

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 0041 OF 2015 ( )

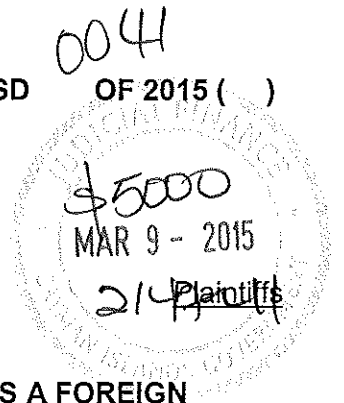
BETWEEN:

- (1) SIMON CAWDERY
- (2) HELIX ADVISORY SERVICES LTD

AND:

EFG BANK (REGISTERED IN THE CAYMAN ISLANDS AS A FOREIGN  
COMPANY)

Defendant



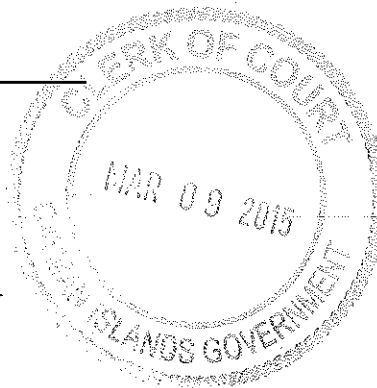
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WRIT OF SUMMONS

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TO: EFG BANK  
45B Market Street, Suite 3208, Camana Bay  
P.O. Box 10360  
Grand Cayman KY1-1003  
CAYMAN ISLANDS



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs 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 495G, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

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

**Issued: 9 March 2015**

**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.

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## STATEMENT OF CLAIM

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### PARTIES

1. The First Plaintiff is, and was at all material times, an Investment Manager. He is a director and shareholder of the Second Plaintiff, through which he provided independent investment management services to clients pursuant to the contracts set out below.
2. The Defendant is registered in the Cayman Islands as a foreign company under No. 217105. It forms part of a Swiss private banking group.

### THE CONTRACTS

3. Between 12 November 2008 and 31 May 2013 the First Plaintiff was employed by the Defendant as an investment manager pursuant to a contract of employment dated 12 November 2008 (the "**Employment Contract**").
4. Pursuant to the Defendant's Equity Incentive Plan, the First Plaintiff was granted 3,111 restricted shares in EFG International AG on 12 April 2010. He was granted 8,562 restricted stock units in the same company on 21 March 2011.
5. In late 2012 the Defendant informed the First Plaintiff that it would no longer permit its employees to provide independent investment management and relationship manager services to clients, and that all such investment services would be performed from a separate entity known as EFG Asset Management. The Defendant advised the First Plaintiff that he could either:
  - 5.1 work for EFG Asset Management and continue in his role as an investment manager;
  - 5.2 work for Defendant as a Client Relationship Officer without performing any investment functions or;

- 5.3 provide his investment management services through a separate entity which would receive referral fees from business introduced to the Defendant.
6. The last option was agreed in early 2013. Accordingly on 31 May 2013 the First Plaintiff and Defendant entered into a 'Separation and Release Agreement' (the "**Separation Agreement**") which provided, amongst other things, for the termination of the Employment Contract and for independent investment management services to be provided through a company under the First Plaintiff's control.
7. Paragraph 6 of the Separation Agreement provided:
- "With effect from 1 June 2013, EFG and an entity controlled by Mr. Cawdery will enter into a Third party Investment Management and Sub-Advisory agreement."*
8. Paragraph 7 of the Separation Agreement provided that *"Stock options awarded to Mr. Cawdery in prior years that have not yet vested will immediately vest but be restricted up until the original date of vesting."*
9. The Separation Agreement provided for a bonus to be paid to the First Plaintiff based on fees received, or to be received by the Defendant and / or accrued but not disclosed to the First Plaintiff for the period up to and including 31 May 2013. Since not all fees for the relevant period had been received by the Defendant when the Separation Agreement was signed, it was agreed that any fees that were received by the Defendant for the period up to 31 May 2013 after the date of the Separation Agreement or that had been received but were not disclosed to the First Plaintiff would attract a bonus payable to the First Plaintiff at the rates applicable pursuant to the terms of the Investment Agreement discussed below.
10. On 28 May 2013 the Defendant executed a Third Party Investment Management and Advisory Agreement (the "**Investment Agreement**") with *"Simon Cawdery Corp. (company to be incorporated)"*, the latter being described as the 'Manager'. The Investment Agreement was to be effective from 1 June 2013. The Second Plaintiff had not been incorporated at the time that the Investment Agreement was drafted, but the intention was to define the legal relationship and obligations as between the Defendant and the Second Plaintiff upon its incorporation at or around the same time as the Investment Agreement was executed. The

Investment Agreement governed the provision of services by the Second Plaintiff to two different categories of clients introduced to the Defendant by the First Plaintiff: (1) Investment Advisory Clients ("**IAC Clients**") who contracted directly with the Defendant, who then in turn sub-contracted with the Second Plaintiff for investment management services and (2) Third Party Investment Management Clients ("**TPIM Clients**") who contracted directly with the Second Plaintiff for investment management services.

11. Paragraph 5 of the Investment Agreement contained the following express terms as to the Manager's remuneration:

*"5.1 EFG will pay the Manager a retrocession on EFG's revenue from the accounts introduced and managed by the Manger according to the details described in Appendix 1 attached hereto, to the exclusion of all other benefits or compensation;"*

*"5.2 The Manger will be credited with the retrocession on a monthly basis in arrears..."*

12. Paragraphs 1 and 2 of Appendix 1 of the Investment Agreement specified the Manager's entitlement to fees in respect of both categories of client:

**"1. Sub-Advisory Agreement Clients**

*1.1 The Manager shall be entitled to a retrocession fee calculated on the basis of the EFG's aggregate revenues earned from Sub-Advisory Agreement Clients.*

*1.2 The retrocession rate is set at (i) 36.5% of the investment management revenues earned (i.e. gross base investment management fees, less performance fees), (ii) 30% of the gross non-investment management revenues earned and (iii) 50% of the performance fee earned by EFG"*

**2. TPIM Clients**

*2.1 The Manager shall be entitled to a retrocession fee calculated on the basis of EFG's Investment Management revenues (i.e. gross base investment management fees, less performance fees) for each new Client introduced and managed by the Manager and accepted by EFG. These revenues include EFG's subscription and brokerage commissions, safe custody fees, as well as fiduciary commissions.*

*2.2 The retrocession fee rate is set at 45% of the revenues (less performance fees) earned during the period of this agreement. In*

*addition, a retrocession fee rate of 50% will be paid on performance fee earned by EFG.*

2.3 *The manger shall furthermore be entitled to a retrocession fee calculated on the basis of EFG's gross non-investment management revenues for each such client introduced and the retrocession fee rate is set at 30% of the gross revenues (all those revenues other than investment management or performance fees) earned during the period of this agreement."*

13. Paragraph 3 of Appendix 1 of the Investment Agreement specified the Manager's entitlement to fees in respect of other business introductions ("**Business Introductions**");

**"3. Other Business Introductions**

3.1 *If the Manager introduces clients to EFG, then the Manager shall be entitled to a retrocession fee of 30% calculated on the basis of EFG's Gross revenues for each new client introduced.*

3.2 *Any Corporate Equity Optimizer Loan transactions, or similar transactions, will entitle the Manager to a retrocession of 35% of the net lending fees and commission (after cost-of-capital).*

3.3 *Any fiduciary client (as documented on appendix C) or otherwise receiving corporate or fiduciary services from EFG will entitle the Manger to a retrocession of 36.5% of the gross revenue derived from such clients.*

3.4 *Unless inconsistent with these provisions, the terms of the EFG's Standard Business Investment Agreement shall apply."*

14. Paragraph 9 of the Investment Agreement provided for the duration and termination of the Investment Agreement with notice where no breach had occurred, and without notice where a material breach of the Investment Agreement had occurred:

**"9. Duration and termination**

9.1 *This Agreement shall come into force on June 2013, and will continue until terminated in accordance with the provisions of this Agreement. This Agreement may be terminated by either of the parties hereto subject to 3 months' written notice, to take effect at the end of a month subject to Section 5 Appendix 1.*

9.2 *Notwithstanding the above provisions, each of the parties can terminate the Agreement at any time and with immediate effect for material breach of any provision of this Agreement. Furthermore, EFG may*

*terminate this agreement with immediate effect if the Manager, after written notice of the alleged breach, has failed to correct it within 15 (fifteen) days, or has committed willful default, gross negligence, or fraud.*

9.3 *In the case of termination with immediate effect, EFG's obligations pursuant to Art. 5 above will also cease with immediate effect. Moreover, in such circumstances EFG shall be authorized to close operations not yet allocated, crediting the Manager directly for any profits or debiting him for any losses. The right to apply Article 6 is not affected."*

15. Paragraph 5.2 of Appendix 1 further provided that in the event the Defendant terminated the Investment Agreement for material breach (such a material breach being a condition precedent to the right to terminate under paragraph 9) then the Second Plaintiff would forfeit its entitlement to business introducer commissions. Such a provision is void and / or unenforceable as a penalty. In any event, paragraph 5.2 provided that, should the Defendant terminate the Investment Agreement for anything other than a material breach, the Defendant would continue to pay the Second Plaintiff a business introducer commission of 30% of gross revenues received by the Defendant.

## **PERFORMANCE OF THE CONTRACTS**

16. The Second Plaintiff has performed its obligations in accordance with the contracts set out above. In particular the Second Plaintiff provided independent investment management services to the IAC and TPIM Clients and made Business Introductions to the Defendant. The Defendant paid compensation consistent with the terms of the contracts set out above until around September 2014, albeit payment was frequently made late without justification.
17. By letter dated 5 September 2014 the Defendant purported to terminate the appointment of the Second Plaintiff as Sub Adviser with immediate effect in relation to one client only: the Cayman Islands Chamber of Commerce Pension Plan. In its letter the Defendant represented that the Second Plaintiff would be entitled to fees as Business Introducer following the purported termination pursuant to paragraph 3 of Appendix 1 of the Investment Agreement. Accordingly, the Defendant believed, represented and is estopped from denying that there were any grounds on which to allege the Second Plaintiff was in material breach of the

Investment Agreement, such material breach being a condition precedent to any entitlement to terminate the Investment Agreement in its entirety.

18. From around late 2014 the Defendant determined to construct a false basis on which to terminate its obligations pursuant to the Investment Agreement. By letter dated 24 November 2014 the Defendant purported to terminate the Investment Agreement with immediate effect. The Defendant asserted that the First Plaintiff, acting through the Second Plaintiff, had breached the Investment Agreement, thus entitling the Defendant to terminate it without notice. In the alternative, the Defendant asserted that the letter amounted to notice to terminate the Investment Agreement pursuant to paragraph 9.1, which it is accepted that it was entitled to do. The allegations of breach were as follows:

18.1 The Second Plaintiff had deliberately made several false and misleading representations concerning its association with the Defendant in breach of paragraph 3.3.4 of the Investment Agreement;

18.2 The Second Plaintiff had shown willingness to violate Securities Exchange Commission ("**SEC**") regulations with respect to cross account trades in breach of paragraphs 3.1.1 and 3.2.1 of the Investment Agreement;

18.3 The Defendant had received complaints from an affiliated entity about the level of service provided by the Second Plaintiff demonstrating the Second Plaintiff to be in breach of paragraph 9.2 of the Investment Agreement.

19. The Second Plaintiff denies it has breached the Investment Agreement, as alleged or at all. Allegations have been contrived after the event by the Defendant, in bad faith and with the intention of avoiding its obligations. The Plaintiffs respond as follows, but reserve their right to provide further particulars following discovery:

19.1 Paragraph 3.3.4 of the Investment Agreement does not prohibit any and every reference by the Second Plaintiff to the Defendant.

19.2 Further or alternatively, a term shall be implied into the contract, or the contract should be construed such that references to the Defendant shall be permitted where

reasonably necessary to give efficacy to the Investment Agreement, in particular paragraph 1.2.1 as set out below, and/or to allow the parties to co-operate to ensure the performance of their obligations pursuant to the Investment Agreement to supply services to their clients and for the Second Plaintiff to introduce business to the Defendant.

19.3 The Second Plaintiff has not made any reference to the Defendant within its own documents, publications or other communications, as required to amount to a breach of paragraph 3.3.4 of the Investment Agreement. Further or alternatively, the Defendant was at all material times aware of the references the Second Plaintiff was making to it and has accordingly waived and / or acquiesced in, and / or is estopped from relying on any breach.

19.4 Any references made to the Defendant were in compliance with the Second Defendant's contractual obligations to the Defendant, and cannot therefore be in breach of contract. Paragraph 1.2.1 of the Investment Agreement expressly requires that the "*manager undertakes to use all reasonable efforts to establish contacts with potential TPIM Clients and to refer them to EFG*".

19.5 The Second Defendant did nothing to infringe the SEC Regulations but in any event was not bound to comply with them because, amongst other things, all clients were booked in the Cayman Islands or the Bahamas and as such the SEC Regulations did not apply.

19.6 The alleged complaint disclosed no wrongdoing on the part of the Second Plaintiff such as would amount to a breach of the Investment Agreement, or at all. The content of the complaint from an affiliate of the Defendant amounts to a self-serving attempt to achieve a termination of the Investment Agreement after the event and in bad faith.

19.7 The Defendant has shown further evidence of its bad faith by, amongst other things:

19.7.1 Contacting the Second Plaintiff's clients to inform them of the purported termination of the Investment Agreement without providing the Second Plaintiff a reasonable opportunity to comment on the communication to be sent;

19.7.2 Advising the Plaintiffs that they would tell TPIM clients that they would no longer continue to provide them with custody and brokerage platforms with effect from 24 February 2015, then separately advising the clients that they wanted to continue to offer them those services.

19.7.3 Attempting to persuade clients to remain as clients of the Defendant and endeavoring to deter them from discontinuing use of their services by means such as applying exit charges, so as to continue to receive the benefit of the business introduced by the Plaintiffs without the burden of compensating the Second Plaintiff for the introductions;

19.7.4 Requesting that clients immediately cancel their agreements with the Second Plaintiff;

19.7.5 Continuing to debit the Second Plaintiff's clients for management fees to which they were not entitled; in effect converting client money.

20. Further or alternatively, in the event that it is found that breaches have occurred, the Second Plaintiff asserts that such breaches are not material, so as to amount to a breach pursuant to paragraph 9.2 of the Investment Agreement. The Second Plaintiff has at all times complied with, and remains ready, willing and able to continue to comply with its obligations pursuant to the Investment Agreement.

21. Further or alternatively, the first part of paragraph 5.2 of Appendix 1 is void and/or unenforceable as a penalty and the Second Plaintiff is entitled to receive business introducer commission in any event.

22. In breach of the terms of the Investment Agreement, the Defendant has ceased to make any payments to the Second Plaintiff with effect from 24 November 2014.

## LOSS

23. As a result of the Defendant's breach of contract the Plaintiffs have suffered loss. The Defendant possesses much of the information upon which the Second Plaintiff's losses are calculated upon and as such, where indicated, the following losses and claims are estimations and projections
  
24. The First Plaintiff is entitled to:
  - 24.1 His bonus in respect of fees received by the Defendant for the period up to 31 May 2013 but not accounted for in the payment made to him at the time of the Separation Agreement, amounting to CI\$103,526.19, pursuant to Appendix 1 of the Separation Agreement, as set out in Schedule 1.
  
  - 24.2 His shares and stock options under the terms of paragraph 7 of the Separation Agreement, as set out in the Restricted Shares Grant Notice dated 12 April 2010 and the Grant Notice dated 21 March 2011.
  
25. The Second Plaintiff is entitled to:
  - 25.1 Fees and retrocession in respect of Sub-Advisory Agreement Clients pursuant to paragraph 1 of Appendix 1 to 28 February 2015, amounting to US\$87,009.05 as set out in Schedule 2.
  
  - 25.2 Fees and retrocession in respect of TPIM Clients pursuant to paragraph 2 of Appendix 1 to 28 February 2015, amounting to US\$17,776.06 as set out in Schedule 3.
  
  - 25.3 Fees and retrocession in respect of Other Business Introductions pursuant to paragraph 3 of Appendix, as set out at Schedule 4.

**AND THE FIRST PLAINTIFF CLAIMS:**

- (1) A declaration of his entitlement to a bonus as set out at paragraph 20.1;
- (2) A declaration of his entitlement to share and stock options as set out at paragraph 20.2 above;
- (3) An order that the Defendant pay the First Plaintiff his bonus entitlement;
- (4) An order for specific performance of his share and stock option entitlement;
- (5) Damages for breach of contract;
- (6) Interest;
- (7) Costs; and
- (8) Such further and other orders as this Court thinks fit.

**AND THE SECOND PLAINTIFF CLAIMS:**

- (1) A declaration of its entitlement to fees and retrocessions as set out at paragraph 21 above;
- (2) An order that the Defendant pay the Second Plaintiff those fees and retrocessions;
- (3) Damages for breach of contract;
- (4) Interest;
- (5) Costs; and
- (6) Such further and other orders as this Court thinks fit.

Dated: 9 March 2015

*Travers Thorp Alberga*

**TRAVERS THORP ALBERGA**  
Attorneys-at-Law for the Plaintiffs

TO: The Registrar of the Financial Services Division

AND TO: EFG BANK  
45B Market Street, Suite 3208, Camana Bay  
P.O. Box 10360  
Grand Cayman KY1-1003  
CAYMAN ISLANDS

**Schedule 1:**  
**Bonus due to First Plaintiff**

	<u>Performance Fee</u>	<u>Percentage due to Helix</u>	<u>Money due to Helix</u>	<u>Amount Outstanding</u>
Vigilant	33,679.20	50%	16,839.60	10,103.76
Citadel	211,937.07	50%	105,968.54	63,581.12
East Metro	553.32	50%	276.66	166.00
Tectonics	31,775.59	50%	15,887.80	9,532.68
Maloir	67,142.13	50%	33,571.07	20,142.64
			<b>Total Due</b>	<b>US\$103,526.20</b>

**Schedule 2:**  
**Sub Advisory Clients Fees and Retrocessions to 28 February 2015 due to the Second Plaintiff**

Average Monthly Revenue Sub Advisory ( Net of clients who left)	79,460.32
Number of months unpaid	3.00
Total estimated revenue	238,380.95
Retrocession rate	36.5%
<b>Total Due</b>	<b>US\$87,009.05</b>

**Schedule 3:**  
**TPIM Clients fees and retrocessions to 28 February 2015 due to Second Plaintiff**

Average monthly revenue TPIM	13,167.45
Number of months unpaid	3.00
Total estimated revenue	39,502.36
Retrocession rate	45%
<b>Total Due</b>	<b>US\$17,776.06</b>

**Schedule 4:**  
**Business Introducers fees and retrocessions to 28 February 2015 due to Second Plaintiff**

*(Calculated using revenue from 2014 and adjusted for clients that have left)*

Total annual revenue 2014	1,236,635.42
Total revenue left 2014	139,077.00
Total revenue leaving confirmed	122,060.10
Adjusted for safekeeping fee costs	-43,074.40
Net revenue	1,018,572.72
Business Introducer rate	30.00%
<b>Annual loss</b>	<b>US\$305,571.82</b>
<b>5 year accounting</b>	<b>US\$1,527,859.08</b>
<b>10 year accounting</b>	<b>US\$3,055,718.15</b>

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, Grand Cayman, KY1-1106.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

***See over for Notes for Guidance***

## NOTES FOR GUIDANCE

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (                    )" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (                    )" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

BETWEEN:

(1) SIMON CAWDERY  
(2) HELIX ADVISORY SERVICES LTD

Plaintiffs

AND:

EFG BANK (REGISTERED IN THE CAYMAN ISLANDS AS A FOREIGN  
COMPANY)

Defendant

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ACKNOWLEDGEMENT OF SERVICE OF  
WRIT OF SUMMONS

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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

YES

NO

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)

YES

NO

Service of the Writ is acknowledged accordingly

(Signed) .....

*Please complete overleaf*

**NOTES ON ADDRESS FOR SERVICE**

Attorney: Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: Where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

*Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.*

Travers Thorp Alberga Attorneys-at-Law P.O. Box 472 Grand Cayman, KY1-1106 Cayman Islands Phone: +1 (345) 949-0699 Facsimile: +1 (345) 949-8171 ATTN: Ian Huskisson Ref: IEH/H0465-001
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*Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.*

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