

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 351 OF 2010

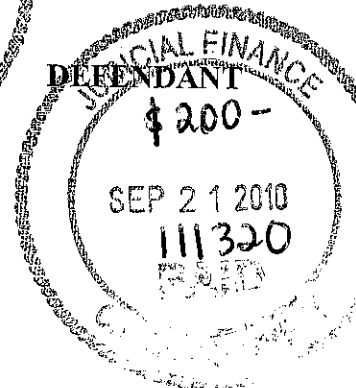
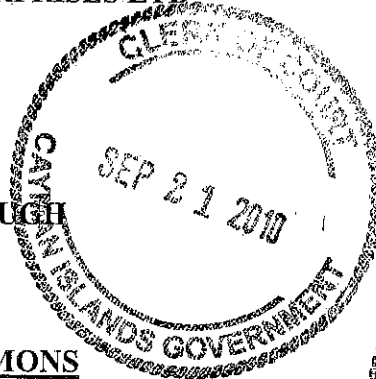
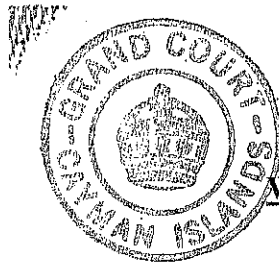
BETWEEN

KIRKCONNELL ENTERPRISES LTD

PLAINTIFF

AND

PAUL MCGEOUGH



WRIT OF SUMMONS

TO THE DEFENDANT:

Paul McGeough of PO Box 11249, Grand Cayman, KY1-1008, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intent to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of September, 2010.

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for acknowledgment of Service are given with the accompanying form.

GENERAL INDORSEMENT

The Defendant was employed by Kirkconnell Brothers Ltd ("KBL") from 8 May 2003 until 31 January 2009 whereafter the Defendant was employed by the Plaintiff. A Novation Agreement was entered into by the Plaintiff, the Defendant and KBL on 18 February 2009 with regarding to the Defendant's employment. At all times, the Defendant was engaged as a Manager of the Heavy Hardware Section at Kirk Home Centre. Pursuant to a Deed of Assignment dated 17 September 2010, KBL assigned its rights of action in this matter to the Plaintiff.

Recently, it has come to the Plaintiff's attention that the Defendant has, in breach of his duties to the Plaintiff and/or KBL, been purchasing good directly from suppliers of the Plaintiff and KBL either for personal use or onward sale to third parties. In further breach of his duties, the Defendant also caused the Plaintiff and/or KBL to fund the freight and duty for his personal items and the Defendant has been avoiding paying freight and duty by concealing the existence of the goods on the Plaintiff's and/or KBL's containers.

Accordingly the Plaintiff will seek to recover damages incurred for the following:

- (i) Breach of duty to exercise skill;
- (ii) Breach of duty to exercise reasonable care;
- (iii) Breach of duty of fidelity; and
- (iv) Breach of duty to account.

Further, pursuant to the terms of the Novation Agreement dated 18 February, 2009, the Defendant gave an indemnity to the Plaintiff in relation to any losses caused to the Plaintiff. The Defendant has caused the Plaintiff and KBL loss and damage.

DATED this 21 day of September 2010



TURNER & ROULSTONE
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Turner & Roulstone, Attorneys-at-Law for the Plaintiff whose address for service is Strathvale House, 90 North Church Street, P.O. Box 2636 GT, George Town, Grand Cayman, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 351 OF 2010

BETWEEN

KIRKCONNELL ENTERPRISES LTD

AND

PAUL MCGEOUGH



PLAINTIFF

DEFENDANT



STATEMENT OF CLAIM

1. The Plaintiff is an ordinary resident company incorporated in the Cayman Islands on 21 October 2008. The business of Kirk Home Centre was transferred from Kirkconnell Brothers Ltd (“KBL”) to the Plaintiff on 31 January 2009. On 16 September 2010, KBL assigned the rights of action in relation to the Defendant to the Plaintiff by Deed of Assignment.
2. The Defendant was initially engaged by KBL on 8 May 2003 as a Manager of the Heavy Hardware division. The Defendant’s employment contract was novated to the Plaintiff by a Novation Agreement dated 18 February 2009 (“the Novation Agreement”).

Duties of the Defendant

3. The Defendant’s Employment Contact states under “Responsibilities and Duties” as follows: “Assigned to work for Kirkconnell Brothers Limited to perform the duties and assume the responsibilities of Manager, Heavy Hardware”. The contract also described the Defendant as “senior management staff”.
4. The Defendant is also bound by the terms of the Staff Handbook. The handbook includes the following passages:

“16.4 The following are examples of gross misconduct. Instant dismissal, without warning or compensation may be ordered for the following offences:

16.4.1 Dishonest or fraudulent actions;

16.4.2 Immoral conduct;

....

16.4.4 Gross insubordination i.e. willfully refusing to obey orders, instructions or being disrespectful to management personnel;

....

16.4.10 Any act which constitutes misconduct as defined in section 52(1) of the Labour Law (2001) as amended or restated;

....

16.4.12 Any action or lack of action which harms the Company's assets or business relationships;

....

16.5 The following are examples of misconduct. This list is intended as a guide and is not exhaustive;

16.5.1 Failure to comply with the Company's policies, procedures, rules or working practices;

....

16.5.3 Negligence or irresponsibility in carrying out duties;

16.5.4 Abuse of status or responsibilities;

....

16.5.11 Disposing of Company's products without supervisor's authorization;

....

16.5.13 Discounting Company's products without just cause."

5. The job description for the Heavy Hardware Manager from November 2006 (which was the first time that the position was advertised after the Defendant accepted the position) described the duties of the position as follows :
 1. *"Buying / ordering heavy hardware items for inventory and special orders,*
 2. *Blue print take-offs*
 3. *Presentations to builders and architects*
 4. *Ensuring sales targets are met*
 5. *Recommending product lines to be added, promoted or discontinued,*
 6. *Managing inventory levels and reorder points,*
 7. *Tracking and communicating with suppliers concerning outstanding purchase orders,*
 8. *Ensuring that freight forwarders receive adequate documentation in a timely manner,*
 9. *Supervising approximately 20 staff members,*
 10. *Maintaining a high level of customer attention, service and satisfaction,*
 11. *Managing deliveries to customers,*
 12. *Organizing and maintaining the warehouse and lumber yard,*
 13. *Ensuring that company's vehicles and equipment are well maintained."*
6. There were implied terms of the contract between the Plaintiff and the Defendant that the Defendant would:
 - a. Perform his duties with reasonable skill;
 - b. Perform his duties with reasonable care;

- c. Perform his duties with fidelity and good faith;
- d. Account to the Plaintiff for all property entrusted to him and for all property received by him from a third party for or on account of the Plaintiff.

Fiduciary Duty

- 7. The Defendant had a duty to KBL and the Plaintiff to act bona fide and in the best interests of the Plaintiff as the Plaintiff's agent and employee.

Indemnity

- 8. The Novation Agreement provided, inter alia "the Employee shall indemnify the New Employer against any loss or damage suffered or incurred by the New Employer arising out of any negligent act, default or breach by the Employee in the performance of his obligations under the Employment Agreement prior to the date of this Agreement. Subject to any limitation of liability in the Employment Agreement, the Employee shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Old Employer (or suffered or incurred to the same extent by the Old Employer)."

Facts

- 9. The Defendant was responsible for buying all goods for the heavy hardware division. The Defendant ordered goods when one of the following occurred:
 - i. If the Defendant saw from a visual inspection of the goods in stock that the stock required replenishing;
 - ii. If the Defendant received a request from a customer for a specific item (these would be termed "special orders"; the customer would be required to pay 50% of the retail value of the goods as a deposit upon ordering the same with the remaining 50% due once the goods were received by the Plaintiff before being sent to the customer); or

iii. If the Defendant was informed by suppliers to the Plaintiff that the price of a particular item was low or the cost was to increase in the near future.

10. The ordering process which was at all material times, the process which should have been followed by the Defendant was as follows:

- (a) The Defendant would telephone, fax or email a purchase order to the supplier;
- (b) The supplier would send an order acknowledgement or confirmation regarding price and quantity;
- (c) The Defendant would approve the order acknowledgement/confirmation;
- (d) The supplier would fax or email the Defendant the purchase invoice;
- (e) The supplier would then either (i) send a container load of goods directly to Cayman if the order was large enough to fill a container or (ii) send the goods to a freight forwarder (such as Jeld-wen) in Miami who would consolidate the goods from various suppliers and ship a container to Cayman once filled;
- (f) The goods would then be sealed on a container and shipped to Cayman, the shipping company would list the goods in the container, based on the purchase invoices (provided by the freight forwarder) to produce a bill of lading;
- (g) The Defendant would deliver the purchase invoices to the costing department;
- (h) After the costing department gathered all invoices relating to each container, the Plaintiff's customs broker would fill out the custom entry form to give a general description of the type of merchandise in the container;
- (i) The customs broker would also calculate the duty owed on each container after evaluating each invoice item by item to determine the rate of duty to charge, when duty is calculated on a container, it is based on the first cost of the goods, plus the inland freight, plus the marine insurance and the ocean freight;
- (j) The customs entry form would then checked by a customs officer who also would calculate the sum to be paid in duty;
- (k) Once the amount of duty is established and a cheque requested from the accounting department to pay the customs fee, an employee of the Plaintiff would then take the cheque and all documents to Customs to pay to have the

- container released (the customs entry form is then stamped and the container can be released);
- (l) Once the release papers are given, a clerk of the Plaintiff would deliver the documents to McLees (the trucking company), to have the container delivered to Kirk Home Center;
 - (m) At the same time, the Plaintiff's costing department continues to process the just arrived inventory into the system, based on the purchase invoices, as follows: after the duty on each container has been assessed the costing department takes the bill of lading and adds all charges on the bill of lading (e.g. ocean freight, bunker surcharge, security fees, port charges, trucking charges, insurance charges etc);
 - (n) The costing department would then give the invoices back to the Defendant so that he may match the Plaintiff's product codes to the supplier items;
 - (o) At this time, the Defendant would also note special orders for customers of the Plaintiff;
 - (p) When the invoices are returned to the costings department, new item codes are built if necessary and regular stock items are received under item codes already on the system;
 - (q) The information was then passed back to the costings department;
 - (r) Each item would then be allocated a landed cost based on all charges associated with the container;
 - (s) Each item would then be marked-up, according to pre-established guidelines: for example, if a product landed at C1\$ 10.00 and the pre-established mark-up is 1.40, the product will retail at C1\$ 14.00;
 - (t) Product quantity would then be entered into the Plaintiff's inventory;
 - (u) For special orders, the Defendant would contact the customer, inform them that their goods had arrived and ask them to pay the remaining sums due in full before the Plaintiff delivers the goods;
 - (v) Inventory should never leave the custody of the Plaintiff without a sale being registered, regardless of whether the inventory being consigned to the customer is regular stock or a special order item; the Defendant was directly responsible for registering all special order sales;

- (w) Once price and inventory quantity is entered into the system, a costing & accounts payable ("AP") rider is produced along with a goods received note;
 - (x) The invoices from the suppliers are paid by the Plaintiff;
 - (y) The freight charges from the shipping companies are sent to the Plaintiff monthly and paid as and when they are due; and
 - (z) The port charges from the Port Authority are sent to the Plaintiff usually paid bi-monthly.
11. If any employee of the Plaintiff wished to purchase goods through the Plaintiff, the employee may do so. If there are goods in stock that an employee wishes to purchase, they would receive a staff discount. If an employee wishes to place a special order, they may do so but this will be treated as any other special order and a discount will only be given on the retail value of the goods (i.e. the first cost of the goods, plus the landing costs of shipping, duty, plus the mark up) if specifically approved by the General Manager of the Plaintiff, Brigitte Shaughness. The majority of items in the Heavy Hardware division of the Plaintiff are marked up by 1.4 on the landed costs of the goods.
12. The Defendant approached Ms. Shaughness, the General Manager and a director of the Plaintiff in 2007 and indicated that he was building a property in Cayman on land which he had purchased some time previously but that he would be purchasing the majority of his goods and materials for the property from Home Depot in US. The Defendant asked whether he could receive a discount on goods he was intending to buy through the Plaintiff from three specific suppliers (American Standard, GE Appliances and Trane A/C). Ms. Shaughness of the Plaintiff agreed that the Defendant could purchase items from these specific suppliers at a 1.15 mark up, as opposed to a 1.4 mark up on the landed cost (i.e. after port charges, trucking, other charges, ocean freight, marine insurance and duty have been calculated and added). The purchase of goods for the Defendant's property was not further discussed between the Plaintiff and the Defendant. The discounted mark up was only provided for goods from those three suppliers and would have to be specifically negotiated by the Defendant or any other employee who wished to purchase any item through the Plaintiff.

13. During 2008 and 2009 the Defendant caused loss to the Plaintiff by using the Plaintiff's suppliers, employees, equipment, systems, warehouses, facilities and other resources to import goods for his personal use without approval from the Plaintiff, without following the procedure for special orders and without registering any sales invoices. The Defendant was, at all times, employed by KBL and/or the Plaintiff as a Manager of the Heavy Hardware division. The Defendant imported these personal goods against company policy and in direct conflict with the Plaintiff's interests, that the Defendant was employed to protect.
14. The Defendant has damaged the reputation of the Plaintiff by failing to pay import duty and by requesting that suppliers provide fraudulent invoices for goods that understated or omitted values which would allow less duty to be paid than should be.
15. The Defendant breached the written terms of his employment contract and the implied terms of the contract.
16. On 22nd September 2010, the Plaintiff terminated the Defendant's employment with immediate effect for breach of the policies and procedures of the Plaintiff.

BPD Group Ltd debt

16. In 2007, BPD Group Ltd ("BPD") contacted the Plaintiff to order windows for the work it was undertaking at Renaissance, South Bay Beach Club and Beachcomber developments. The Defendant placed the orders for the windows with a supplier as a special order without first collecting the requisite 50% of the sales price from the customer (which was known company policy). The Defendant delivered the special order goods to the customer without first registering the sales and collecting the payment in full.
17. The total sales price of these special orders was C\$1,020,042 all of which the Defendant should have collected prior to delivery. The Defendant exposed the

Plaintiff to CI\$746,542.00 of unauthorized credit risk of which the Plaintiff has been unsuccessful at collecting CI\$235,660.

18. The only payments received for these special orders by the Plaintiff prior to the goods being delivered to BPD were CI\$129,618 and CI\$143,882.00 on 5th October 2007.
19. The transfer of the business from KBL to the Plaintiff occurred in January 2009. Prior to that date, detailed accounts of KBL had to be prepared to provide an accurate reflection of the finances to enable a fair sale of the business. When the Defendant was asked by the CFO (Patrick Shaughness) of the Plaintiff the status of the outstanding liability for prepayments associated with the special orders during late 2008, the Defendant stated that the recorded balance of prepayments by BPD was correct because the windows had not yet been received by the Plaintiff. This meant that the goods were inaccurately recorded in KBL's accounts as inventory on hand as opposed to the truth which was that the goods had been delivered to BPD (against company policy) before payment had been received in full which meant that it should have been recorded as cash sales.
20. In September 2009, Mr. James Smith of the Plaintiff discovered that the special orders, which the Defendant alleged had not yet been delivered, had in fact been received and recorded as inventory on hand by KBL. It was also discovered that the Defendant, contrary to known company policy, had in fact delivered the windows to BPD without receiving the remaining payments due, without registering the sale on the system, without relieving the recorded inventory quantity on hand and without raising invoices to BPD.
21. On 20th November 2009, the Defendant was presented with a letter from the Plaintiff which confirmed that there was approximately CI\$190,000 outstanding to the Plaintiff (the extent of loss that was known by the Plaintiff at that time) pursuant to the BPD debt for which the Plaintiff was holding the Defendant responsible. The letter further stated "As regards the amount due from B.P.D. Group we expect you to accept responsibility for any amounts not settled by them by 28th February 2010..... Please sign a copy of this letter below confirming receipt and confirming acceptance of its

terms". The Defendant countersigned the letter the same day once he had read and considered its terms.

22. On 6th September 2009, KBL assigned the debt due from KBL to the Plaintiff. Proceedings were issued against BPD for the sums due on 20th September 2010. One of the defences pleaded is that "KBL failed and neglected to demand payment for them, either within a reasonable time or at all". The sum claimed is C\$191,427.19 plus costs and interest.
23. The Defendant attended the credit committee meetings of the Plaintiff between February 2006 to April 2007 and was at all times, fully aware of the process regarding special orders.
24. Since issue of the claim by the Plaintiff, it has been discovered that the actual loss to the Plaintiff in relation to the BPD debt is US\$235,660.00.

Container SMLU-272407-0

25. The Defendant purchased goods from US Mona Lisa Tiles (invoice 24315), Universal Stone, Inc (invoice 655) and Iberia Tiles (Order 116463) in March 2009 for his personal use. The first cost of these goods was US\$1,171.00, US\$11,359.88 and US\$2,175.37 respectively. These goods were brought into the Cayman Islands on a container paid for by the Plaintiff, being container SMLU-272407-0. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$10,389.27. The first cost of the goods purchased by the Defendant for his own personal use which was on that container totaled US\$14,706.25.
26. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$253.99; trucking – US\$46.32; ocean freight – US\$1,088.40; marine insurance – US\$34.99. These have all been calculated on the basis that 59% of the value of the goods on the container was for the Defendant's personal use. Therefore, 59% of these costs have been allocated to the Defendant's goods.

27. Further, the Defendant also caused the Plaintiff to pay US\$482.05 in duty which is not attributable to the Plaintiff's own goods. With the entirety of the marine insurance and the ocean freight being incorrectly attributed to the Plaintiff's goods, the Plaintiff has paid duty on landing costs which should have been attributed to the Defendant's personal items.
28. Further, US\$5,842.51 of overhead costs were attributable to the goods which were for the Defendant's personal use.
29. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$1,885.67 (which is calculated by taking the landed costs of the goods being US\$19,320.46, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
30. Therefore the loss to the Plaintiff in relation to container SMLU-272407-0 is US\$1,905.75 of landing costs plus US\$5,842.51 of overhead costs plus US\$1,885.67 of profit, totaling US\$9,633.93.

Container CRXU-108448-9

31. The Defendant purchased goods from Allied Trade Group (order 758347) in February 2009 for his personal use. The first cost of these goods was US\$2,640.00. These goods were brought into the Cayman Islands on a container paid for by the Plaintiff, being container CRXU-108448-9. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$12,892.86.
32. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$77.66; trucking – US\$20.23; other charges – US\$4.25; ocean freight – US\$314.77; marine insurance – US\$11.78. These have all been calculated on the basis that 17% of the value of the goods on the container was for the

Defendant's personal use. Therefore, 17% of these costs have been allocated to the Defendant's goods.

33. Further, the Defendant also caused the Plaintiff to pay US\$63.59 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
34. Further, US\$1,108.47 of overhead costs were attributable to the goods which were for the Defendant's personal use.
35. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$357.76 (which is calculated by taking the landed costs of the goods being US\$3,665.56, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
36. Therefore the loss to the Plaintiff in relation to container CRXU-108448-9 is US\$492.28 of landing costs plus US\$1,108.47 of overhead costs plus US\$357.76 of profit, totaling US\$1,958.51.

Container SMLU-253865-1

37. The Defendant purchased goods from Jeld-wen (order DQ340642) in July 2009 for his personal use. The first cost of these goods was US\$7,580.18. These goods were brought into the Cayman Islands on a container paid for by the Plaintiff, being the above named container. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$19,451.21.
38. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$128.13; trucking – US\$33.38; other charges – US\$7.01; ocean freight – US\$526.07; marine insurance – US\$41.28. These have all been calculated on the basis that 28% of the value of the goods on the container was for the

Defendant's personal use. Therefore, 28% of these costs have been allocated to the Defendant's goods.

39. Further, the Defendant also caused the Plaintiff to pay US\$106.27 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
40. Further, US\$3,009.95 of overhead costs were attributable to the goods which were for the Defendant's personal use.
41. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$971,46 (which is calculated by taking the landed costs of the goods being US\$9,953.52, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
42. Therefore the loss to the Plaintiff in relation to this container is US\$842.14 of landing costs plus US\$3,009.95 of overhead costs plus US\$971.46 of profit, totaling US\$4,823.55.

Container SMLU-272370-5

43. The Defendant purchased goods from Best Buy (order 3040834) in October 2009 for his personal use. The first cost of these good was US\$2,109.33. These goods were brought into the Cayman Islands on a container paid for by the Plaintiff, being container SMLU-272370-5. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$18,899.75.
44. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$45.87; trucking – US\$11.95; other charges – US\$2.51; ocean freight – US\$188.95; marine insurance – US\$9.81. These have all been calculated on the basis that 10% of the value of the goods on the container was for the

Defendant's personal use. Therefore, 10% of these costs have been allocated to the Defendant's goods.

45. Further, the Defendant also caused the Plaintiff to pay US\$12.22 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
46. Further, US\$848.76 of overhead costs were attributable to the goods which were for the Defendant's personal use.
47. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$273.93 (which is calculated by taking the landed costs of the goods being US\$2,806.74, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
48. Therefore the loss to the Plaintiff in relation to container SMLU-272370-5 is US\$271.31 of landing costs plus US\$273.93 of overhead costs and US\$848.76 of profit, totaling US\$1,394.00.

Container SMLU-272881-5

49. The Defendant purchased goods from Horner Express (order 038402) in August 2009 for his personal use. The first cost of these good was US\$755.12. These goods were brought into the Cayman Islands on a container paid for by the Plaintiff, being container SMLU-272881-5. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$30,148.55.
50. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$11.14; trucking – US\$2.90; other charges – US\$0.61; ocean freight – US\$45.76; marine insurance – US\$3.68. These have all been calculated on the basis that 2% of the value of the goods on the container was for the

Defendant's personal use. Therefore, 2% of these costs have been allocated to the Defendant's goods.

51. Further, the Defendant also caused the Plaintiff to pay US\$27.44 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
52. Further, US\$294.00 of overhead costs were attributable to the goods which were for the Defendant's personal use.
53. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$94.89 (which is calculated by taking the landed costs of the goods being US\$972.21, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
54. Therefore the loss to the Plaintiff in relation to container SMLU-272881-5 is US\$91.53 of landing costs plus US\$294.00 of overhead costs plus US\$94.89 profit, totaling US\$480.42.

Container FBLU-310192-8

55. The Defendant purchased goods from various suppliers for his personal use which were shipped on container FBLU-310192-8 in June 2009. The first cost of the goods imported totaled US\$3,691.27 and was broken down as follows: Jeld-wen (order number DQ330596): US\$541.00; Iberia Tiles (order number 117604): US\$946.34; Ylighting (invoice number 137725): US\$1,981.05; Jeld-wen (order number DQ331960): US\$199.00; American Standard (order number 4115): US\$23.88. These goods were brought into the Cayman Islands on a container paid for by the Plaintiff, being container FBLU-310192-8. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$11,890.76.

56. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$108.24; trucking – US\$28.20; other charges – US\$5.92; ocean freight – US\$438.73; marine insurance – US\$22.47. These have all been calculated on the basis that 24% of the value of the goods on the container was for the Defendant's personal use. Therefore, 24% of these costs have been allocated to the Defendant's goods.
57. Further, US\$1,551.04 of overhead costs were attributable to the goods which were for the Defendant's personal use.
58. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$500.59 (which is calculated by taking the landed costs of the goods being US\$5,129.09, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
59. Therefore the loss to the Plaintiff in relation to container FBLU-310192-8 is US\$603.56 of landing costs plus US\$1,551.04 of overhead costs plus US\$500.59 profit, totaling US\$2,655.19.

Container SMLU-786317-1

60. The Defendant purchased goods from Jeld-wen (order number DQ320158) in March 2009 for his personal use. The first cost of these good was US\$23,302.76. These goods were brought into the Cayman Islands on a container paid for by the Plaintiff, being container SMLU-786317-1. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$24,272.21.
61. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$447.61; trucking – US\$58.31; other charges – US\$12.25; ocean freight – US\$1,328.37; marine insurance – US\$91.23. These have all been calculated on the basis that 49% of the value of the goods on the container was for the

Defendant's personal use. Therefore, 49% of these costs have been allocated to the Defendant's goods.

62. Further, the Defendant also caused the Plaintiff to pay US\$268.34 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
63. Further, US\$9,137.33 of overhead costs were attributable to the goods which were for the Defendant's personal use.
64. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$2,949.08 (which is calculated by taking the landed costs of the goods being US\$30,216.01, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
65. Therefore the loss to the Plaintiff in relation to container SMLU-786317-1 is US\$2,206.11 of landing costs plus US\$9,137.33 of overhead costs plus US\$2,949.08 profit, totaling US\$14,292.52.

Container SMLU- 255628-0

66. The Defendant purchased goods from various suppliers for his personal use which were shipped on container SMLU – 255628-0 in May 2009. The first cost of the goods imported totaled US\$20,121.11 and was broken down as follows: American Standard (order 4171): US\$250.31; Jeld-wen (order DQ325667): US\$6,924.00; Jeld¹wen (order DQ328088): US\$350.00; Trane (order MMR-080408-2): US\$11,424.00; Jeld-wen (order DQ329404): US\$1,172.80 and Rezek (order 1006111): unknown sum as only the packing list has been located without cost. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$6,647.08.
67. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$343.46; trucking – US\$89.49; other charges – US\$18.79;

ocean freight – US\$1,392.11; marine insurance – US\$44.10. These have all been calculated on the basis that 75% of the value of the goods on the container was for the Defendant's personal use. Therefore, 75% of these costs have been allocated to the Defendant's goods.

68. Further, the Defendant also caused the Plaintiff to pay US\$1,473.08 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
69. Further, US\$7,969.67 of overhead costs were attributable to the goods which were for the Defendant's personal use.
70. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$2,572.22 (which is calculated by taking the landed costs of the goods being US\$26,354.72, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
71. Therefore the loss to the Plaintiff in relation to container SMLU-255628-0 is US\$3,361.03 of landing costs plus US\$7,969.67 of overhead costs plus US\$2,572.22 of profit, totaling US\$13,902.92.

Container GESU-8147531

72. The Defendant purchased goods from Concrete Reinforcing Products (invoice 118126-8) in April 2008 for his personal use. The first cost of these goods was US\$17,846.08. These goods were brought into the Cayman Islands on a container landed by the Defendant and as such, no landing costs are due to the Plaintiff for the container. The Plaintiff has estimated the landing costs for this container to be US\$6,167.15 including US\$3,916.23 of duty.
73. As was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of

profit which has been denied by the Defendant to the Plaintiff amounts to US\$2,343.69 (which is calculated by taking the estimated landed costs of the goods being US\$24,013.22, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, customs payment, less the estimated landing costs and less the overhead costs (as set out separately above).

74. Further, US\$7,261.60 of overhead costs were attributable to the goods which were for the Defendant's personal use.
75. Therefore the loss to the Plaintiff in relation to container GESU-814753-1 is US\$7,261.60 of overhead costs plus US\$2,343.69 of profit totaling US\$9,605.29.

Bill of Lading CI-11

76. The Defendant purchased goods from Gulf South First Products, Inc. (invoice numbers 83347 and 83170) in July and October 2008 for his personal use. The first cost of these goods was US\$3,413.85 and US\$2,026.00 respectively. These goods were brought into the Cayman Islands on a ship but not loaded onto a specific container. The costs of the ship were paid for by the Plaintiff. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$122,832.41.
77. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$150.88; trucking – US\$45.94. These have all been calculated on the basis that 4% of the value of the goods on the ship was for the Defendant's personal use. Therefore, 4% of these costs have been allocated to the Defendant's goods.
78. Further, US\$1,964.80 of overhead costs were attributable to the goods which were for the Defendant's personal use.
79. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$634.14 (which is calculated by taking the landed costs of the goods being US\$6,497.34, multiplied by the mark up of 1.40, less the first cost of the goods

already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).

80. It should be noted that in relation to this container, the Plaintiff may have underpaid the duty and as such, the amount due from the Defendant to the Plaintiff is reduced by US\$227.31.

81. Therefore the loss to the Plaintiff in relation to bill of lading CI-11 is US\$196.82 of landing costs plus US\$1,964.80 of overhead costs plus US\$634.14 of profit, totaling US\$2,795.76.

Container GESU-700182-0 and GESU-700167-1

82. The Defendant purchased goods from various suppliers for his personal use which were shipped on the above named containers in August 2008. There are two container numbers as the goods were reloaded in Jamaica on their way from US. The first cost of the goods imported totaled US\$783.49 for goods ordered from Gulf South (invoice number 83219) The first cost of the goods purchased by the Defendant for the Plaintiff which was on the containers was US\$11,541.42.

83. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$58.09; trucking – US\$10.59; ocean freight – US\$249.83; marine insurance – US\$6.79. These have all been calculated on the basis that 6% of the value of the goods on the containers was for the Defendant's personal use. Therefore, 6% of these costs have been allocated to the Defendant's goods.

84. Further, the Defendant also caused the Plaintiff to pay US\$37.85 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.

85. Further, US\$382.64 of overhead costs were attributable to the goods which were for the Defendant's personal use.

86. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the

amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$123.49 (which is calculated by taking the landed costs of the goods being US\$1,265.34, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).

87. Therefore the loss to the Plaintiff in relation to the above named containers is US\$363.15 of landing costs plus US\$382.64 of overhead costs plus US\$123.49 of profit, totaling US\$869.28.

Container SMLU- 254166-0

88. The Defendant purchased goods from various suppliers for his personal use which were shipped on container SMLU-254166-0 in March 2009. The first cost of the goods imported totaled US\$4,725.74 and was broken down as follows: AS America (order 4171): US\$135.90; Horner Express Worldwide Inc (order 036741): US\$4,221.16; and Faucet.com (order 1167010): US\$368.68. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$17,112.90.
89. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$98.87; trucking – US\$25.76; other charges – US\$5.41; ocean freight – US\$389.94; marine insurance – US\$28.25. These have all been calculated on the basis that 22% of the value of the goods on the container was for the Defendant's personal use. Therefore, 22% of these costs have been allocated to the Defendant's goods.
90. Further, the Defendant also caused the Plaintiff to pay US\$153.24 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
91. Further, US\$1,907.34 of overhead costs were attributable to the goods which were for the Defendant's personal use.

92. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$615.60 (which is calculated by taking the landed costs of the goods being US\$6,307.35, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).

93. Therefore the loss to the Plaintiff in relation to the above named container is US\$701.47 of landing costs plus US\$1,907.34 of overhead costs plus US\$615.60 of profit, totaling US\$3,224.41.

Container SMLU- 254572-7

94. The Defendant purchased goods from Jeld-wen for his personal use which were shipped on container SMLU-254572-7 in January 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$654.37. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$13,067.15.

95. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$21.79; trucking – US\$5.68; other charges – US\$1.19; ocean freight – US\$91.52; marine insurance – US\$5.15. These have all been calculated on the basis that 5% of the value of the goods on the container was for the Defendant's personal use. Therefore, 5% of these costs have been allocated to the Defendant's goods.

96. Further, the Defendant also caused the Plaintiff to pay US\$150.66 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.

97. Further, US\$281.35 of overhead costs were attributable to the goods which were for the Defendant's personal use.

98. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$90.80 (which is calculated by taking the landed costs of the goods being US\$930.36, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
99. Therefore the loss to the Plaintiff in relation to the above named container is US\$275.99 of landing costs plus US\$281.35 of overhead costs plus US\$90.80 of profit, totaling US\$648.14.

Container SCZU-8124972

100. The Defendant purchased goods from BlueLink Corporation for his personal use which were shipped on container SCZU-8124972 in September 2008. The first cost of the goods imported totaled US\$4,546.15 being two orders as follows: reference 26418637 for US\$679.09 and reference 26425276 for US\$3,867.06. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$6,376.10.
101. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$190.18; trucking – US\$49.55; other charges – US\$10.41; ocean freight – US\$1,028.50; marine insurance – US\$17.32. These have all been calculated on the basis that 42% of the value of the goods on the container was for the Defendant's personal use. Therefore, 42% of these costs have been allocated to the Defendant's goods.
102. Further, the Defendant also caused the Plaintiff to pay US\$155.83 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
103. Further, US\$2,022.05 of overhead costs were attributable to the goods which were for the Defendant's personal use.

104. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$652.61 (which is calculated by taking the landed costs of the goods being US\$6,686.67, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
105. Therefore the loss to the Plaintiff in relation to the above named container is US\$1,451.79 of landing costs plus US\$2,022.05 of overhead costs plus US\$652.61 profit, totaling US\$4,126.45.

Container TSCW-8327445

106. The Defendant purchased goods from BlueLink Corporation (reference 26425272) for his personal use which were shipped on container TSCW-8327445 in September 2008. The first cost of the goods imported totaled US\$406.80. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$803.10.
107. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$12.09; trucking – US\$28.02; ocean freight – US\$92.19; marine insurance – US\$1.71. These have all been calculated on the basis that 34% of the value of the goods on the container was for the Defendant's personal use. Therefore, 34% of these costs have been allocated to the Defendant's goods.
108. Further, US\$186.41 of overhead costs were attributable to the goods which were for the Defendant's personal use.
109. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$60.16 (which is calculated by taking the landed costs of the goods being US\$616.41, multiplied by the mark up of 1.40, less the first cost of the goods already

paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).

110. Therefore the loss to the Plaintiff in relation to the above named container is US\$134.01 of landing costs plus US\$186.41 of overhead costs plus US\$60.16 of profit, totaling US\$380.58.

Container CRXU-235063-9

111. The Defendant purchased goods from Jeld-wen for his personal use which were shipped on container CRXU-235063-9 in September 2009. The first cost of the goods imported totaled US\$399.55 for order number DQ337135. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$22,866.01.
112. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$7.85; trucking – US\$2.04; other charges – US\$0.43; ocean freight – US\$32.32; marine insurance – US\$2.98. These have all been calculated on the basis that 2% of the value of the goods on the container was for the Defendant's personal use. Therefore, 2% of these costs have been allocated to the Defendant's goods.
113. Further, the Defendant also caused the Plaintiff to pay US\$2.06 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
114. Further, US\$161.00 of overhead costs were attributable to the goods which were for the Defendant's personal use.
115. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$51.97 (which is calculated by taking the landed costs of the goods being US\$532.41, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the

government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).

116. It should be noted that in relation to this container, the Plaintiff may have underpaid the duty and as such, the amount due from the Defendant to the Plaintiff is reduced by US\$12.14.

117. Therefore the loss to the Plaintiff in relation to the above named container is US\$47.68 of landing costs plus US\$161.00 of overhead costs plus US\$51.97 of profit, totaling US\$260.65, less US\$121.45 of landing costs already reimbursed by the Defendant to the Plaintiff for a net balance due of US\$139.20.

Container TTNU-162057-6

118. The Defendant purchased goods from Jeld-wen for his personal use which were shipped on container TTNU-162057-6 in November 2008. The first cost of the goods imported totaled US\$12,777.39 for order number DQ310468. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$28,857.12.

119. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$39.11; trucking – US\$10.19; other charges – US\$2.14; ocean freight – US\$202.68; marine insurance – US\$16.42. These have all been calculated on the basis that 31% of the value of the goods on the container was for the Defendant's personal use. Therefore, 31% of these costs have been allocated to the Defendant's goods.

120. Further, the Defendant also caused the Plaintiff to pay US\$385.77 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.

121. Further, US\$4,738.58 of overhead costs were attributable to the goods which were for the Defendant's personal use.

122. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the

amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$1,529.38 (which is calculated by taking the landed costs of the goods being US\$15,669.90, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).

123. Therefore the loss to the Plaintiff in relation to the above named container is US\$656.31 of landing costs plus US\$4,738.58 of overhead costs plus US\$1,529.38 of profit, totaling US\$6,924.27.

Container SMLU- 253086-1

124. The Defendant purchased goods from various suppliers for his personal use which were shipped on container SMLU-253086-1 in July 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$10,416.03 and was broken down as follows: Modani (order 1611): US\$9,233.03; The Shade Store (order 7606356): US\$544.00; and Just Blinds (order 466491): US\$639.00. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$12,258.20.
125. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$209.90; trucking – US\$54.69; other charges – US\$11.48; ocean freight – US\$850.77; marine insurance – US\$44.74. These have all been calculated on the basis that 46% of the value of the goods on the container was for the Defendant's personal use. Therefore, 46% of these costs have been allocated to the Defendant's goods.
126. Further, the Defendant also caused the Plaintiff to pay US\$171.86 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
127. Further, US\$4,192.33 of overhead costs were attributable to the goods which were for the Defendant's personal use.

128. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$1,353.07 (which is calculated by taking the landed costs of the goods being US\$13,863.50, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
129. Therefore the loss to the Plaintiff in relation to the above named container is US\$1,343.44 of landing costs plus US\$4,192.33 of overhead costs plus US\$1,353.07 of profit, totaling US\$6,888.84.

Container SMLU- 256112-1

130. The Defendant purchased goods from various suppliers for his personal use which were shipped on container SMLU-266112-1 in May 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$1,681.59 and was broken down as follows: Forecast Lighting (order 784425): US\$144.00; Universal Stone Inc. (invoice 737): US\$1,072.59; and Stardust (invoice 1712): US\$465.00. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$17,528.28.
131. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$40.00; trucking – US\$10.42; other charges – US\$2.19; ocean freight – US\$162.12; marine insurance – US\$11.71. These have all been calculated on the basis that 9% of the value of the goods on the container was for the Defendant's personal use. Therefore, 9% of these costs have been allocated to the Defendant's goods.
132. Further, the Defendant also caused the Plaintiff to pay US\$34.78 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.

133. Further, US\$689.61 of overhead costs were attributable to the goods which were for the Defendant's personal use.
134. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$222.58 (which is calculated by taking the landed costs of the goods being US\$2,280.46, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
135. Therefore the loss to the Plaintiff in relation to the above named container is US\$261.22 of landing costs plus US\$689.61 of overhead costs plus US\$222.58 profit, totaling US\$1,173.41.

Container TTNU-294989-0

136. The Defendant purchased goods from Jeld-wen and American Standard for his personal use which were shipped on container TTNU-294989-0 in April 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$3,701.00 and was broken down as follows: American Standard (order 4115): US\$246.20; American Standard (order 4231): US\$301.64; Jeld-wen (order DQ330595): US\$1,540.44; Jeld-wen (order DQ330111): US\$220.00; Jeld-wen (order DQ332413): US\$1,042.72; and Jeld-wen (order DQ328088): US\$350.00. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$18,292.34.
137. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$76.89; trucking – US\$20.03; other charges – US\$4.21; ocean freight – US\$312.24; marine insurance – US\$23.40. These have all been calculated on the basis that 17% of the value of the goods on the container was for the Defendant's personal use. Therefore, 17% of these costs have been allocated to the Defendant's goods.

138. Further, the Defendant also caused the Plaintiff to pay US\$63.08 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
139. Further, US\$1,496.42 of overhead costs were attributable to the goods which were for the Defendant's personal use.
140. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$482.96 (which is calculated by taking the landed costs of the goods being US\$4,948.45, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
141. Therefore the loss to the Plaintiff in relation to the above named container is US\$499.85 of landing costs plus US\$1,496.42 of overhead costs plus US\$482.96 of profit, totaling US\$2,479.23.

Container SMLU-255621-2

142. The Defendant purchased goods from American Standard for his personal use which were shipped on container SMLU-255621-2 in February 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$481.93 and was broken down as follows: order 3991: US\$272.98; order 4115: US\$208.95. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$16,686.05.
143. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$12.83; trucking – US\$3.34; other charges – US\$0.70; ocean freight – US\$51.99; marine insurance – US\$2.88. These have all been calculated on the basis that 3% of the value of the goods on the container was for the Defendant's personal use. Therefore, 3% of these costs have been allocated to the Defendant's goods.

144. Further, the Defendant also caused the Plaintiff to pay US\$93.96 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
145. Further, US\$200.05 of overhead costs were attributable to the goods which were for the Defendant's personal use.
146. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$64.55 (which is calculated by taking the landed costs of the goods being US\$661.52, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
147. Therefore the loss to the Plaintiff in relation to the above named container is US\$165.70 of landing costs plus US\$200.05 of overhead costs plus US\$64.55 of profit, totaling US\$430.30.

Container SMLU- 255894-0

148. The Defendant purchased goods from Jeld-wen and American Standard for his personal use which were shipped on container SMLU-255894 in February 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$837.80 and was broken down as follows: American Standard (order 4115): US\$489.90; and Jeld-wen (order DQ314986): US\$347.90. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$21,636.42.
149. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$17.03; trucking – US\$4.44; other charges – US\$0.93; ocean freight – US\$71.54; marine insurance – US\$6.06. These have all been calculated on the basis that 4% of the value of the goods on the container was for the Defendant's personal use. Therefore, 4% of these costs have been allocated to the Defendant's goods.

150. Further, the Defendant also caused the Plaintiff to pay US\$14.46 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
151. Further, US\$339.14 of overhead costs were attributable to the goods which were for the Defendant's personal use.
152. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$109.45 (which is calculated by taking the landed costs of the goods being US\$1,121.49, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
153. Therefore the loss to the Plaintiff in relation to the above named container is US\$114.46 of landing costs plus US\$339.14 of overhead costs plus US\$109.45 of profit, totaling US\$563.05.

Container SMLU-254541-3

154. The Defendant purchased goods from GEA Caribbean Export LLC and Y-Lighting for his personal use which were shipped on container SMLU-254541-3 in April 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$10,069.00 and was broken down as follows: GEA (invoice number 50058480): US\$7,248.00; GEA (invoice number 50058481): US\$557.00; and Y-Lighting (order YL-134001): US\$2,264.00. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$10,305.30.
155. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$225.81; trucking – US\$58.83; other charges – US\$12.36; ocean freight – US\$890.55; marine insurance – US\$48.13. These have all been calculated on the basis that 49% of the value of the goods on the container was for the

Defendant's personal use. Therefore, 49% of these costs have been allocated to the Defendant's goods.

156. Further, the Defendant also caused the Plaintiff to pay US\$164.92 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
157. Further, US\$4,088.00 of overhead costs were attributable to the goods which were for the Defendant's personal use.
158. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$1,319.40 (which is calculated by taking the landed costs of the goods being US\$13,518.51, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
159. Therefore the loss to the Plaintiff in relation to the above named container is US\$1,400.60 of landing costs plus US\$4,088.00 of overhead costs plus US\$1,319.40 of profit, totaling US\$6,808.00, less US\$2,117.81 of landing costs already reimbursed by the Defendant to the Plaintiff for the net balance due of US\$4,690.19.

Container FSCU-339108-4

160. The Defendant purchased goods from Handlesets.com and Clopay in March 2009 for his personal use which were shipped on the above named container. The first cost of the goods imported for the Defendant's personal use totaled US\$8,515.63 and was broken down as follows: Handlesets.com (invoice number 55698689): US\$3,259.61 and Clopay (order 151034575): US\$5,256.02. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$19,446.93.
161. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$139.14; trucking – US\$36.25; other charges – US\$7.62; ocean freight – US\$620.95; marine insurance – US\$30.77. These have all been

calculated on the basis that 30% of the value of the goods on the container was for the Defendant's personal use. Therefore, 30% of these costs have been allocated to the Defendant's goods.

162. Further, the Defendant also caused the Plaintiff to pay US\$103.86 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
163. Further, US\$3,378.32 of overhead costs were attributable to the goods which were for the Defendant's personal use.
164. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$1090.35 (which is calculated by taking the landed costs of the goods being US\$11,171.68, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
165. Therefore the loss to the Plaintiff in relation to the above named container is US\$938.59 of landing costs plus US\$3,378.32 of overhead costs plus US\$1,090.35 of profit, totaling US\$5,407.26.

Container CRXU-936755-1

166. The Defendant purchased a water heater from Masonex International, Inc. for his personal use which was shipped on container CRXU-936755-1 in June 2009. The first cost of the goods imported for the Defendant's personal use totaled US\$1,155.83.
167. Further, US\$495.05 of overhead costs were attributable to the goods which were for the Defendant's personal use.
168. As was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$364.40

(which is calculated by taking the landed costs of the goods being US\$1,432.43, multiplied by the mark up of 1.60 (which is standard for non-heavy hardware items), less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to government for customs duties and less the landing cost (as set out separately above) and less overhead cost (as set out separately above).

169. Therefore the loss to the Plaintiff in relation to the above named container is US\$495.05 of overhead costs and US\$364.40 of profit, totaling US\$859.45.

Container CMAU-825816-7

170. The Defendant ordered goods for himself personally and for the Plaintiff from Yekalon Industry, Inc. (also known as Sennorwell) ("Yekalon") in early 2009. The container which was being sent from Yekalon was delayed. The Defendant entered into email communication with Yekalon in relation to the order which were unprofessional and breached the Defendant's duties. The following are excerpts from emails sent between the Defendant and Yekalon:

- a. 2 June 2009 from the Defendant to Yekalon: *"My most annoying issue, is the items that I am waiting on for my personal home"*.
- b. 22 June 2009 from the Defendant to Yekalon: *"Please do not send me any more of these crap email responses waffling on about how good a customer we are and how good your company will be next time. Just answer the questions that I put to you in my last 4 emails. We had to move into a hotel room yesterday and we still do not know when we are getting our container. Please respond back immediately to this email with all my information and especially how you propose to pay for my stay in the hotel. You can forward me your company credit card and I will check with the hotel if they will accept this"*.
- c. 5 July 2009 from the Defendant to Yekalon: *"I need for you to do something for me. I need to get a new invoice just for my personal items as when I show it to customs dept in the Cayman Islands they are going to charge me duty on all items that I an (sic) importing from China. It is based upon the invoice that you*

supply me, so I am asking if you can do me a new invoice but I want all the prices to be lowered."

- d. 6 July 2009 from Yekalon to the Defendant: *"I am happy to help u abt (sic) low valued invoice, we also did this for customer's (sic) before, however, we got investigation from one of our customer's custom for low-valued invoice. Our company is involved in this case, so in order to avoid causing any problem in the future, our financial dep have a new policy for issue low valued invoice details as bleow (sic): Guarantee Letter" Due to the new financial policy about the lower value CI, it request the customer to deliver a "Guarantee Letter" to say that the CI with the lower value only for custom clearance use. Please signe (sic) your name in the attachment for the "Guarantee Letter" and fax to me. So that I could show to my financial to amend the commercial invoice and then fax to you..... We are afraid that custom will investigate this order, because your CI value amend too low. We suggest you can amend the value into half original (Half CI value : 8164.82 USD), it will avoid this problem".*
- e. 7 July 2009 from the Defendant to Yekalon: *"I am fine with your second suggestion but I want the fianl (sic) amount on the invoice to show around US\$4759.00. I have signed your letter of guarantee to how this amount but remember this is in my name and not in my company's name". The guarantee was as follows: "We, Kirk Home Centre, the buyer of order (YS13058-1), we guarantee the commercial of order (YS13058-1) which says USD1679.18 only be applied for custom clearance. Any consequences and risks, arise from this, will be born on our part, and have nothing to do with Yekalon Industry Inc."*

171. The first cost of the Defendant's goods for his personal use which were shipped on this container totaled US\$17,763.00. The first cost of the goods purchased by the Defendant for the Plaintiff which was on that container was US\$45,630.12.
172. The sums payable by the Defendant to the Plaintiff for the landing costs are as follows: port charges – US\$256.06; trucking – US\$33.36; other charges – US\$7.01. These have all been calculated on the basis that 28% of the value of the goods on the

container was for the Defendant's personal use. Therefore, 28% of these costs have been allocated to the Defendant's goods.

173. Further, the Defendant also caused the Plaintiff to pay US\$1,134.93 in duty which is not attributable to the Plaintiff's own goods but is attributable to the Defendant's personal items.
174. Further, US\$6,546.22 of overhead costs were attributable to the goods which were for the Defendant's personal use.
175. Yet further, as was the agreed policy with the Plaintiff, if the Defendant had abided by company policy and brought the goods in through the Plaintiff as set out above, the amount of profit which has been denied by the Defendant to the Plaintiff amounts to US\$2,112.80 (which is calculated by taking the landed costs of the goods being US\$21,647.55, multiplied by the mark up of 1.40, less the first cost of the goods already paid by the Defendant, less the amount which should have been paid to the government for customs payment, less the landing costs and less the overhead costs (as set out separately above)).
176. Therefore the loss to the Plaintiff in relation to the above named container is US\$1,431.36 of landing costs plus US\$6,546.22 of overhead costs and US\$2,112.80 profit, totaling US\$10,090.38.

Customs

177. In relation to all of the above listed containers, the Plaintiff is not aware of the Defendant making any payments for import duty for the Defendant's goods. While the Plaintiff makes no claim for such duty, the Defendant's actions exposed the Plaintiff to possible prosecution under the Customs Law (2007 Revision).

Storage

178. The Defendant has been storing his personal items in storage facilities paid for by the Plaintiff. The Plaintiff has storage facilities which cost US\$14.45 per square foot. Approximately two years ago, the Defendant instructed the Plaintiff's staff to store his personal items in the storage facilities. The Defendant's personal items took up

approximately 400 square feet. The Defendant did not have the permission of the Plaintiff to store any items in the storage facility.

Particulars of the breaches

179. The Defendant breached his duty of reasonable skill and/or reasonable care and/or fidelity and good faith in that he caused the Plaintiff to pay for the landing costs and some duty for the Defendant's goods;
180. The Defendant breached his duty of fidelity in that he solicited orders from the Plaintiff's suppliers on his own behalf;
181. The Defendant breached his duty of reasonable skill and/or reasonable care in that he caused a loss to the Plaintiff by releasing goods to BPD Group Ltd in breach of the policy to collect all sums due prior to release;
182. The Defendant breached his duty of good faith in that he misrepresented the status of the BPD Group Ltd order when the business of the Home Centre was transferred from KBL to the Plaintiff;
183. The Defendant breached his duty of reasonable skill and/or reasonable care and/or good faith when he exposed the Plaintiff to possible prosecution pursuant to the Customs Law (2007 Revision) when he imported goods on the Plaintiff's containers without paying duty thereon;
184. The Defendant breached his duty of reasonable skill and/or fidelity and/or good faith when he requested a supplier of the Plaintiff to provide fraudulent invoicing to Defendant to avoid paying duty on the true value of goods;
185. The Defendant breached his duty of reasonable skill and/or reasonable care and/or fidelity and/or good faith by denying the Plaintiff profit on the goods which the Defendant purchased for his own personal use, in breach of company policy;
186. The Defendant breached his duty of fidelity and/or good faith by using the Plaintiff's resources to import personal goods from the Plaintiff's suppliers and from suppliers who were potential suppliers of the Plaintiff through the special ordering process;

187. The Defendant breached his duty of reasonable skill and/or reasonable care and/or fidelity and/or good faith by failing to ensure that the junior staff of the Plaintiff in the accounts and costings departments were correctly allocating costs to the Defendant for his personal items;
188. The Defendant breached his duty of fidelity and/or good faith when he caused his personal items to be stored at a warehouse which had been rented and paid for by the Plaintiff;
189. The Defendant breached his duty of reasonable skill and/or reasonable care and/or fidelity and/or good faith in that he used the resources of the Plaintiff to unload his personal items from the Plaintiff's containers;
190. The Defendant breached his duty of reasonable skill and/or reasonable care and/or fidelity and good faith in that he caused the Plaintiff to pay for the storage of the Defendant's personal items;
191. The Defendant acted in breach of his fiduciary duty to the Plaintiff by not acting in the interests of the Plaintiff; and
192. The Defendant breached his duty of reasonable skill and/or reasonable care and/or fidelity and/or good faith by failure to ensure that the freight forwarders received in a timely manner adequate documentation that is required for export from the USA and required for import to the Cayman Islands.

AND THE PLAINTIFF CLAIMS

193. Payment of US\$19,756.15 being the landing costs paid costs (inclusive of duty, port charges, trucking, other charges, ocean freight and marine insurance) by the Plaintiff which are attributable to the Defendant;
194. Payment of US\$70,092.64 being the overhead costs paid by the Plaintiff which are attributable to the Defendant;
195. Payment of US\$22,827.00 being the profit which was has been lost of the Plaintiff pursuant to the actions of the Defendant;