case conference;

3. THIS COURT ORDERS that Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Ltd. and Banyan Tree Foundation shall pay the costs of this motion to the plaintiffs, fixed in the amount of \$5,000.00, payable within 45 days.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 14 2010

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:  
PER / PAR:



(Signature of judge, officer or registrar)

**PETTINELLI, MASTROLUISI LLP**  
**CHARTERED ACCOUNTANTS**

**BANYAN TREE FOUNDATION LEVERAGED CHARITABLE DONATION PROGRAM**  
**(PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992)**

**SCHEDULE OF OPT-OUT NOTICES DEEMED INVALID BY ORDER OF JUSTICE STRATHY DATED  
SEPTEMBER 17, 2010, BEING OPT-OUT NOTICES ORIGINATING FROM: I) FAX #416-214-1323  
"PROMITTERD" AND II) ROBERT EGER**

**APPENDIX A**

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<b>#</b>	<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>NOTE</b>	<b>DATE RECEIVED</b>
1	1295910 ALBERTA LTD.	-		JULY 8, 2010
2	AITKEN	W. NEIL		JULY 8, 2010
3	AITKEN	BARBARA		JULY 8, 2010
4	ALLEN	ROBERT		JULY 8, 2010
5	BEDNAR	BERNICE		JULY 8, 2010
6	BERNSEN	CORNELIUS		JULY 8, 2010
7	BERNSEN	IRENE		JULY 8, 2010
8	BERNSEN	JODY		JULY 8, 2010
9	BERNSEN	MARK		JULY 8, 2010
10	BILISKI	KAREN		JULY 8, 2010
11	BOOTH	BONNIE		JULY 8, 2010
12	BOOTH	ROBERT		JULY 8, 2010
13	BOUCHARD	GILLES		JULY 8, 2010
14	BREDIN	SHEILA		JULY 8, 2010
15	COGHLIN	MARY		JULY 8, 2010
16	COGHLIN	LAURIE		JULY 8, 2010
17	COOKE	CHARLES		JULY 8, 2010
18	COOKE	BERNADETTE		JULY 8, 2010
19	CREW	JUDY		JULY 8, 2010
20	CREW	SHAUN		JULY 8, 2010
21	CREW	THOMAS		JULY 8, 2010

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22	DI CURZIO	BARBARA		JULY 8, 2010
23	DI CURZIO	JOE		JULY 8, 2010
24	DOERKSEN	GREG		JULY 8, 2010
25	DOERKSEN	LEANNE		JULY 8, 2010
26	DOW	MICHAEL H.		JULY 8, 2010
27	DUNSEITH	BONNIE E.		JULY 8, 2010
28	DUNSEITH	MALCOLM		JULY 8, 2010
29	EGER	BLAIR		JULY 8, 2010
30	EGER	RAELENE		JULY 8, 2010
31	EGER	ROBERT		JULY 8, 2010
32	ELIAS	KATRINA		JULY 8, 2010
33	ELIAS	MATTHEW		JULY 8, 2010
34	ENNS	JOHN		JULY 8, 2010
35	FEHR	HILDA		JULY 8, 2010
36	FETTERLY	ELDEN		JULY 8, 2010
37	FETTERLY	SARAH		JULY 8, 2010
38	FLAHERTY	DAVID		JULY 8, 2010
39	FLAHERTY	SHIRLEY		JULY 8, 2010
40	FOSTER	RALSTON		JULY 8, 2010
41	FRASER	DAVID		JULY 8, 2010
42	FRASER	KIM		JULY 8, 2010

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43	GADOMSKI	HELEN	3	JULY 8, 2010
44	GATTINGER	J. SCOTT		JULY 8, 2010
45	GLOBA	ED		JULY 8, 2010
46	GLOBA	RITA		JULY 8, 2010
47	GURVEY	BRENDA		JULY 8, 2010
48	GURVEY	MARTIN		JULY 8, 2010
49	HALFORD	BONNIE		JULY 8, 2010
50	HALFORD	MARC		JULY 8, 2010
51	HARRISON	JEFF		JULY 8, 2010
52	HARRISON	JENNIFER		JULY 8, 2010
53	HENKEWICH	RICK		JULY 8, 2010
54	HOMIK	LAWRENCE		JULY 8, 2010
55	HRYB	BERYL		JULY 8, 2010
56	HRYB	STELLA		JULY 8, 2010
57	HRYB	CORY		JULY 8, 2010
58	HRYB	JOHN J.		JULY 8, 2010
59	HRYB	SHERRI		JULY 8, 2010
60	HYNES	HUSHIE		JULY 8, 2010
61	INKSTER	BARBARA JEAN		JULY 8, 2010
62	INSLEY	RONALD D.		JULY 8, 2010
63	KELLY	DAVE		JULY 8, 2010

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64	KELLY	MELISSA		JULY 8, 2010
65	KIMELMAN	ALLEN		JULY 8, 2010
66	KINCH	KATHERINE		JULY 8, 2010
67	KLASSEN	INGRID		JULY 8, 2010
68	KLASSEN	NEIL		JULY 8, 2010
69	KLISH	MELANIE		JULY 8, 2010
70	KOHUT	ED		JULY 8, 2010
71	KOHUT	LINDA		JULY 8, 2010
72	LAWRENCE	JIM		JULY 8, 2010
73	LENT	BRIAN		JULY 8, 2010
74	LIMACHER	DAN		JULY 8, 2010
75	LIMACHER	DAVID		JULY 8, 2010
76	LIMACHER	LORI S.		JULY 8, 2010
77	LIMACHER	RICHARD		JULY 8, 2010
78	LOHRENZ	BRADLEY		JULY 8, 2010
79	LUKE	BRUCE		JULY 8, 2010
80	LUKE	MARGARET		JULY 8, 2010
81	LUSSIER	H. ANDREE		JULY 8, 2010
82	LUSSIER	TOM		JULY 8, 2010
83	MALENCHAK	GARY		JULY 8, 2010
84	MALENCHAK	NELSIA		JULY 8, 2010

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85	MCCRACKEN	DON		JULY 8, 2010
86	MCKENZIE	DARLENE		JULY 8, 2010
87	MCKENZIE	LUKE		JULY 8, 2010
88	MOTA	TARA		JULY 8, 2010
89	MOTA	WALTER		JULY 8, 2010
90	MOTA	MANUEL		JULY 8, 2010
91	MOTA	MARIA		JULY 8, 2010
92	NAUS	GABRIELA		JULY 8, 2010
93	RAPCHALK	JASON		JULY 8, 2010
94	RAPCHALK	KIMBERLY		JULY 8, 2010
95	REMIN	STANLEY WILLIAM		JULY 8, 2010
96	ROATH	LESLEY		JULY 8, 2010
97	ROATH	MARTIN		JULY 8, 2010
98	SCHOONMAKER	DICK		JULY 8, 2010
99	SEVENKO	FRED		JULY 8, 2010
100	SHANKIE	AL		JULY 8, 2010
101	STEFANEC	ANGELA		JULY 8, 2010
102	STEFANEC	RON		JULY 8, 2010
103	SYNDER	LEN		JULY 8, 2010
104	SNYDER	LINDA		JULY 8, 2010
105	TREMBLAY	CECILE		JULY 8, 2010

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106	TRIM	AMANY		JULY 8, 2010
107	TRIM	DONALD		JULY 8, 2010
108	VOTH	C.H. LLOYD		JULY 8, 2010
109	WEIRICH	MARTIN		JULY 8, 2010
110	WEIRICH	SHANET		JULY 8, 2010
111	WESTON	JOAN		JULY 8, 2010
112	WESTON	PAMELA		JULY 8, 2010
113	J&P WESTON RESOURCES LTD.	-		JULY 8, 2010
114	WESTON	JAMES CRAIG		JULY 8, 2010
115	WHITTA	BARRY		JULY 8, 2010
116	WHITTA	LORETTA		JULY 8, 2010
117	WHITTAKER	MARTIN		JULY 8, 2010
118	WINTERHALT	LES		JULY 8, 2010
119	WONG	ANTHONY		JULY 8, 2010
120	WONG	MAY		JULY 8, 2010
121	ZAROWNY	DONALD		JULY 8, 2010
122	ZIBELL	DOREEN		JULY 8, 2010
123	ZIBELL	KARL		JULY 8, 2010
124	FUNK	BETTY		JULY 21, 2010
125	GUARINO	ANTHONY		JULY 21, 2010
126	GULASH	DAVID		JULY 21, 2010

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127	GULASH	ROSANN		JULY 21, 2010
128	JOHNSON	ROSYLIN		JULY 21, 2010
129	JOHNSON	WINSTON		JULY 21, 2010
130	KRISTIANSEN	CHERYL		JULY 21, 2010
131	KRISTIANSEN	GARY		JULY 21, 2010
132	KROON	HENK		JULY 21, 2010
133	LEMKY	DAVE		JULY 21, 2010
134	BRAY	J. ARTHUR		JULY 21, 2010
135	BREEN	SANDRA		JULY 21, 2010
136	BREEN	THOMAS		JULY 21, 2010
137	DALEY	DIANE		JULY 21, 2010
138	DALEY	DEVON		JULY 21, 2010
139	DOBBIN	KAREN & BRET	4	JULY 21, 2010
140	DUECK	MARK		JULY 21, 2010
141	EDIE	BARBARA		JULY 21, 2010
142	EGER	KAREN		JULY 21, 2010
143	EGER	MARK		JULY 21, 2010
144	LEMKY	KATHY		JULY 21, 2010
145	LEE	GEORGE		JULY 21, 2010
146	LEV	LINDA		JULY 21, 2010
147	LUKE	KIRK		JULY 21, 2010

**PETTINELLI, MASTROLUISI LLP**  
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148	MOSSMAN	CHARLES		JULY 21, 2010
149	MUIRHEAD	BRIAN		JULY 21, 2010
150	PATTERSON	JANICE		JULY 21, 2010
151	PFEIFER	DON		JULY 21, 2010
152	PFEIFER	SHARON		JULY 21, 2010
153	REMPEL	DANNY		JULY 21, 2010
154	REMPEL	MARJORIE		JULY 21, 2010
155	RICHARDSON	MARGARET		JULY 21, 2010
156	RICHARDSON	ROCKY		JULY 21, 2010
157	SHUPENICK	JOHN & LYN	5	JULY 21, 2010
158	SPENARD	CHRISTIANE		JULY 21, 2010
159	THIESSEN	HELGA		JULY 21, 2010
160	THIESSEN	HANS		JULY 21, 2010
161	WALDNER	ELVIS		JULY 21, 2010
162	WALKER	DAREN		JULY 21, 2010
163	WARRINGTON	CRAIG		JULY 21, 2010
164	WARRINGTON	SHERRY		JULY 21, 2010
165	WOLFF	DARLENE		JULY 21, 2010
166	BOUCHARD	NICOLE		SEPTEMBER 13, 2010
167	BRIESE	EWALD		SEPTEMBER 13, 2010
168	CARTER	JOHN		SEPTEMBER 13, 2010

**PETTINELLI, MASTROLUISI LLP**  
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169	DOERKSEN	STEVE		SEPTEMBER 13, 2010
170	DUECK	KELLY		SEPTEMBER 13, 2010
171	DUNSEITH	SHERRY K.		SEPTEMBER 13, 2010
172	DUNSEITH	WILLIAM F.		SEPTEMBER 13, 2010
173	FAST	NIK		SEPTEMBER 13, 2010
174	HAWRYSH	THEODORE		SEPTEMBER 13, 2010
175	HENRIKSON	CHARLENE		SEPTEMBER 13, 2010
176	HENRIKSON	GORD		SEPTEMBER 13, 2010
177	JANSEN	HELEN K.		SEPTEMBER 13, 2010
178	JANSEN	JOHN B.		SEPTEMBER 13, 2010
179	JONES	GORD		SEPTEMBER 13, 2010
180	KLIPPENSTEIN	DON		SEPTEMBER 13, 2010
181	KRSOMO	RANDY		SEPTEMBER 13, 2010
182	KUSANO	ALEXANDRA		SEPTEMBER 13, 2010
183	LANDER	CAREY		SEPTEMBER 13, 2010
184	LIMACHER	PAUL		SEPTEMBER 13, 2010
185	MAHE	MAURICE		SEPTEMBER 13, 2010
186	MCCAUGHLIN	BONNIE		SEPTEMBER 13, 2010
187	MCCAUGHLIN	KEVIN		SEPTEMBER 13, 2010
188	MCCAUGHLIN	SHAWN		SEPTEMBER 13, 2010
189	MCCRACKEN	TERRILYNN		SEPTEMBER 13, 2010

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190	MOLINSKI	RAY		SEPTEMBER 13, 2010
191	OFFERT	JOHN		SEPTEMBER 13, 2010
192	PISCHKE	CINDY L.		SEPTEMBER 13, 2010
193	PISCHKE	GARTH		SEPTEMBER 13, 2010
194	REMPEL	DOROTHY		SEPTEMBER 13, 2010
195	REMPEL	ERWIN		SEPTEMBER 13, 2010
196	ROACH	VIKKI L.		SEPTEMBER 13, 2010
197	ROADLEY	JOANNE		SEPTEMBER 13, 2010
198	ROADLEY	PETER		SEPTEMBER 13, 2010
199	SCOTT	RANDOLPH TONY		SEPTEMBER 13, 2010
200	SHAPER	DAVID		SEPTEMBER 13, 2010
201	SHAPER	KAREN		SEPTEMBER 13, 2010
202	SWAN	GLEN		SEPTEMBER 13, 2010
203	TOEWS	BEN		SEPTEMBER 13, 2010
204	TOEWS	KATY		SEPTEMBER 13, 2010
205	WAEDT	GWEN		SEPTEMBER 13, 2010
206	WAEDT	HELMUT		SEPTEMBER 13, 2010
207	WIEBE	BARB		SEPTEMBER 13, 2010
208	WIEBE	ERNIE		SEPTEMBER 13, 2010
209	YOUNG	GAIL		SEPTEMBER 13, 2010

**PETTINELLI, MASTROLUISI LLP**  
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**NOTES:**

- 1) Opt-out notices 1 to 165 were received from fax # 416-214-1323 - "Promitterd." These notices were deemed invalid by Justice Strathy in his Reasons for Decision dated September 17, 2010.
- 2) Opt-out notices 166 to 209 were received from Roger Eger. These notices were deemed invalid by Justice Strathy in his Reasons for Decision dated September 17, 2010.
- 3) This opt-out form is not witnessed.
- 4) This opt-out form reflects the opt-out of two (2) individuals.
- 5) This opt-out form reflects the opt-out of two (2) individuals and is not witnessed.

KATHRYN ROBINSON ET AL.

V.

ROCHESTER FINANCIAL ET AL.

Court File No. 08-CV-349792

**ONTARIO**  
SUPERIOR COURT OF JUSTICE

Proceeding under the *Class Proceedings Act, 1992*

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**SCARFONE HAWKINS LLP**

Barristers & Solicitors  
One James Street South, 14th Floor  
P.O. Box 926, Depot #1  
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L8N 3P9

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Lawyers for the plaintiffs, Kathryn Robinson and  
Rick Robinson