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Restriction on removal of documents (The Rules of the High Court (Rule 9))

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO. 817 OF 2009

BETWEEN

CHRISTIAN EMIL TOGGENBURGER  
PROMISED LAND ENTERPRISES LIMITED  
GLOBE DRAGON LIMITED

1<sup>st</sup> Plaintiff  
2<sup>nd</sup> Plaintiff  
3<sup>rd</sup> Plaintiff

and

LUU, HUNG VIET DERRICK  
ZHONG YI (HONG KONG) C.P.A. COMPANY LIMITED  
TANG, KA SIU JOHNNY

1<sup>st</sup> Defendant  
2<sup>nd</sup> Defendant  
3<sup>rd</sup> Defendant

TO THE 1<sup>ST</sup> DEFENDANT whose address is situate at Room 4103, Tower Two, Lippo Centre, 89 Queensway, Admiralty, Hong Kong.

TO THE 2<sup>ND</sup> DEFENDANT whose registered office is situate at 9<sup>th</sup> Floor, Chinachem Hollywood Centre, 1-13 Hollywood Road, Central, Hong Kong.

TO THE 3<sup>RD</sup> DEFENDANT whose address is situate at 9<sup>th</sup> Floor, Chinachem Hollywood Centre, 1-13 Hollywood Road, Central, Hong Kong.

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

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 Registry of the High Court the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend 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 from the Registry of the High Court this 23<sup>rd</sup> day of March 2009

Note: - This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

Registrar

IMPORTANT

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

## STATEMENT OF CLAIM

### PARTIES

1. The 1<sup>st</sup> Plaintiff is, and at all times material to this proceeding was, an investor in private and public companies in Hong Kong.
2. The 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are companies incorporated in the British Virgin Islands (“**BVI**”) of which the 1<sup>st</sup> Plaintiff is the sole director and shareholder.
3. Betterment Enterprises Limited (“**Betterment**”) is a company incorporated in the BVI of which the 1<sup>st</sup> Plaintiff was, in the circumstances described below, the sole director and shareholder.
4. The 1<sup>st</sup> Defendant is, and at all times material to this proceeding was, an experienced entrepreneur and investor in private and public companies in Hong Kong and mainland China.
5. The 2<sup>nd</sup> Defendant is a firm of certified public accountants in Hong Kong providing accounting, tax and business advice, including corporate finance and business valuation advice.
6. The 3<sup>rd</sup> Defendant is a director of and the major shareholder in the 2<sup>nd</sup> Defendant.
7. The 3<sup>rd</sup> Defendant is also a partner of Tang Wong & Partners (“**Tang Wong**”), which carries on business as a provider of company secretarial services at the same address as the 1<sup>st</sup> Defendant.

8. At all times material to this proceeding, the 1<sup>st</sup> Defendant retained the 2<sup>nd</sup> Defendant for accounting and business advice.
9. The 1<sup>st</sup> Defendant was introduced to the 1<sup>st</sup> Plaintiff by the 3<sup>rd</sup> Defendant in Hong Kong in the last quarter of 2006. The 3<sup>rd</sup> Defendant, and the 1<sup>st</sup> Defendant himself, held out the 1<sup>st</sup> Defendant to the 1<sup>st</sup> Plaintiff as a US\$ billionaire who was experienced and well-connected in finance and investment in Hong Kong and mainland China.
10. At all times material to this proceeding, Messrs Stevenson, Wong & Co. ("SW") were the solicitors for the 1<sup>st</sup> Defendant.

#### WARDERLY AGREEMENT

11. In January 2007, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants approached the 1<sup>st</sup> Plaintiff to procure a loan, of up to HK\$25,000,000, to Warderly International Holdings Limited ("**Warderly**"), a company incorporated in the Cayman Islands which is listed on the Stock Exchange of Hong Kong (the "**SEHK**").
12. At 2 meetings held between 28 February and 2 March 2007 between the 1<sup>st</sup> Plaintiff and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants at the Renaissance Harbour View Hotel, Hong Kong, the 1<sup>st</sup> Defendant made the following representations to the 1<sup>st</sup> Plaintiff (the "**Warderly Representations**").

- (1) Under a convertible loan of between HK\$20,000,000 and HK\$25,000,000 to Warderly, the 1<sup>st</sup> Plaintiff would become a 20-25% shareholder in Warderly and a director.
  - (2) Alternatively, under a facility agreement of between HK\$20,000,000 and HK\$25,000,000 to Warderly, the 1<sup>st</sup> Plaintiff would be repaid within 2 years, with interest at 2% per month.
  - (3) The loan to Warderly would be used by Warderly for the acquisition of an oil re-processing plant in Fangshan, Beijing (the “**Oil Project**”), from Mr Ma Xichao (“**Mr Ma**”).
  - (4) Mr Ma was a business partner of the 1<sup>st</sup> Defendant and an RMB billionaire who owned coal mines in mainland China.
  - (5) The Oil Project was currently earning substantial revenue, and would boost Warderly’s share price if Warderly could acquire it.
  - (6) The 1<sup>st</sup> Plaintiff would earn good profits, as a substantial shareholder in Warderly, or at very least from the interest on the loan to Warderly.
13. At a meeting on or about 2 March 2007 at the offices of SW, attended by the 1<sup>st</sup> Plaintiff, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and Ms Cornelia Chu, a partner of SW, the 1<sup>st</sup> Defendant repeated the Warderly Representations to the 1<sup>st</sup> Plaintiff.

14. In reliance on the Warderly Representations, the 1<sup>st</sup> Plaintiff agreed to provide the 1<sup>st</sup> Defendant with the total sum of HK\$23,000,000, for the 1<sup>st</sup> Defendant to arrange a loan to Warderly by the 1<sup>st</sup> Plaintiff (the “**Warderly Agreement**”).
15. The 1<sup>st</sup> Defendant advised the 1<sup>st</sup> Plaintiff that a loan to Warderly would have to be made using the vehicle of a company. The 3<sup>rd</sup> Defendant through Tang Wong arranged for the 1<sup>st</sup> Plaintiff to become director and shareholder of the 2<sup>nd</sup> Plaintiff.
16. In performance of the Warderly Agreement, the 1<sup>st</sup> Plaintiff on behalf of the 2<sup>nd</sup> Plaintiff, at the request of the 1<sup>st</sup> Defendant, paid a total of HK\$23,000,000 on divers dates between 5 March 2007 to 17 April 2007 to SW as escrow agent.
17. On or about 6 March 2007, the 1<sup>st</sup> Defendant requested the 1<sup>st</sup> Plaintiff to transfer HK\$5,000,000 held on escrow by SW to Housely Industries Limited (“**Housely**”), a subsidiary of Warderly. The 1<sup>st</sup> Defendant represented to the 1<sup>st</sup> Plaintiff that such transfer would be credited towards the intended loan to Warderly (the “**Housely Representation**”).
18. At the 1<sup>st</sup> Defendant’s request and in reliance on the Housely Representation, the 1<sup>st</sup> Plaintiff on behalf of the 2<sup>nd</sup> Plaintiff instructed SW to transfer HK\$5,000,000 to Housely.
19. On or about 6 March 2007, the 1<sup>st</sup> Defendant represented to the 1<sup>st</sup> Plaintiff that:

- (1) the 1<sup>st</sup> Defendant had urgent financial needs in another investment project and transfers from money held on escrow by SW to a company called New Energy Investment Limited (“**New Energy**”) would allow the 1<sup>st</sup> Defendant to meet those needs;
- (2) the 1<sup>st</sup> Defendant would repay, to the 1<sup>st</sup> and/or 2<sup>nd</sup> Plaintiffs, money transferred to New Energy with funds arriving from Canada and such funds would be credited by the 1<sup>st</sup> Defendant to the intended loan to Warderly

(the “**New Energy Representations**”).

20. At the 1<sup>st</sup> Defendant’s request, and in reliance on the New Energy Representations, on divers dates between 6 March 2007 and 17 April 2007, the 1<sup>st</sup> Plaintiff on behalf of the 2<sup>nd</sup> Plaintiff instructed SW to transfer a total of HK\$18,000,000 to New Energy.
21. Particulars of the payments made by the 1<sup>st</sup> Plaintiff on behalf of the 2<sup>nd</sup> Plaintiff to SW, and transfers made by SW to Housely and New Energy, are as follows.

Particulars

| Date         | Transfer Details                | Amount (HK\$) |
|--------------|---------------------------------|---------------|
| 5 March 2007 | 1 <sup>st</sup> Plaintiff to SW | 9,000,000     |
| 6 March 2007 | SW to Housely                   | 5,000,000     |

|               |                                 |           |
|---------------|---------------------------------|-----------|
| 6 March 2007  | SW to New Energy                | 4,000,000 |
| 14 March 2007 | 1 <sup>st</sup> Plaintiff to SW | 3,500,000 |
| 15 March 2007 | SW to New Energy                | 3,500,000 |
| 23 March 2007 | 1 <sup>st</sup> Plaintiff to SW | 1,100,000 |
| 23 March 2007 | 1 <sup>st</sup> Plaintiff to SW | 750,000   |
| 26 March 2007 | SW to New Energy                | 1,850,000 |
| 26 March 2007 | 1 <sup>st</sup> Plaintiff to SW | 750,000   |
| 27 March 2007 | SW to New Energy                | 750,000   |
| 28 March 2007 | 1 <sup>st</sup> Plaintiff to SW | 3,200,000 |
| 29 March 2007 | SW to New Energy                | 3,200,000 |
| 4 April 2007  | 1 <sup>st</sup> Plaintiff to SW | 3,500,000 |
| 4 April 2007  | SW to New Energy                | 3,500,000 |
| 17 April 2007 | 1 <sup>st</sup> Plaintiff to SW | 800,000   |
| 17 April 2007 | 1 <sup>st</sup> Plaintiff to SW | 400,000   |
| 17 April 2007 | SW to New Energy                | 800,000   |
| 17 April 2007 | SW to New Energy                | 400,000   |

22. During the period over which the above mentioned payments and transfers took place, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants repeatedly told the 1<sup>st</sup> Plaintiff that the documentation for the intended loan to Warderly would be provided soon.
23. The 1<sup>st</sup> Plaintiff has never received documentation for the intended loan to Warderly.
24. Neither the 1<sup>st</sup> nor the 2<sup>nd</sup> Plaintiff has ever received any shares or convertible bonds in Warderly.
25. None of the money transferred to Housely or New Energy has been credited towards the intended loan to Warderly or repaid to the 1<sup>st</sup> or 2<sup>nd</sup> Plaintiff.
26. On 21 March 2007, but unknown to the 1<sup>st</sup> Plaintiff until January 2009, the 1<sup>st</sup> Defendant acquired 30,000,000 shares in Warderly.
27. To the best of the 1<sup>st</sup> Plaintiff's knowledge and belief:
  - (1) the 1<sup>st</sup> Defendant acquired the aforesaid 30,000,000 shares in Warderly with the benefit of money transferred to Housely;
  - (2) New Energy is a company owned and/or controlled by the 1<sup>st</sup> Defendant and money transferred to it was kept by and/or used to the benefit of the 1<sup>st</sup> Defendant.

28. In late April 2007 or early May 2007, in a telephone conference followed by a meeting at Sino Plaza, Causeway Bay, Hong Kong, the 3<sup>rd</sup> Defendant told the 1<sup>st</sup> Plaintiff that:
- (1) Warderly “was in trouble”;
  - (2) the Warderly Agreement “was not working out”;
  - (3) the 1<sup>st</sup> Plaintiff would not receive any repayments, or shares or convertible bonds in Warderly;
  - (4) “we will not get the Housely money back”;
  - (5) the 1<sup>st</sup> Defendant was also “in trouble” and could not repay the money transferred to New Energy.
29. On 14 May 2007, the SEHK suspended trading in Warderly’s shares.
30. On 23 January 2008, an order was made for the winding up of Housely upon the creditor’s petition of TUV Rheinland Hong Kong Limited.
31. On 6 November 2008, SW told Messrs Haldanes, solicitors for the Plaintiffs, that there was no loan to Warderly.
32. On 4 February 2009, the Grand Court of the Cayman Islands directed that a meeting of creditors of Warderly be held to consider and vote on a scheme of arrangement between Warderly and its creditors.

33. In the premises, wrongfully and in breach of the Warderly Agreement, the 1<sup>st</sup> Defendant failed to use the total sum of HK\$23,000,000 paid to SW on his behalf, or any part of it, for the purpose of arranging a loan to Warderly by the 1<sup>st</sup> or 2<sup>nd</sup> Plaintiffs.
34. Further or in the 1<sup>st</sup> alternative, the Warderly Representations, made by the 1<sup>st</sup> Defendant to induce the 1<sup>st</sup> Plaintiff into entering into the Warderly Agreement and providing the total sum of HK\$23,000,000 to the 1<sup>st</sup> Defendant through SW for that purpose, were false and untrue and were made by the 1<sup>st</sup> Defendant fraudulently knowing them to be false and untrue or recklessly not caring whether the same were true or false.
35. Further or in the 2<sup>nd</sup> alternative, the Housely Representation and the New Energy Representations, made by the 1<sup>st</sup> Defendant to induce the 1<sup>st</sup> Plaintiff into instructing transfers of money from SW to Housely and New Energy, were false and untrue and were made by the 1<sup>st</sup> Defendant fraudulently knowing them to be false and untrue and recklessly not caring whether the same were true or false.
36. If, contrary to the above, the Warderly Representations or the Housely Representation or the New Energy Representations were made innocently, the 1<sup>st</sup> Defendant is nevertheless liable for damages pursuant to s. 3 of the Misrepresentation Ordinance (Cap 284).
37. By reason of the matters aforesaid, the 1<sup>st</sup> and/or 2<sup>nd</sup> Plaintiffs have suffered loss and damage.

38. Further or in the 3<sup>rd</sup> alternative, by reason of wrongfully accepting or putting the said HK\$23,000,000 to his use, the 1<sup>st</sup> Defendant is liable to repay such sum as money had and received by him or otherwise by way of restitution.

### CHAMP CAR RACING PROJECT

39. In late April or early May 2007 (on the same occasion referred to in paragraph 28 above), at a meeting at Sino Plaza, Causeway Bay, Hong Kong, the 3<sup>rd</sup> Defendant told the 1<sup>st</sup> Plaintiff “not to worry” and that the 1<sup>st</sup> Defendant “had another project” and that the 1<sup>st</sup> Defendant “would take you in there”.

40. On or about 21 May 2007, at a further meeting in Hong Kong attended by the 1<sup>st</sup> Plaintiff and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, the 1<sup>st</sup> Defendant offered to sell to the 1<sup>st</sup> Plaintiff a 15% share in a car racing project in mainland China (the “**Car Racing Project**”).

41. At the above mentioned further meeting, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants told the 1<sup>st</sup> Plaintiff the following.

- (1) The 1<sup>st</sup> Defendant and a group of investors had obtained rights to conduct, and to broadcast on television, a car racing series in mainland China at Zhuhai pursuant to contracts entered into between New Energy and Champ Car World Series LLC, a company incorporated in Delaware, in the United States (“**Champ Car**”).

- (2) A new company (the "**Newco**") would be formed for the purpose of taking over such rights from New Energy.
- (3) A further new company, Fortune King Investments Limited, incorporated in the BVI ("**Fortune King**"), had been formed and would acquire a 40% share in the Newco.
- (4) The 1<sup>st</sup> Plaintiff could buy a 37.5% share in Fortune King, for US\$4,950,000, and through Fortune King, would acquire a 15% share in the Newco.
- (5) The 1<sup>st</sup> Plaintiff would only need to pay HK\$15,702,670.40 for a 37.5% share in Fortune King, since his failed investment under the Warderly Agreement would be "counted towards" his investment in the Car Racing Project.

42. In order to induce the 1<sup>st</sup> Plaintiff to invest in the Car Racing Project, the 1<sup>st</sup> Defendant made the following representations to the 1<sup>st</sup> Plaintiff (the "**1<sup>st</sup> Defendant's Car Racing Representations**").

- (1) The car racing business was very profitable.
- (2) Investors in the Car Racing Project would earn a return of 100% on their investment every 6 months.
- (3) Broadcasting minutes for commercials to be shown during car races had already been sold and cash flow was being generated. Such cash flow was alone sufficient for the 1<sup>st</sup>

Plaintiff to get back HK\$17,000,000 (i.e. the sum of HK\$15,702,670.40 plus interest) within 2 months.

(4) The 1<sup>st</sup> Defendant and his group of investors had acquired and already owned a huge army property near the race course at Zhuhai. Such property would be used to expand the race course and develop residential housing.

(5) Investment funds based in the United States had agreed, and were already queuing, to buy shares in the Car Racing Project from first-in-place investors.

43. In order to induce the 1<sup>st</sup> Plaintiff to invest in the Car Racing Project, the 3<sup>rd</sup> Defendant made the following representations to the 1<sup>st</sup> Plaintiff (the “**3<sup>rd</sup> Defendant’s Car Racing Representations**”).

(1) The 3<sup>rd</sup> Defendant had seen and checked the documentation for the Car Racing Project (i.e. the contracts with Champ Car and the land title documents).

(2) The Car Racing Project was a “good investment” for the 1<sup>st</sup> Plaintiff.

(3) Investing in the Car Racing Project was the only way for the 1<sup>st</sup> Plaintiff to recover the losses he had suffered under the failed Warderly Agreement.

44. In reliance on the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Car Racing Representations, the 1<sup>st</sup> Plaintiff accepted the 1<sup>st</sup> Defendant's offer to buy a 15% share in the Car Racing Project.
45. On 21 May 2007, at the request of the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Plaintiff paid HK\$15,702,670.40 to the account of the 2<sup>nd</sup> Defendant to be held on escrow for the purpose of the Car Racing Project (the "Escrow Account").
46. On 31 May 2007, the 1<sup>st</sup> Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered into a written escrow agreement (the "Escrow Agreement") which provides, among other things, as follows.

*"AGREEMENT between Mr Derrick Luu (Seller), Zhong Yi (Hong Kong) CPA Company Limited (Escrow Agent), and Mr Christian Emil Toggenburger, (Buyer).*

*Seller and Buyer have simultaneously with the execution of this agreement entered into a sales and purchase agreement (the Agreement) by which Seller conveys to Buyer the following:*

*The Buyer agreed to buy 37.5% of the equity interest in Fortune King Investments Limited, a company incorporated in the British Virgin Islands, from Mr Derrick Luu at a total consideration of US\$4,950,000. Fortune King Investments Limited is the 40% equity owner of a new company being formed for the purchase of taking over the car racing contracts which was entered between New Energy Investment Limited and Champ Car World Series LLC.*

*The closing will be conditional to the successful registration of the new company and the completion of the transfer process to make sure the new company owns all these racing contracts which are currently under the name of "New Energy Investment Limited" ... In accordance with the Contract, Buyer must pay to the Seller US\$4,950,000 (or an equivalent amount of HK\$). Part of whole of this sum which will be paid by the Buyer from time to time will be*

considered a down payment on this account, and will be held in escrow by Escrow Agent.

...

*If the closing takes place under the Contract, Escrow Agent at the time of closing shall pay the amount deposited with Agent to Seller or in accordance with Seller's written instructions. Escrow Agent shall make simultaneously transfer of the said equity ownership in Fortune King Investments Limited to the Buyer. The Escrow Agent will also release the down payment, before the closing, to the Seller at the written instruction of the Buyer.*

*If no closing takes place under the Contract, Escrow Agent shall continue to hold the amount deposited until receipt of written authorization for its deposition signed by both Buyer and Seller. If there is any dispute as to whom Escrow Agent is to deliver the amount deposited, Escrow Agent shall hold the sum until the parties' rights are finally determined in an appropriate action or proceeding or until a court orders Escrow Agent to deposit the down payment with it. If Escrow Agent does not receive a proper written authorization from Seller and Buyer, or if an action or proceeding to determine Seller's and Buyer's rights is not begun or diligently prosecuted, Escrow Agent is under no obligation to bring an action or proceeding in court to deposit the sum held, but may continue to hold the deposit."*

47. Under the Escrow Agreement, the 2<sup>nd</sup> Defendant owed the contractual duty to the 1<sup>st</sup> Plaintiff not to transfer moneys out of the Escrow Account unless closing had taken place as described under the Escrow Agreement.
48. The 2<sup>nd</sup> Defendant also owed the following duties of care in tort to the 1<sup>st</sup> Plaintiff.
  - (1) A duty to exercise the skill and care to be expected of a reasonably competent escrow agent and financial adviser.

- (2) A duty to ensure that it did not knowingly or carelessly provide false or inaccurate information regarding the Car Racing Project.
- (3) A duty not to recommend an investment in the Car Racing Project, and therefore the transfer of the HK\$15,702,670.40 to the 1<sup>st</sup> Defendant, unless it had reasonable grounds for believing that the investment was suitable to the Plaintiff and that all documents necessary for such investment had been executed.
49. On 31 May 2007, at the 1<sup>st</sup> Defendant's request and in reliance on the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Car Racing Representations, the 1<sup>st</sup> Plaintiff instructed the 2<sup>nd</sup> Defendant to transfer HK\$15,702,670.40 from the Escrow Account to the 1<sup>st</sup> Defendant.
50. No car races have been held pursuant to the Car Racing Project.
51. No property near the race course at Zhuhai has been acquired by the 1<sup>st</sup> Defendant, as alleged or at all.
52. No revenue, as alleged or at all, has been earned by New Energy or any other party, from the Car Racing Project. The 1<sup>st</sup> Plaintiff has earned no return on his investment.
53. Further:
- (1) The rights purportedly held by New Energy in relation to the Car Racing Project derive from an Official Promoter

Agreement (the “**OPA**”), and a subsidiary International Television Agreement (the “**ITA**”), entered into between New Energy and Champ Car both dated 1 May 2007.

- (2) Copies of the OPA and the ITA were first provided to the 1<sup>st</sup> Plaintiff by the 1<sup>st</sup> Defendant’s new solicitors, Messrs Herbert Smith (“**Herbert Smith**”), in December 2008.
- (3) The OPA and the ITA prohibit the assignment of the rights of “New Energy” under them.
- (4) The rights of “New Energy” under the OPA depend upon the payment of an annual fee of US\$4,000,000 by “New Energy” to Champ Car. To the best of the 1<sup>st</sup> Plaintiff’s knowledge and belief, no such payment has been made.
- (5) The OPA and the ITA subsist for a fixed term of 3 years expiring on 30 April 2009.

54. In December 2008, the 1<sup>st</sup> Plaintiff was also told by Herbert Smith that the Newco to be formed under the Car Racing Project was China Sport Culture Development Limited, a company incorporated in the British Virgin Islands (“**China Sport**”).

55. To the best of the 1<sup>st</sup> Plaintiff’s knowledge and belief, China Sport has not taken over any of New Energy’s rights under the OPA or the ITA.

56. According to a search carried out in March 2009, a company called "New Energy Investment Limited" was incorporated in the BVI on 25 October 1994. "New Energy Investment Limited" is currently not in good standing under the laws of the BVI and was struck off on 1 May 2000 for non-payment of its annual licence fee.
57. To the best of the 1<sup>st</sup> Plaintiff's knowledge and belief, the HK\$15,702,670.40 from the Escrow Account has been transferred to and/or used to the benefit of the 1<sup>st</sup> Defendant.
58. In the premises, each of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Car Racing Representations was false and untrue.
59. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Car Racing Representations were made fraudulently knowing them to be false and untrue or recklessly not caring whether the same were true or false.
60. If, contrary to the above, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Car Racing Representations were made innocently, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants are nevertheless liable for damages pursuant to s. 3 of the Misrepresentation Ordinance (Cap 284).
61. Further or in the 1<sup>st</sup> alternative, by reason of the matters aforesaid, the 2<sup>nd</sup> Defendant has also breached its contractual and tortious duties owed to the 1<sup>st</sup> Plaintiff by:
- (1) representing to the 1<sup>st</sup> Plaintiff that the Car Racing Project was a good investment when it had no reasonable grounds to form such an opinion;

- (2) failing to check, properly or at all, the truth or accuracy of information provided to the 1<sup>st</sup> Plaintiff in relation to the Car Racing Project;
  - (3) transferring HK\$15,702,670.40 from the Escrow Account to the 1<sup>st</sup> Defendant without checking, properly or at all, the Car Racing Project documentation.
  - (4) transferring HK\$15,702,670.40 from the Escrow Account to the 1<sup>st</sup> Defendant before closing, as described in the Escrow Agreement, had taken place.
62. By reason of the matters aforesaid, the 1<sup>st</sup> Plaintiff has suffered loss and damage.
63. Further or in the 2<sup>nd</sup> alternative, by wrongfully accepting or putting the said HK\$15,702,670.40 to his use, the 1<sup>st</sup> Defendant is liable to repay such sum as money had and received by him or otherwise by way of restitution.
64. Further or in the 3<sup>rd</sup> alternative, by wrongfully transferring the said HK\$15,702,670.40 to or to the benefit of the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant is liable to repay such sum as money had and received by him or otherwise by way of restitution.

#### **LISTED COMPANY**

65. In or about the last week of May 2007, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants introduced a further potential investment to the 1<sup>st</sup> Plaintiff.

66. In this connection, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants told the 1<sup>st</sup> Plaintiff that they could assist him to acquire a listed company. They stated that the Car Racing Project, or any of the 1<sup>st</sup> Defendant's other projects, could be "injected" into that "shell". The 1<sup>st</sup> Plaintiff and the 1<sup>st</sup> Defendant would both ultimately become shareholders of the listed company.

67. In or about the last week of May 2007, at a meeting at the offices of the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants made the following representations to the 1<sup>st</sup> Plaintiff (the "**Listed Company Representations**"):

- (1) the opportunity to acquire the majority shareholding in a listed company could arise quickly, and should be acted upon quickly, so funding for the acquisition should be put into place ahead of time;
- (2) the 1<sup>st</sup> Plaintiff would have to acquire a major shareholding through a corporate vehicle;
- (3) the 1<sup>st</sup> Plaintiff would have to transfer as much funds as he could afford to the 1<sup>st</sup> Defendant;
- (4) such funds would be applied to the acquisition and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants would take care of them until then;
- (5) the 1<sup>st</sup> and 3<sup>rd</sup> Defendants would arrange for the balance of the cost of acquisition.

68. In reliance on the Listed Company Representations, the 1<sup>st</sup> Plaintiff agreed to provide the 1<sup>st</sup> Defendant with the total further sum of HK\$73,000,000 for the purpose of acquiring the majority shareholding in a listed company (the “**Listed Company Agreement**”).

69. On divers dates between 1 June 2007 and 26 July 2007, in performance of the Listed Company Agreement, the 1<sup>st</sup> Plaintiff, at the request of the 1<sup>st</sup> Defendant, transferred HK\$73,000,000 to the 2<sup>nd</sup> Defendant as escrow agent.

Particulars

| <b>Date</b>  | <b>Transfer Details</b>                                    | <b>Amount (HK\$)</b> |
|--------------|--|----------------------|
| 1 June 2007  | 1 <sup>st</sup> Plaintiff to the 2 <sup>nd</sup> Defendant | 26,000,000           |
| 9 July 2007  | 1 <sup>st</sup> Plaintiff to the 2 <sup>nd</sup> Defendant | 44,000,000           |
| 25 July 2007 | 1 <sup>st</sup> Plaintiff to the 2 <sup>nd</sup> Defendant | 200,000              |
| 26 July 2007 | 1 <sup>st</sup> Plaintiff to the 2 <sup>nd</sup> Defendant | 1,000,000            |
| 26 July 2007 | 1 <sup>st</sup> Plaintiff to the 2 <sup>nd</sup> Defendant | 1,800,000            |

70. In the premises, the 2<sup>nd</sup> Defendant owed an implied contractual duty, and a tortious duty, to the 1<sup>st</sup> Plaintiff as escrow agent only to make transfers from the said sum of HK\$73,000,000 held on escrow, for

the purpose of the Listed Company Agreement and in accordance with the express instructions of the 1<sup>st</sup> Plaintiff.

71. On 26 July 2007, pursuant to the Listed Company Representations and the Listed Company Agreement, the 3<sup>rd</sup> Defendant through Tang Wong arranged for the 1<sup>st</sup> Plaintiff to become the sole director and shareholder of Betterment.
  
72. On 9 August 2007:
  - (1) the 1<sup>st</sup> and 3<sup>rd</sup> Defendants introduced the 1<sup>st</sup> Plaintiff to Richchamp Financial Consultant Limited (“**Richchamp**”);
  - (2) the 1<sup>st</sup> Plaintiff entered into a written retainer with Richchamp for Richchamp to introduce the 1<sup>st</sup> Plaintiff to a listed company available for acquisition;
  - (3) Richchamp introduced the 1<sup>st</sup> Plaintiff to the principal shareholders of ZZ Node Technologies Holdings Limited, a company incorporated in the Cayman Islands whose shares were traded on the SEHK (the “**Listed Company**”).
  
73. On 24 October 2007, the 1<sup>st</sup> Plaintiff on behalf of Betterment entered into written sale and purchase agreements with the 3 principal shareholders of the Listed Company for a majority of the shares of the Listed Company (the “**Listco S & P Agreements**”). Under the Listco S & P Agreements, Betterment would come under an unconditional liability to acquire such shares on or before 31 December 2007, at which time Betterment would also become liable

under the Hong Kong Code on Takeovers and Mergers to make an unconditional offer for all remaining listed shares in the Listed Company.

74. On divers occasions in the 1<sup>st</sup> half of December 2007, the 1<sup>st</sup> Plaintiff instructed the 2<sup>nd</sup> Defendant through the 3<sup>rd</sup> Defendant to transfer money held by the 2<sup>nd</sup> Defendant on escrow to the vendors under the Listco S & P Agreements, so as to enable Betterment to comply with its obligations thereunder.
75. On each such occasion, the 3<sup>rd</sup> Defendant told the 1<sup>st</sup> Plaintiff that:
- (1) such transfer could not be carried out because there was “some problem”;
  - (2) the money was “still there” but “the account had been pledged”;
  - (3) the 1<sup>st</sup> Plaintiff “should not worry” and “everything would be fine”.
76. Betterment was not able to complete under the Listco S & P Agreements by 31 December 2007.
77. On 17 January 2008, the 3 principal shareholders in the Listed Company entered into addendums to the Listco S & P Agreements with Betterment, under which completion was extended until 22 January 2008.

78. On 17 January 2008 Betterment, upon the introduction of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, entered into an agreement with Richcom Group Limited (“**Richcom**”), under which Richcom provided a convertible loan to Betterment to enable Betterment to complete under the Listco S & P Agreements and acquire a majority shareholding in the Listed Company.
79. On 17 January 2008, the 1<sup>st</sup> Plaintiff became a director of the Listed Company.
80. On or about 28 February 2008, Richcom exercised an option under the above mentioned convertible loan and acquired 99.49% of the issued share capital of Betterment. Richcom thereafter became the majority shareholder in the Listed Company.
81. On 28 February 2008, the 1<sup>st</sup> Plaintiff was voted out of office as a director of Betterment.
82. In or about late February or early March 2008, the 1<sup>st</sup> Defendant paid the 1<sup>st</sup> Plaintiff HK\$5,000,000. Of that sum, HK\$2,500,000 was for payment of Richchamp’s fee for the introduction of the Listed Company and HK\$2,500,000 was compensation for damage done to the 1<sup>st</sup> Plaintiff’s reputation for being unable, without Richcom’s convertible loan, to complete Betterment’s obligations under the Listco S & P Agreements.
83. In or about late February 2008, the 3<sup>rd</sup> Defendant told the 1<sup>st</sup> Plaintiff that the HK\$73,000,000 provided under the Listed Company

Agreement “was being used in another account” belonging to the 1<sup>st</sup> Defendant.

84. On divers occasions between February and May 2008, the 1<sup>st</sup> Defendant told the 1<sup>st</sup> Plaintiff that the HK\$73,000,000 provided under the Listed Company Agreement was “still locked” in the 1<sup>st</sup> Defendant’s “other investments”.

85. In the premises, and to the best of the 1<sup>st</sup> Plaintiff’s knowledge and belief, the HK\$73,000,000 paid to the 2<sup>nd</sup> Defendant on escrow under the Listed Company Agreement has been transferred by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant and/or used to the benefit of the 1<sup>st</sup> Defendant.

86. On 29 May 2008, the 1<sup>st</sup> Plaintiff was voted out of office as a director of the Listed Company at the Annual General Meeting thereof.

87. Wrongfully and in breach of the Listed Company Agreement, the 1<sup>st</sup> Defendant failed to use the said HK\$73,000,000 for the purpose of acquiring the Listed Company and instead used the same for his own purposes.

88. Further or in the 1<sup>st</sup> alternative, wrongfully and in breach of its duties as escrow agent, the 2<sup>nd</sup> Defendant:

- (1) failed to comply with the instructions of the 1<sup>st</sup> Plaintiff to transfer money held by it on escrow to the vendors under the Listco S & P Agreements;

- (2) transferred the said HK\$73,000,000 to the 1<sup>st</sup> Defendant without the instructions or knowledge of the 1<sup>st</sup> Plaintiff.
89. Further or in the 2<sup>nd</sup> alternative, the Listed Company Representations were false and untrue and were made by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants fraudulently knowing them to be false and untrue or recklessly not caring whether the same were true or false.
90. If, contrary to the above, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants made the Listed Company Representations innocently, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants are nevertheless liable for damages pursuant to s. 3 of the Misrepresentation Ordinance (Cap 284).
91. By reason of the matters aforesaid, the 1<sup>st</sup> Plaintiff has suffered loss and damage.
92. Further or in the 3<sup>rd</sup> alternative, by wrongfully accepting the said HK\$73,000,000, the 1<sup>st</sup> Defendant is liable to repay the sums as money had and received by him or otherwise by way of restitution.
93. Further or in the 4<sup>th</sup> alternative, by wrongfully transferring the said HK\$73,000,000 to or to the benefit of the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant is liable to repay such sum had and received by it or otherwise by way of restitution.

### **CHINA OIL**

94. By 30 June 2007, the 1<sup>st</sup> Plaintiff had begun to transfer money (ultimately in the total sum of HK\$73,000,000) to the 2<sup>nd</sup> Defendant

on escrow under the Listed Company Agreement. In the circumstances, on or about this date, the 1<sup>st</sup> Plaintiff told the 1<sup>st</sup> and 3<sup>rd</sup> Defendants that he required security or collateral for money transferred and to be transferred under the Listed Company Agreement.

95. In or about the 1<sup>st</sup> week of July 2007, at a meeting at the 2<sup>nd</sup> Defendant's offices, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants invited the 1<sup>st</sup> Plaintiff to accept 1,000,000 shares (the "**China Oil Shares**") in China Oil and Methanol Group Incorporated, a company incorporated in Nevada, United States ("**China Oil**") as security or collateral for money transferred and to be transferred under the Listed Company Agreement.
96. At the aforesaid meeting, in order to induce the 1<sup>st</sup> Plaintiff to accept the China Oil Shares, the 1<sup>st</sup> Defendant told the 1<sup>st</sup> Plaintiff that the China Oil Shares were owned by the 1<sup>st</sup> Defendant's uncle and could be transferred to the 1<sup>st</sup> Plaintiff as security or collateral for money transferred or to be transferred under the Listed Company Agreement (the "**China Oil Representations**").
97. In order further to induce the 1<sup>st</sup> Plaintiff to accept the China Oil Shares, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants showed the 1<sup>st</sup> Plaintiff a Strategic Business Plan of China Oil dated March 2007 (the "**Plan**"). The Plan contains, among others, the following representations (the "**Plan Representations**").

- (1) China Oil had 4 operating subsidiaries in mainland China:  
Liaonan Petrochemical Co. Ltd, Zhuhai Huafuo

Petrochemical Co. Ltd, Zhongshan Xiaolan Oil Refinery and Maoming Petrochemical Co Ltd.

- (2) China Oil had acquired 2 industrial complexes in mainland China: Beijing Fangshan Yandong Chemical Plant and Beijing Zhongchun Changao Oil Co. Ltd.
  - (3) China Oil was presently generating cash revenues from trading in crude oil and would have about US\$5.2 billion revenues in 2009.
98. On 23<sup>rd</sup> June 2007, the 1<sup>st</sup> Defendant took the 1<sup>st</sup> Plaintiff on a day trip by car to Guangdong province and showed him 3 refineries, which the 1<sup>st</sup> Defendant said were assets belonging to 3 of China Oil's operating subsidiaries: Zhuhai, Zhongshan and Maoming (the **"Visit Representations"**).
99. The 1<sup>st</sup> Defendant told the 1<sup>st</sup> Plaintiff that he would have to accept the China Oil Shares using a corporate vehicle. For this purpose the 3<sup>rd</sup> Defendant through Tang Wong arranged for the 1<sup>st</sup> Plaintiff to become the sole director and shareholder of the 3<sup>rd</sup> Plaintiff.
100. On 6 July 2007, in reliance on the China Oil Representations, the Plan Representations and the Visit Representations, the 1<sup>st</sup> Plaintiff on behalf of the 3<sup>rd</sup> Plaintiff entered into a Sale & Purchase Agreement with Richtex Investment Limited for the acquisition of 1,000,000 shares in China Oil (the **"Richtex S & P Agreement"**).

101. The 2<sup>nd</sup> Defendant owed a duty of care in tort to ensure that it did not knowingly or carelessly provide false or inaccurate information regarding the Plan to the 1<sup>st</sup> Plaintiff.

102. The China Oil Representations were false and untrue. In particular, the consideration for the acquisition of 1,000,000 shares was stated in the Richtex S & P Agreement to be US\$10,000,000. In so far as is relevant to this proceeding, the 1<sup>st</sup> Plaintiff will say that:

- (1) he was misled into signing a document which was essentially different from that which he intended to sign;
- (2) in the premises, the Richtex S & P Agreement is void and unenforceable on the ground of *non est factum*.

103. The Plan Representations and the Visit Representations were false and untrue. In particular:

- (1) China Oil has no operating subsidiaries, or any subsidiaries.
- (2) China Oil has not acquired any industrial complexes, as alleged or at all.
- (3) China Oil is not earning any revenue, as alleged or at all.

104. To the best of the 1<sup>st</sup> Plaintiff's knowledge and belief, the HK\$73,000,000 paid to the 2<sup>nd</sup> Defendant on escrow under the Listed Company Agreement has been transferred by the 2<sup>nd</sup> Defendant to or to the benefit of the 1<sup>st</sup> Defendant.

105. The China Oil Representations and the Visit Representations were made by the 1<sup>st</sup> Defendant fraudulently knowing them to be false and untrue or recklessly not caring whether the same were true or false.
106. The Plan Representations were made by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants fraudulently knowing them to be false and untrue or recklessly not caring whether the same were true or false.
107. If, contrary to the above, the China Oil Representations and/or the Plan Representations and/or the Visit Representations were made innocently, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants are nevertheless liable for damages pursuant to s. 3 of the Misrepresentation Ordinance (Cap 284).
108. Further or in the 1<sup>st</sup> alternative, the 2<sup>nd</sup> Defendant through the 3<sup>rd</sup> Defendant has also breached its tortious duty by failing to check, properly or at all, the truth or accuracy of information provided to the 1<sup>st</sup> Plaintiff in relation to the Plan.
109. By reason of the matters aforesaid, the 1<sup>st</sup> Plaintiff and/or the 3<sup>rd</sup> Plaintiff have suffered loss and damage.
110. Further or in the 2<sup>nd</sup> alternative, by reason of wrongfully accepting or putting the said HK\$73,000,000 to his use, the 1<sup>st</sup> Defendant is liable to repay the same as money had and received by him or otherwise by way of restitution.

## SETTLEMENT AGREEMENT

111. On 24 June 2008, at a meeting at the 1<sup>st</sup> Defendant's offices between the 1<sup>st</sup> Plaintiff, the 1<sup>st</sup> Plaintiff's agent and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, the 1<sup>st</sup> Defendant entered into a settlement agreement (the "Settlement Agreement") with the 1<sup>st</sup> Plaintiff in the following terms:

- (1) the 1<sup>st</sup> Defendant would return 50% of the net balance of the funds the 1<sup>st</sup> Plaintiff advanced to the escrow accounts of SW and the 2<sup>nd</sup> Defendant, totaling HK\$109,902,670.40 (HK\$111,702,670.40 less HK\$1,800,000 repaid by the 1<sup>st</sup> Defendant on 21 September 2007 and 15 November 2007) together with interest and inflation compensation (of no less than 10%) (amounting to HK\$120,892,937.44) in cash and tradable shares before the end of August 2008.
- (2) The remaining 50% of the aforesaid net balance would be paid by the 1<sup>st</sup> Defendant to the 1<sup>st</sup> Plaintiff before the end of 2008.

112. The 1<sup>st</sup> Defendant has made payments totaling HK\$2,150,000 to the 1<sup>st</sup> Plaintiff on divers dates between 8 August 2008 and 12 September 2008.

### Particulars

| Date | Amount |
|------|--------|
|------|--------|

|                   | (HK\$)    |
|-------------------|-----------|
| 8 August 2008     | 100,000   |
| 11 August 2008    | 300,000   |
| 13 August 2008    | 200,000   |
| 18 August 2008    | 400,000   |
| 30 August 2008    | 1,000,000 |
| 11 September 2008 | 50,000    |
| 12 September 2008 | 100,000   |

113. In breach of the Settlement Agreement, the 1<sup>st</sup> Defendant has failed to refund the balance of HK\$118,742,937.44 to the Plaintiff despite repeated requests.

**AND THE PLAINTIFFS CLAIM:**

Against the 1<sup>st</sup> Defendant

1. The said sum of HK\$118,742,937.44.
2. Further or alternatively, damages.
3. Further or alternatively, repayment of the sum of HK\$107,752,670.40 as money had and received or otherwise by way of restitution.

Against the 2<sup>nd</sup> Defendant

4. Damages.
5. Further or alternatively, repayment of the sum of HK\$84,752,670.40 as money had and received or otherwise by way of restitution.

Against the 3<sup>rd</sup> Defendant

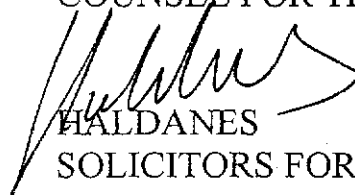
6. Damages.

Against all Defendants

7. Such further or other relief as the Court thinks fit.
8. Interest at such rate and for such duration as the Court thinks fit, pursuant to s. 48 of the High Court Ordinance (Cap 4).
9. Costs.

Dated 23 March 2009.

THOMAS LEE  
COUNSEL FOR THE PLAINTIFFS



HALDANES  
SOLICITORS FOR THE PLAINTIFFS

(Where the Plaintiff's claim is for a debt or liquidated demand only: If, within the time for returning the Acknowledgment of Service, the Defendant pays the amount claimed and \$1,550.00/\$1,680.00 for costs and, if the Plaintiff obtains an order for substituted service, the additional sum of HK\$500.00, further proceedings will be stayed. The money must be paid to the Plaintiff or his Solicitor.)

THIS WRIT was issued by Messrs. Haldanes of 8<sup>th</sup> Floor, Ruttonjee House, 11 Duddell Street, Central, Hong Kong, Solicitors for the said Plaintiffs whose addresses are 1403A, Tower 2, Admiralty Centre, 18 Harcourt Rd., Admiralty, Hong Kong

A handwritten signature in cursive script, appearing to read "Haldanes", is written in black ink on the right side of the page.

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO. 815 OF 2009

BETWEEN

CHRISTIAN EMIL TOGGENBURGER 1<sup>st</sup> Plaintiff

PROMISED LAND ENTERPRISES  
LIMITED 2<sup>nd</sup> Plaintiff

GLOBE DRAGON LIMITED 3<sup>rd</sup> Plaintiff

and

LUU, HUNG VIET DERRICK 1<sup>st</sup> Defendant

ZHONG YI (HONG KONG) C.P.A.  
COMPANY LIMITED 2<sup>nd</sup> Defendant

TANG, KA SIU JOHNNY 3<sup>rd</sup> Defendant

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WRIT OF SUMMONS

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Issued this 23<sup>rd</sup> day of March 2009.

Haldanes  
Solicitors for the Plaintiffs  
8th Floor Ruttonjee House  
11 Duddell Street  
Central Hong Kong

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