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COURT FILE NUMBER

1703 12765

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

SERVUS CREDIT UNION LTD.

DEFENDANTS

CRELOGIX ACCEPTANCE CORPORATION,  
CRELOGIX CREDIT GROUP INC., CRELOGIX  
PORTFOLIO SERVICES CORPORATION, KARL  
SIGERIST, NICHOLAS CARTER, MIKE MCKAY  
AND MICHAEL MILLS

DOCUMENT

**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP  
Barristers and Solicitors  
2700 Commerce Place  
10155 - 102 Street  
Edmonton, AB, Canada T5J 4G8  
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's

Name: Rick T.G. Reeson, Q.C.

Lawyer's

Email: rreeson@millerthomson.com

File No.: 138667.138

**NOTICE TO DEFENDANTS**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

1. The Plaintiff, Servus Credit Union Ltd. ("**Servus**"), is a financial institution, operating pursuant to the *Credit Union Act*, R.S.A. 2000, c C-32, which provides financial services throughout the Province of Alberta, and whose head office is located in the City of Edmonton, in the Province of Alberta.
2. The Defendant, Crelogix Acceptance Corporation (the "**CAC**"), is a body corporate incorporated pursuant to the laws of the Province of British Columbia, having its head office in Vancouver, British Columbia, and is extra-provincially registered and carrying on business in the Province of Alberta. CAC was previously incorporated under the name Travelers Acceptance Corporation, having changed its name to CAC on March 14, 2010.
3. The Defendant, Crelogix Portfolio Services Corporation ("**CPSC**"), is a body corporate incorporated pursuant to the laws of the Province of British Columbia, having its head

office in Vancouver, British Columbia, and is extra-provincially registered and carrying on business in the Province of Alberta. CPSC is a subsidiary of CAC.

4. The Defendant, Crelogix Credit Group Inc. (“**CCGI**”), is a body corporate incorporated pursuant to the laws of the Province of British Columbia, having its head office in Vancouver, British Columbia, and carrying on business in the Province of Alberta. CCGI is a subsidiary of CAC.
5. The Defendants, Karl Sigerist, Michael McKay also known as Mike McKay, Michael Mills, and Nicholas Carter are individuals, residing in or around the City of Vancouver, in the Province of British Columbia (collectively the “**Individual Guarantors**”). The Individual Guarantors were, at all times material to this action, the principals of each of CAC, CPSC and CCGI and administered the day-to-day business operations of each of CAC, CPSC and CCGI.

#### **The Warehouse Loan Facility**

6. On the application of CAC, Servus agreed to extend to CAC a Demand Overdraft Facility in the maximum amount of \$2,000,000.00 (the “**Warehouse Loan**”), the terms of which are set out in the Overdraft Protection Agreement dated March 31, 2008, and the Offers of Financing dated March 7, 2008 and May 31, 2013 (collectively, the “**Warehouse Loan Agreements**”).
7. It is a term of Warehouse Loan Agreements, among others that:
  - (a) CAC shall repay the Warehouse Loan on demand;
  - (b) The interest rate on the Warehouse Loan is Servus’ prime rate of interest, from time to time, plus 1.50% *per annum*, payable monthly not in advance; and
  - (c) In the event of default by CAC under the terms of the Warehouse Loan Agreements, CAC would pay to Servus all costs and expenses (including all professional fees and legal fees on a solicitor and own client full indemnity basis) incurred by Servus to enforce any rights granted to Servus under the terms of the Warehouse Loan Agreements.

#### **The Evergreen Loan Facility**

8. On the application of CAC, Servus agreed to further extend to CAC a Demand Overdraft Facility in the maximum amount of \$1,250,000.00 (the “**Evergreen Loan**”), the terms of which are set out in the Supplemental Credit Facility Letter, dated September 8, 2016, and all amendments thereto, including the Amending Facility Letters dated November 15, 2016, December 14, 2016, December 22, 2016, January 9, 2017, January 30, 2017, February 14, 2017, February 28, 2017, March 17, 2017, April 10, 2017, April 21, 2017, May 1, 2017, May 15, 2017, and June 27, 2017 (the “**Evergreen Loan Agreements**”).
9. It is a term of Evergreen Loan Agreements, among others that:
  - (a) CAC shall repay the Evergreen Loan on demand, and no later than July 7, 2017;
  - (b) The interest rate on the Evergreen Loan is Servus’ prime rate of interest, from time to time, plus 4.00% *per annum*, payable monthly not in advance; and

- (c) In the event of default by CAC under the terms of the Evergreen Loan Agreements, CAC would pay to Servus all costs and expenses (including all professional fees and legal fees on a solicitor and own client full indemnity basis) incurred by Servus to enforce any rights granted to Servus under the terms of the Evergreen Loan Agreements.

### **The Consultant Loan Facility**

- 10. On the application of CAC, Servus agreed to further extend to CAC a Demand Term Loan in the amount of \$179,652.02 (the “**Consultant Loan**”), the terms of which are set out in the Supplemental Credit Facility Letter, dated September 8, 2016, and all amendments thereto, including the Amending Facility Letters dated December 14, 2016, December 22, 2016, January 9, 2017, January 30, 2017, February 28, 2017, March 17, 2017, April 19, 2017, May 1, 2017, May 15, 2017, and June 27, 2017 (the “**Consultant Loan Agreements**”).
- 11. It is a term of Consultant Loan Agreements, among others that:
  - (a) CAC shall repay the Consultant Loan on demand, and no later than July 7, 2017;
  - (b) The interest rate on the Consultant Loan is Servus’ prime rate of interest, from time to time, plus 4.00% *per annum*, payable monthly not in advance; and
  - (c) In the event of default by CAC under the terms of the Consultant Loan Agreements, CAC would pay to Servus all costs and expenses (including all professional fees and legal fees on a solicitor and own client full indemnity basis) incurred by Servus to enforce any rights granted to Servus under the terms of the Consultant Loan Agreements.

(the Warehouse Loan, the Evergreen Loan and the Consultant Loan are collectively referred to as the “**CAC Facilities**”)

### **CCGI Unsecured Convertible Note Agreement**

- 12. Servus agreed to extend to CCGI a one-time non-revolving loan in the principal amount of \$2,000,000.00 (the “**CCGI Loan**”), the terms of which are set out in the Unsecured Convertible Note Agreement, dated September 14, 2016 (the “**CCGI Note**”).
- 13. It is a term of CCGI Note, among others that:
  - (a) CCGI shall repay the CCGI Loan no later than December 15, 2016;
  - (b) The interest rate on the CCGI Loan is Servus’ prime rate of interest, from time to time, plus 4.00% *per annum*, compounded monthly in advance; and
  - (c) The CCGI Note shall be in default upon if, at any time, there occurs and event or circumstance which, in the opinion of Servus acting reasonably and in good faith, has a material adverse effect:
    - (i) on the business, operations, assets, condition, or prospects of CAC, CCGI, or CPSC considered as a whole;
    - (ii) on the ability of CAC, CCGI, CPSC, or the Individual Guarantors to perform any of their respective obligations required by the Transaction

Documents (as therein defined, which includes the CCGI Note, CAC Guarantees, Subsidiary Note Guarantees, and Forbearance Agreement).

14. By a series of 10 amending agreements, payment under the CCG Note was extended to and including July 7, 2017.

#### **Guarantees of the CAC Facilities**

15. To secure payment and discharge of present and future indebtedness and liability of CAC to Servus under the CAC Facilities, the following guarantees were granted in favour of Servus:
  - (a) Continuing Guarantee and Postponement, dated December 10, 2010, executed by Karl Sigerist, in the amount of \$530,400.00, plus interest thereon compounded monthly, and all costs, charges and expenses, incurred by Servus in relation to enforcement and obtaining payment under the guarantee, including legal fees and disbursements on a solicitor and his own client full indemnity basis (the **"Sigerist Guarantee"**);
  - (b) Continuing Guarantee and Postponement, dated December 10, 2010, executed by Michael Mills, in the amount of \$250,200.00, plus interest thereon, compounded monthly, and all costs, charges and expenses, incurred by Servus in relation to enforcement and obtaining payment under the guarantee, including legal fees and disbursements on a solicitor and his own client full indemnity basis (the **"Mills Guarantee"**);
  - (c) Continuing Guarantee and Postponement, dated December 10, 2010, executed by Michael McKay also known as Mike McKay, in the amount of \$250,200.00, plus interest thereon, compounded monthly, and all costs, charges and expenses, incurred by Servus in relation to enforcement and obtaining payment under the guarantee, including legal fees and disbursements on a solicitor and his own client full indemnity basis (the **"McKay Guarantee"**);
  - (d) Continuing Guarantee and Postponement, dated December 10, 2010, executed by Nicholas Carter, in the amount of \$250,200.00, plus interest thereon, compounded monthly, and all costs, charges and expenses, incurred by Servus in relation to enforcement and obtaining payment under the guarantee, including legal fees and disbursements on a solicitor and his own client full indemnity basis (the **"Carter Guarantee"**);
  - (e) Continuing Guarantee and Postponement, dated October 30, 2009, executed by CCGI, in the amount of \$2,000,000.00, plus interest thereon compounded monthly, and all costs, charges and expenses, incurred by Servus in relation to enforcement and obtaining payment under the guarantee, including legal fees and disbursements on a solicitor and his own client full indemnity basis (the **"CCGI Guarantee"**); and
  - (f) Continuing Guarantee and Postponement dated October 30, 2009, in the amount of \$2,000,000.00, executed by CPSC, plus interest thereon, compounded monthly, and all costs, charges and expenses, incurred by Servus in relation to enforcement and obtaining payment under the guarantee, including legal fees and disbursements on a solicitor and his own client full indemnity basis (the **"CPSC Guarantee"**).



(collectively, the “**CAC Guarantees**”)

### **Guarantees of the CCGI Loan**

16. To secure payment and discharge of the indebtedness and liability of CCGI to Servus under the CCGI Loan, CAC and CPSC each executed unlimited continuing guarantees dated September 14, 2016 (collectively, the “**Subsidiary Note Guarantee**”) in favour of Servus with respect to all amounts owing under the CCGI Note, plus all costs, losses, damage or liability suffered by Servus in relation to the enforcing and obtaining payment under the Subsidiary Note Guarantee.

### **Outstanding Indebtedness and Liability to Servus**

17. There is due and owing to Servus by CAC under the CAC Facilities and by CCGI under the CCGI Loan (the CAC Facilities and the CCGI Loan hereafter collectively referred to as the “**Loan Facilities**”), plus such further amounts owed in respect of costs and expenses incurred by Servus, together with accruing interest, as at July 2, 2017, as follows:

- (a) **Warehouse Loan**  
\$1,474,488.78
- (b) **Evergreen Loan**  
\$508,798.92
- (c) **Consultant Loan**  
\$182,693.82 (per diem - \$32.98)
- (d) **CCGI Loan**  
\$2,108,277.15 (per diem - \$381.54)

**Total:** \$4,274,258.67 (plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest, hereafter called the “**Indebtedness**”).

### **General Security Agreements Granted in Favour of Servus**

18. On or about March 31, 2008, CAC granted to Servus a General Security Agreement (the “**CAC GSA**”) securing, charging and pledging to Servus all of CAC’s present and after acquired personal property, including all accounts receivable, goods, equipment, inventory and the proceeds thereof. The CAC GSA secures all obligations of CAC to Servus, including those obligations in relation to the CAC Facilities and the Subsidiary Note Guarantee (collectively, the “**CAC Obligations**”).
19. On or about October 30, 2009, CCGI granted to Servus a General Security Agreement (the “**CCGI GSA**”) securing, charging and pledging to Servus all of CCGI’s present and after acquired personal property, including all accounts receivable, goods, equipment, inventory and the proceeds thereof. The CCGI GSA secures all obligations of CCGI to Servus, including those obligations in relation to the CCGI Loan and the CCGI Guarantee (collectively, the “**CCGI Obligations**”).
20. On or about October 30, 2009, CPSC granted to Servus a General Security Agreement (the “**CPSC GSA**”) securing, charging and pledging to Servus all of CPSC’s present and

after acquired personal property, including all accounts receivable, goods, equipment, inventory and the proceeds thereof. The CPSC GSA secures all obligations of CPSC to Servus, including those obligations in relation to the CPSC Guarantee and the Subsidiary Note Guarantee (collectively, the “**CPSC Obligations**”).

#### **Interim Forbearance Arrangements and Demand for Payment**

21. The Defendants defaulted under their obligations under the Warehouse Loan Agreements.
22. Servus and the Defendants entered into three letter agreements, dated August 26, 2016, September 6, 2016, and September 9, 2016, respectively (the “**Letter Agreements**”) pursuant to which the Defendants confirmed their default in their obligations to Servus, and pursuant to which Servus was willing to forbear in taking steps recover the amounts owing to Servus in respect of the Warehouse Loan and the CAC Guarantees.
23. On or about September 13, 2016, due to the Defendants’ default under the Letter Agreements, Servus issued its demands upon each of the Defendants, along with serving Notices of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act* upon each of CAC, CCGI, and CPSC, seeking payment in full of the Warehouse Loan and the CAC Guarantees.

#### **September 14, 2016 Forbearance Agreement and Subsequent Extensions**

24. On or about September 14, 2016, Servus agreed to forbear from exercising the rights and remedies available to Servus as a result of the Defendants’ defaults under the Letter Agreements (the “**Forbearance Agreement**”).
25. It is a term of the Forbearance Agreement:
  - (a) that the CAC Facilities would be repaid in full by no later than 2:00 P.M. (Edmonton time) on December 15, 2016;
  - (b) the Defendants would provide to Servus a form of Consent Receivership Order (the “**Consent Order**”) to be used in connection with an action commencing in the Court of Queen’s Bench of Alberta, Judicial Centre of Edmonton, with respect to placing CAC, CCGI and CPSC into receivership upon an event of default under the Forbearance Agreement or any of the Loan Facilities, including but not limited to, the occurrence of any adverse change in either the legal position or security position of Servus, or the financial condition of CAC;
26. In the Forbearance Agreement each of the Defendants acknowledged, agreed and represented to Servus, amongst other things, that:
  - (a) they are in default of their obligations to Servus, which obligations were fully due and owing to Servus;
  - (b) the CAC Facilities are fully due and owing to Servus;
  - (c) there is no defence or setoff to the claim by Servus for repayment;
  - (d) all documentation respecting the loans and the guarantees of the loans giving rise to the Defendants respective indebtedness are valid, subsisting and enforceable;

- (e) all security granted by the Defendants in favour of Servus is valid, subsisting and enforceable; and
  - (f) Servus has issued certain demands and Section 244 Notices to the Defendants, such demands and notices were received by the Defendants, and no further demands or notices would be required to be given by Servus to the Defendants.
27. By a series of 13 amending agreements, the Forbearance Agreement was extended to and including 2:00 P.M. (Edmonton time) on July 7, 2017.

#### **Default under the Terms of the Forbearance Agreement and its Amendments**

28. On or around:
- (a) 4:30 P.M. (Edmonton time) on June 30, 2017, Karl Sigerist, Michael McKay also known as Mike McKay, Michael Mills and Wayne Cook (Chairman of CAC's Board of Directors), tendered their resignations as directors and officers of CAC, CCGI and CPSC; and
  - (b) July 4, 2017, Marcel Fizell tendered his resignation as the sole remaining director of CAC, CCGI and CPSC.

(the “**Senior Management Resignations**”)

29. As a result of the Senior Management Resignations, Servus has experienced a material adverse change in its legal and security position, which has a material adverse effect on the financial condition of CAC, CCGI and CPSC. Consequently, the Defendants are in default under the terms of the Forbearance Agreement, as amended.

#### **Real and Substantial Connection to Alberta**

30. There is a real and substantial connection between Alberta and the facts on which Servus' within action against the Defendants is based, as:
- (a) the Loan Facilities, the Letter Agreements, and the Forbearance Agreement were made, performed and breached in Alberta;
  - (b) it is an express term of the Loan Facilities and the Forbearance Agreement that claims under those agreements shall be governed by the law of Alberta;
  - (c) Servus' claims relate to enforcement of security against CAC, CCGI, and CPSC assets, a portion of which are located in Alberta;
  - (d) CAC, CCGI and CPSC carry on business in Alberta. CAC and CPSC are extra-provincially registered in Alberta pursuant the Alberta *Business Corporations Act*, RSA 2000, c B-9; and
  - (e) the Individual Guarantors, although residents of British Columbia, are a necessary or proper party to within action due to their personal liabilities in respect of the CAC Guarantees.
31. The Plaintiff proposes that the trial of this action be held at the Law Courts, in Edmonton, Alberta, and that this action be characterized as a standard case.

**REMEDY SOUGHT:**

32. WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST CRELOGIX ACCEPTANCE CORPORATION:
- (a) Judgment against CAC, as at July 2, 2017, in favour of Servus in the following amounts pursuant to the outstanding CAC Obligations together with interest to accrue on the Judgment at the rates set out in the under the Loan Facilities, the Subsidiary Note Guarantee, the Letter Agreements and the Forbearance Agreement, as follows:
    - (i) Pursuant to the CAC Facilities in the principal sum of \$2,165,981.52 plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest; and
    - (ii) Pursuant to the Subsidiary Note Guarantee in the principal sum of \$2,096,068.00 plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest.
33. WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST CRELOGIX CREDIT GROUP INC.
- (a) Judgment against CCGI, as at July 2, 2017, in favour of Servus pursuant to the outstanding CCGI Obligations together with interest to accrue on the Judgment at the rates set out in the under the CCGI Loan, the CCGI Guarantee, the Letter Agreements and the Forbearance Agreement as amended, as follows:
    - (i) Pursuant to the CCGI Loan in the principal sum of \$2,108,277.15 plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest; and
    - (ii) Pursuant to the CCGI Guarantee in the principal sum of \$2,000,000.00, plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest.
34. WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST CRELOGIX PORTFOLIO SERVICES CORPORATION:
- (a) Judgment against CPSC, as at July 2, 2017, in favour of Servus pursuant to the outstanding CPSC Obligations together with interest to accrue on the Judgment at the rates set out in the under the Loan Facilities, the CPSC Guarantee, the Subsidiary Note Guarantee, the Letter Agreements and the Forbearance Agreement as amended, as follows:
    - (i) Pursuant to the Subsidiary Note Guarantee in the principal sum of \$2,108,277.15 plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest; and



- (ii) Pursuant to the CPSC Guarantee in the principal sum of \$2,000,000.00, plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest.

35. WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST KARL SIGERIST:

- (a) Judgment against Karl Sigerist, as at July 2, 2017, in favour of Servus pursuant to the Sigerist Guarantee together with interest to accrue on the Judgment at the rates set out in the under the Sigerist Guarantee, the Letter Agreements and the Forbearance Agreement as amended, totalling the principal sum of \$530,400.00, plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest.

36. WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST NICHOLAS CARTER:

- (a) Judgment against Nicholas Carter, as at July 2, 2017, in favour of Servus pursuant to the Carter Guarantee together with interest to accrue on the Judgment at the rates set out in the under Carter Guarantee, the Letter Agreements and the Forbearance Agreement as amended, totalling the principal sum of \$250,200.00, plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest.

37. WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST MICHAEL MCKAY ALSO KNOWN AS MIKE MCKAY:

- (a) Judgment against Michael McKay also known as Mike McKay, as at July 2, 2017, in favour of Servus pursuant to the McKay Guarantee together with interest to accrue on the Judgment at the rates set out in the under the McKay Guarantee, the Letter Agreements and the Forbearance Agreement as amended, totalling the principal sum of \$250,200.00, plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest.

38. WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST MICHAEL MILLS:

- (a) Judgment against Michael Mills, as at July 2, 2017, in favour of Servus pursuant to the Mills Guarantee together with interest to accrue on the Judgment at the rates set out in the under Mills Guarantee, the Letter Agreements and the Forbearance Agreement as amended, totalling the principal sum of \$250,200.00, plus such further amounts owed in respect of costs and expenses incurred by Servus, including legal costs and disbursements on a solicitor and own client full indemnity basis, together with accruing interest.

39. An Order for the Appointment of an Interim Receiver of the undertaking, property and assets of CAC, CCGI and CPSC;

40. An Order for the Appointment of a Receiver or Receiver and Manager of the undertaking, property and assets of CAC, CCGI and CPSC;

41. In the alternative, such appointment or relief as may be necessary to ensure the preservation of CAC, CCGI and CPSC's secured property;

42. A declaration that the enforceable security (as advised herein) granted by CAC, CCGI and CPSC in favour of Servus may be enforced by the sale of the whole or any part of undertaking, property and assets of CAC, CCGI and CPSC;
43. An Order dispensing with any bond or other security that might otherwise be required to be posted by a Receiver or a Receiver and Manager;
44. An Order that no action at law or otherwise (other than this action) shall be taken or continued against the Receiver or the Receiver and Manager of CAC, CCGI and CPSC undertakings, property and assets without leave of this Honourable Court first having been obtained;
45. Costs with respect to all legal and financial advisory fees, including without limitation, monitoring costs, incurred from time to time on a solicitor and his own client full indemnity basis or on such further and other basis as this Honourable Court may direct;
46. Such other relief as this Honourable Court may direct.

#### **NOTICE TO THE DEFENDANT(S)**

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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

#### **WARNING**

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