



No. S-140052
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

OCEAN PASTURES CORPORATION and RUSS GEORGE

PLAINTIFFS

AND

**HAIDA SALMON RESTORATION CORPORATION, OLD MASSET ECONOMIC
DEVELOPMENT CORPORATION, JASON McNAMEE, CECIL BROWN, JOHN
DISNEY, BLUE CARBON SOLUTIONS, INC., JOHN (BC) DOE, JOHN DOE #2**

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: The Defendant Haida Salmon Restoration Corporation

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The facts alleged in paragraphs 1 and 3-6 of Part 1 of the Amended Notice of Civil Claim (“**Claim**”) are admitted.
2. The facts alleged in paragraphs 2 and 7-72 of Part 1 of the Amended Notice of Civil Claim are denied.
3. The facts alleged in paragraph none of Part 1 of the Amended Notice of Civil Claim are outside the knowledge of the Defendants.

Division 2 – Defendant’s Version of Facts

4. The Defendant Haida Salmon Corporation (“**HSRC**”) is a company incorporated in British Columbia with a registered office located at P.O. Box 175, Masset, BC V0T 1M0.
5. The Defendants Jason McNamee and John Disney (along with Cecil Brown, the “**Director Defendants**”) were at all material times directors of HSRC. The Defendant Cecil Brown first became a director of HSRC on February 21, 2013.

6. At HSRC's Annual General Meeting on February 20, 2014, the shareholders of HSRC elected the Defendant Cecil Brown, the Defendant John Disney, Harold Yeltatzie, Ken Rea and the Plaintiff Russ George as directors of HSRC.

7. HSRC was incorporated for the purpose of conducting offshore marine science research, and in particular ocean iron fertilization ("**OIF**"), to

- (a) address declining plankton and salmon populations in and around Haida Gwaii, and
- (b) (b) create and sell carbon offset credits to the extent that carbon offsets could be created, measured, and verified as a result of OIF ("**Project**").

Development of the Idea for the Project

8. In early 2004, the Defendant John Disney became acquainted with the Plaintiff Russ George. Mr. Disney subsequently proposed to Mr. George that he, in conjunction with the Old Massett Village Council ("**Council**"), undertake a forestry restoration project on Haida Gwaii.

9. In connection with the proposed forestry restoration project, Mr. George provided Mr. Disney with a resume in which he claimed to have the following academic credentials and work experience, among others:

- (a) University of Utah BSc. Program Environmental Biology;
- (b) recognized by B.C. Public Service Commission as Equivalent to PhD and hired as such;
- (c) recognized by Japanese Institute of Physics Osaka as 'Doctor of Physics';
- (d) Environmental Scientist for B.C. Department of Ecological Reserves;
- (e) consultant to the B.C. Minister of Energy Mines and Petroleum Resources and Cabinet and representative of the Minister on various multi-ministry resource development committees;
- (f) representative of the B.C. Ministry of Environment on various government committees;
- (g) hired by Greenpeace International to develop and implement plans for use of Greenpeace ships as ocean science research vessels;
- (h) partner in Clustron Science Corporation "for a brief time with three top nuclear scientists former head US Joint Chiefs of Staff"; and
- (i) visiting and consultant scientist at a number of research institutions, including Lawrence Berkeley National Laboratories and NASA.

10. In 2008, the reforestation project was abandoned. Shortly thereafter, however, Mr. George suggested to Mr. Disney that an OIF project could be undertaken by the Council off the west coast of Haida Gwaii. Mr. George represented that he had been involved in a similar project in the United States.

11. At Mr. Disney's request, Mr. George provide him with background information concerning OIF, a description of his experience with OIF, and a proposal for an OIF project off Haida Gwaii. The background information included numerous documents, including news articles and peer-reviewed journal articles, concerning the decline of plankton in the North Pacific and OIF as a possible solution to this problem. Mr. George also provided Mr. Disney with a self-authored statement regarding his interest and experience in researching the impact of anthropogenic carbon dioxide on the oceans and the role of OIF in restoring the oceans and reducing carbon dioxide levels in the air. In this statement, amongst other things, Mr. George represented that:

- (a) he had been engaged in the field of OIF and ocean eco-restoration for more than a decade; and
- (b) his company, Planktos Science, was undertaking the research and development, along with collaborating scientists from the world's leading ocean research institutes, to work out the details on how to restore the oceans.

12. Further, on numerous occasions, Mr. George represented to Mr. Disney that he was the world's most knowledgeable person with respect to OIF, and stated that he had relationships with experts in OIF around the world, who would confer with him on the topic of OIF and marine science generally.

13. Mr. Disney provided the information described in paragraphs 9, 11 and 12 of this Response to the Council for their consideration of the proposed OIF project. At all material times, Mr. George knew or ought to have known that the information would be provided to Council, and that the Council would rely on it in considering the proposed OIF project, and he intended that the Council would so rely.

14. In the fall of 2008, Mr. Disney arranged for Mr. George to attend a meeting with the Council. During this Council meeting, Mr. George represented to Mr. Disney and the Council that he was a leading expert in OIF and possessed the unique experience, technical understanding and knowledge to create, manage and successfully complete an OIF project in Haida Gwaii. Mr. George knew or ought to have known that these representations would be relied upon in considering the proposed OIF project, and he intended that the Council would so rely.

15. At all material times, the representations described in paragraphs 9, 11, 12 and 14 of this Response, and also those described in paragraphs 19 and 36(a) (the "**Representations**") were false, to the knowledge of the Plaintiffs. In the alternative, the Plaintiffs ought reasonably to have known, at all material times, that the Representations were false.

16. Further, or in the alternative, the Representations were made for the purpose of inducing, and did induce, the Council and subsequently HSRC, to provide funds to Mr. George and enter into contracts and transactions with him and others as described in paragraphs 26-36 of this Response.

17. On January 12, 2009, in reliance on the Representations, the Council passed a resolution declaring that it supported the development of a business plan for an OIF project to improve ocean survival rates of salmon stocks by addressing the dwindling plankton biomass in the North Pacific.

Formation of HSRC

18. After the Council approved the development of a business plan for the Project, efforts were made on its behalf to secure funding to implement the Project. These efforts were unsuccessful. On September 1, 2010, Mr. Disney himself arranged a loan of \$100,000 from the Council to pay for the business planning, financing and operational preparation for the launch of the Project.

19. At or around this time, Mr. Disney and Mr. George, along with the Defendant Mr. McNamee (a project manager employed by Golder Associates, Ltd) developed and finalized a business plan for the Project. During their discussions, Mr. George stated on a number of occasions that he possessed unique proprietary information concerning OIF derived from the research and development undertaken by his company Planktos Science in the United States.

20. On September 7, 2010, HSRC was incorporated for the purpose of implementing the Project. At the time of incorporation, the sole director of HSRC was Mr. McNamee, and the sole shareholder of HSRC was Kluu Laanas Community Development Corporation ("KLCDC"), a corporation beneficially owned by the Council.

21. On October 18, 2010, Mr. Disney, Mr. George, and Marlene Liddle were each appointed as additional directors of HSRC by shareholder resolution.

22. At all material times subsequent to October 18, 2010, Mr. George was a fiduciary of HSRC and owed fiduciary duties including a duty to act in good faith and in the best interests of HSRC and a duty to refrain from entering into transactions whereby his duties to HSRC were in conflict with his personal interests.

23. Further efforts to secure funding for the Project from private investors or commercial lenders were unsuccessful. Consequently, Mr. Disney proposed to the Council that the Council itself provide the funds necessary to implement the Project by borrowing the money and securing the loan with money owed to the Council by the Gwaii Trust Society.

24. On March 25, 2011, the community of Old Massett, through a closed ballot vote, approved the Council's financing of the Project and HSRC subsequently received a loan of \$2.5 million from the Council for the purpose of implementing the Project.

25. On August 30, 2011, the Council resolved to launch the Project without delay.
26. On September 13, 2011, in reliance on the Representations, HSRC issued 480 shares to OPC for the nominal price of \$0.01 per share, or \$4.80 in total. The shares were issued in consideration of promises made by IISRC and OPC in the agreements described in paragraph 27 of this Response.
27. Also on September 13, 2011 the following agreements (collectively, the “**Agreements**”) were entered into by and among OPC, KLCDC and HSRC:
- (a) A Shareholder Agreement;
 - (b) A Technology and Know-How License Agreement (“**License Agreement**”); and
 - (c) A Management Agreement.

28. The Agreements were drafted by Fasken Martineau DuMoulin LLP (“**Fasken**”), a law firm retained by HSRC at the time as well as by OPC. HSRC was induced to enter into the Agreements, in part, by its understanding that Fasken owed a duty to HSRC to refrain from acting in a manner adverse to HSRC’s interests, and that the Agreements would therefore be fair and reasonable to HSRC.

The Shareholder Agreement

29. The Shareholder Agreement recorded the rights and obligations existing between OPC and KLCDC as shareholders of HSRC.

30. Subsequently, on or about March 1, 2012, KLCDC surrendered all of its shares in HSRC to the company treasury, and the shares were cancelled. On the same day, HSRC issued 520 new common shares to the Old Masset Economic Development Corporation (“**OMEDC**”) at an issue price of \$0.01 per share.

31. The Plaintiffs assented to the transactions described in paragraph 30 of this Response, which were authorized by a directors’ resolution signed by Mr. George.

32. As of the date hereof, the shares of HSRC are held as follows:

- (a) 520 Class A Common Shares without par value held by OMEDC; and
- (b) 480 Class A Common Shares without par value held by OPC.

33. To date, no shareholder agreement has been entered into by and between OPC and OMEDC.

34. Further, or in the alternative, it was a term of the Shareholder Agreement that, if either party defaulted on its obligations under the License Agreement or the Management Agreement, the other party was entitled to demand and receive the resignation of the defaulting party’s

nominees to the board of directors of HSRC. At no material time did OPC have a reasonable expectation that its nominee or nominees would continue on the board of directors after OPC fundamentally breached the License Agreement and the Management Agreement, as described in paragraphs 39 through 57 of this Response.

The Management Agreement

35. Pursuant to the Management Agreement, OPC was appointed to manage the Project and, in particular, was required to provide the following management services to HSRC (“**Management Services**”):

- (a) the full and complete execution of the Project, including the planning and implementation of the Project;
- (b) the management of HSRC’s cash resources;
- (c) hiring of employees, consultants and other persons necessary to carry out the Project;
- (d) the preparation of budgets, accounts, records and other financial documents required to carry out the business of HSRC;
- (e) the definition of all standards of scientific research and verification of the carbon offset credits; and
- (f) the sale of the carbon offset credits.

The License Agreement

36. In the License Agreement, OPC represented and agreed that:

- (a) OPC possessed and had spent substantial time and expense developing the following:
 - (i) Knowledge, information, intellectual property and scientific process associated with ocean restoration techniques and the creation and sale of carbon offset credits (“**Technology**”); and
 - (ii) Technical and commercial information and techniques, existing in document or other tangible form relating to the Technology or its application, ocean fertilization techniques, carbon sequestration verification and measurement and the identification, verification, marketing and disposition of carbon offset credits (“**Know How**”);
- (b) OPC would grant to HSRC a non-exclusive right and licence to use and exploit the Technology and Know How; and

- (c) OPC would provide the following services to HSRC (the “**License Services**”):
 - (i) disclosure of the Technology and Know How to HSRC as and when necessary or advisable in the course of the Project; and
 - (ii) the assistance reasonably required to ensure the effective use of the Technology by HSRC in the course of the Project, in particular technical assistance, copies of relevant documentation regarding the Technology, and consultation services.

37. The License Agreement was not fair and reasonable to HSRC. In particular, but without limiting the foregoing, the License Agreement was not fair and reasonable in that it purported to vest in OPC an exclusive proprietary interest in a broad range of intellectual property generated by the Project, under circumstances where the Plaintiffs knew or ought to have known that the intellectual property would be developed entirely, or alternatively primarily, by the employees and consultants employed by HSRC, at HSRC’s expense, and with little or no valuable contribution by OPC.

38. In breach of his fiduciary duties, Mr. George:

- (a) failed to fairly and accurately disclose to HSRC, its directors or its shareholders, in conformance with the provisions of the *Business Corporations Act*, S.B.C. 2002, c. 57, the full extent of his conflict of interest in relation to the Agreements;
- (b) failed to secure the full and informed consent of HSRC, its directors and its shareholders with respect to the conflict of interest and the Agreements; and
- (c) failed to ensure that the Agreements were fair and reasonable to HSRC.

Launch of the Project

39. In the latter half of 2011, Mr. McNamee on behalf of HSRC hired the staff required to implement the Project, including highly qualified senior professional and scientific staff with experience relevant to the Project. Mr. George was involved in the process of interviewing and decision-making with respect to prospective employees, but ultimately all staff members were hired and supervised by Mr. McNamee.

40. Subsequently, HSRC employees, under the supervision of Mr. McNamee, developed certain protocols, procured the equipment, instruments and supplies, and created certain technological innovations required to undertake an ocean research voyage and otherwise implement the Project, including:

- (a) the development of a laser-based photosynthesis measurement device;
- (b) the development of an experimental oceanographic data buoy;
- (c) the development of a miniaturized multi-frequency sonar for biomass analysis;

- (d) the development of software to perform automated analysis of zooplankton;
- (e) the development of a record of historic/baseline plankton conditions in the area of interest;
- (f) the development of a plankton sampling protocol;
- (g) the development of a chemistry sampling protocol;
- (h) the development of a carbon offset methodology;
- (i) the procurement of scientific equipment, instruments and supplies; and
- (j) the negotiation of contracts with suppliers of the equipment, instruments and supplies.

41. The Plaintiffs had some minor involvement with the matters described in paragraphs 40(a), (c), (h), (i) and (j) of this Response, but otherwise were not involved in developing the analyses, protocols, methodology and other innovations and/or inventions described in paragraph 40.

42. The analyses, protocols, methodology and other innovations and/or inventions described in paragraph 40 of this Response were developed based upon information and knowledge either widely available in the public domain or possessed by HSRC employees. The Plaintiffs did not provide or contribute any proprietary Technology or Know How to HSRC or its employees with respect to such developments.

43. HSRC denies that OPC “organized rigorous scientific processes, the manufacture and procurement of scientific equipment, [and] the retainer of staff and scientists so as to implement the Project”, as alleged in paragraph 26 of Part 1 of the Claim. The Plaintiffs organized no scientific processes, assisted in the procurement of equipment only to a minor extent, and were not ultimately responsible for the retainer of staff and scientists.

44. As an initial step in implementing the Project, HSRC undertook an ocean research voyage for the purpose of collecting baseline data, deploying iron into the ocean (if conditions permitted), and collecting data to determine the effectiveness of the iron deployment.

45. Scientists employed by HSRC prepared a ship for the ocean research voyage. The Plaintiffs did not make any meaningful contribution to the preparation of the ship, nor did they provide or contribute any proprietary Technology or Know How with respect to such preparation.

46. A scientist employed by HSRC developed a chemical sampling protocol and prepared a ship-based laboratory for the chemical analysis of seawater samples which were required to implement the Project. The Plaintiffs did not make any meaningful contribution to such developments or preparations, and they did not provide or contribute any proprietary Technology or Know How to HSRC or its employees with respect to such developments or preparations.

47. The development of a carbon offset methodology was spearheaded by a methodology development expert hired by HSRC for that purpose. The Plaintiffs did not provide or contribute any proprietary Technology or Know How with respect to the development of a carbon offset methodology.

48. A report on the historic/baseline plankton conditions in the area of interest near Haida Gwaii was developed by scientific and other HSRC employees, from publicly available satellite data. The Plaintiffs did not provide or contribute any proprietary Technology or Know How with respect to the development of this report.

49. The first ocean voyage commenced on July 14, 2012 and ended on August 3, 2012. Baseline data collection and the shipboard analysis of such data were performed by HSRC staff in accordance with protocols developed solely by HSRC staff. The Plaintiffs did not provide or contribute any proprietary Technology or Know How with respect to the baseline data collection or analysis, and did not take part in such collection and analysis.

50. During the ocean voyage and ship preparations, Mr. George exhibited a tendency to behave in a manner that was irrational, unprofessional and offensive to others, and engaged in certain inappropriate conduct including a physical assault upon the Project leader, which resulted in the early termination of the voyage. As a result of Mr. George's conduct, it was necessary for HSRC to take certain measures to protect the Project and the Project team, including the replacement of the aforementioned Project leader and the implementation of a communication protocol to limit communication between Mr. George and shipboard personnel.

51. A second ocean voyage commenced on August 11, 2012 and ended on September 11, 2012. The purpose of the second ocean voyage was to quantify the effects of the iron deployment. Ocean gliders were deployed by HSRC staff to collect the necessary data. The Plaintiffs had no involvement with the deployment or operation of the gliders. HSRC staff also conducted certain experiments with the objective of developing a commercially valuable software program (the "**Sonar Software**"). These experiments were planned and conducted by HSRC staff with only minor input from the Plaintiffs.

52. Following completion of second ocean voyage on September 11, 2012, HSRC staff began the process of analyzing the scientific data collected on the voyages, developing measurement and verification mechanisms for the sequestered carbon, and determining how to monetize any carbon offset credits created.

53. On multiple occasions during the Project, HSRC asked the Plaintiffs to share their unique Technology and Know How relating to carbon sequestration verification and measurement and the identification, verifications, marketing and disposition of carbon offset credits. The Plaintiffs provided no such proprietary Technology or Know How. HSRC came to understand that the Plaintiffs simply did not possess the Technology and Know How that they had previously represented to HSRC they possessed.

54. After the ocean voyages were completed, the Project and HSRC became the subject of media scrutiny. Mr. George insisted on handling HSRC's media relations, claiming to have

experience in doing so. However, Mr. George's communications with and statements to the media had the effect of generating greater negative publicity for HSRC and the Project. Mr. George also made a number of statements which were factually inaccurate, highly unprofessional and denigrating of HSRC, including using derogatory terms to refer to the Haida people. These public statements made by Mr. George, purportedly on behalf of HSRC, caused significant damage to HSRC and its reputation.

55. The directors of HSRC passed a resolution, signed by Mr. George, requiring board approval for all public relations items, advertising, news releases or public statements, and requiring that all inquiries or requests for information be referred to Mr. Disney for response. However, Mr. George disregarded this Board resolution and continued to make public statements without Board approval, including statements that were false, exaggerated, embarrassing or otherwise inappropriate. Further, Mr. George continued to respond directly to media inquiries without referring such inquiries to Mr. Disney for response, in violation of the Board's resolution.

56. Mr. George's continued contact with the media caused great damage to HSRC and its reputation at a time when HSRC was subject to intense media scrutiny. By acting in this manner, and by willfully contravening a Board resolution, Mr. George acted contrary to the best interests of HSRC.

57. On May 28, 2013, due to the numerous false, misleading or otherwise embarrassing statements publically made by Mr. George, the Board resolved to shut down HSRC's website and develop a new website to which Mr. George had no access. This process took many weeks to accomplish because Mr. George, in breach of his duties to HSRC, had taken steps to block all access to the management and content of the website by HSRC and its staff. The content of the website caused serious injury to HSRC and the Project in that it contained falsehoods and statements that were harmful and embarrassing to HSRC, OMEDC, the Council and the community of Old Massett.

Investigation of HSRC by Environment Canada

58. On March 27, 2013, Environment Canada executed a search warrant at HSRC's office premises in connection with an investigation into the Project to determine whether HSRC's deployment of iron into the ocean constituted an unauthorized "ocean disposal" under the *Canadian Environmental Protection Act*. To the knowledge of HSRC as of the date of filing of this Response, Environment Canada's investigation into the Project remains ongoing, and no report has yet been submitted to the Crown with respect to charge approval.

Cessation of HSRC's Research and Development Activities

59. As of April 2013, HSRC had been unable to secure any funding for the Project in addition to the loan from the Council. Further, HSRC had not found a buyer for any hypothetical carbon offset credits realized as a result of the Project. As a result, HSRC did not have sufficient funds to continue to conduct its research and development activities. On April 5, 2013, HSRC issued notices of termination of employment to its employees.

60. On April 9, 2013, OMEDC agreed to provide \$15,000 to HSRC to permit the continued development of the Sonar Software and an additional research project to be undertaken with Mount Allison University using fluorometry data acquired during the ocean voyages, and so that HSRC could pay its rent. The Plaintiffs agreed that OPC would match the funds provided to HSRC by OMEDC, but later repudiated this agreement and provided no funds to HSRC.

Mr. George's Conversion of Company Assets

61. On April 19, 2013, Mr. George offered to buy a 2002 Dodge Caravan, which was the property of HSRC, for \$1,100. HSRC accepted his offer, since it required money to continue to pay its bills. Mr. George took possession of the van, but failed to pay the agreed-upon sum to HSRC.

62. On or about April 19, 2013, the parties agreed that certain assets would be removed from HSRC's office for safekeeping and to permit HSRC to continue certain activities, including the development of the Sonar Software, in the event that the premises were required to be vacated for non-payment of rent. It was agreed that specific HSRC directors, officers or employees would have custody of the various assets. These specific directors, officers or employees did not include Mr. George.

63. Between April 19, 2013 and May 7, 2013 Mr. George removed the following items from HSRC's office without HSRC's consent ("**Company Assets**"):

- (a) HSRC's data server, on which were located:
 - (i) all of HSRC's accounting files including all tax reporting;
 - (ii) all records of HSRC's Board of Directors, including notes, meeting minutes, resolutions, and personal files;
 - (iii) all records of the HSRC executive, including grant applications; monthly reports, strategic files, legal files, human resource files, carbon offset methodology, negotiations and negotiation strategies; and
 - (iv) all of HSRC's data files, including all electronic scientific data files (both processed and raw), video and photography files; scientific resource files; research protocols and manuals;
- (b) Plankton samples;
- (c) One iPad;
- (d) Five laptop computers;
- (e) One desktop computer;
- (f) Two cameras;

- (g) One hard drive containing valuable video records of the ocean voyages and of HSRC's work; and
- (h) Other company records, tools and property.

64. The Company Assets were exclusively the property of HSRC. HSRC denies that OPC had any proprietary interest in the Plankton samples or other Company Assets.

65. HSRC and its counsel have repeatedly demanded that Mr. George return the Company Assets. To date, Mr. George continues to refuse to return the Company Assets to HSRC.

66. Many of the Company Assets were required by HSRC to continue operating its business and were the only available means of generating much-needed revenues for the company. By converting the Company Assets, Mr George has failed to act in the best interests of HSRC.

Repudiation and Acceptances

67. OPC has fundamentally breached and repudiated the Agreements by failing to provide the License Services and the Management Services to HSRC, as described in paragraphs 39 through 57 of this Response.

68. HSRC has accepted OPC's repudiation and has communicated its acceptance to OPC, expressly, impliedly or by its conduct, such that the Agreements are at an end and HSRC is no longer bound thereby.

69. In particular, but without limiting the foregoing, HSRC communicated its acceptance of OPC's repudiation by:

- (a) ceasing to pay OPC's fees as contemplated by the Management Agreement;
- (b) excluding or limiting the involvement of Mr. George in the Project and the operations of HSRC;
- (c) removing Mr. George as an officer of HSRC; and
- (d) removing, or purporting to remove, Mr. George as a director HSRC.

70. Further, or in the alternative:

- (a) HSRC has acted reasonably and in good faith in excluding or limiting the involvement of Mr. George in the affairs of HSRC, given his breach of the Agreements, his breaches of fiduciary duty and tortious conduct, and his unsuitability for office as described in paragraphs 36(c)-38 and 39-66 of this Response;

- (b) the Plaintiffs can have no reasonable expectation that Mr. George would remain a director, or would be permitted to participate fully in the affairs of HSRC, under the circumstances; and
- (c) subsequent to May 8, 2013, HSRC believed reasonably and in good faith that the position of Mr. George as a director had been properly terminated, and it acted upon that assumption in good faith.

Mr. George's Access to Company Records and Information

71. Pursuant to a request from Mr. George's former legal counsel, on November 28, 2013, Mr. Disney sent Mr. Millar the most current financial information then available for HSRC.

72. Further, on January 30, 2014, HSRC through its counsel provided the Plaintiffs through their counsel with further financial information and accounting records for HSRC.

Negotiations between HSRC and Blue Carbon

73. As of late 2012, HSRC was in financial trouble. HSRC lacked sufficient funds to continue its research and development activities, and was unable to secure additional funding from traditional lenders or private investors.

74. Currently, HSRC has no employees, and its liabilities exceed its assets by millions of dollars.

75. In or about October 2013, HSRC was approached by certain individuals expressing an interest in investing in the Project. Discussions ensued which led to negotiations between HSRC and the Defendant Blue Carbon Solutions, Inc. ("**Blue Carbon**") for the sale of carbon offset credits created by the Project.

76. The negotiations resulted in a proposed Carbon Offset Agreement ("**Blue Carbon Agreement**") between HSRC and Blue Carbon pursuant to which Blue Carbon would invest the funds required to develop a methodology for the verification and creation of carbon offsets, and in return, if any carbon offsets are consequently created, HSRC would sell those offsets to Blue Carbon.

77. No proprietary information belonging to OPC was disclosed or utilized by HSRC in negotiating the draft Blue Carbon Agreement, nor did the draft Blue Carbon Agreement purport to dispose of any information or other property belonging to OPC, or in which OPC has an interest. In particular, but without limiting the foregoing, the carbon offsets generated by the Project are not the property of OPC, pursuant to the License Agreement or otherwise.

78. Initially, the draft Blue Carbon Agreement provided for the sale of carbon offsets to Blue Carbon at a price of \$1.00 per offset. HSRC subsequently negotiated a higher sale price of \$1.25 per offset.

79. To the knowledge of HSRC, there is no other source of potential funding for the Project other than pursuant to a transaction such as that contemplated in the draft Blue Carbon Agreement. Funding provided to HSRC pursuant to such a transaction would permit HSRC to continue to conduct its research and development activities and potentially profit from such activities.

80. Further, the price for the carbon offsets in the draft Blue Carbon Agreement reflects the risk that would be assumed by a counterparty such as Blue Carbon in connection with a carbon offset agreement with HSRC.

81. Entering into a transaction such as the draft Blue Carbon Agreement would allow HSRC to capitalize on a significant corporate opportunity. One major goal of the Project was to create and sell carbon offsets to third party purchasers in order to recoup the costs of the Project. Had it been completed, the Blue Carbon Agreement would have secured a purchaser for the hypothetical carbon offsets created by HSRC.

82. A meeting of HSRC's board was set for January 4, 2014, with respect to the approval of the Blue Carbon Agreement. Notice of the meeting was duly provided to Mr. George on December 20, 2013, along with a copy of the proposed Blue Carbon Agreement. However, on January 3, 2014, Mr. George brought an application in this Court, without notice, seeking to enjoin the Board meeting. HSRC had no choice but to agree to postpone the vote to approve the Blue Carbon Agreement.

83. Blue Carbon has since rescinded its offer to purchase HSRC's carbon offsets due to the ongoing dispute between HSRC and the Plaintiffs.

84. Until a carbon offset transaction is entered into, HSRC has insufficient funds to continue its research and development activities, hire employees, or otherwise carry out ordinary business operations.

85. An annual general meeting of the shareholders of HSRC was held on February 20, 2014, pursuant to a consent resolution of the shareholders (including OPC) executed January 15, 2014. Mr. George attended the meeting on behalf of OPC. Corporate representatives of OMEDC also attended. As indicated in paragraph 6 above, at that meeting the Plaintiff Mr. George, the Defendants Mr. Disney and Mr. Brown, as well as Mr. Yeltatzie and Mr. Rea, were elected as the directors of HSRC.

Division 3 – Additional Facts

1. None.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant HSRC consents to the granting of the relief sought in none of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

2. The Defendant HSRC opposes the granting of the relief sought in all of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

3. The Defendant HSRC takes no position on the granting of the relief sought in none of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

Part 3: LEGAL BASIS

Mr. George's Access to Records and Information

1. Mr. George has been given access to all records and information in the possession of HSRC to which he is entitled as a director of HSRC pursuant to the *British Columbia Business Corporations Act* ("BCBCA"), including but not limited to HSRC's current financial and accounting information, the minutes of meetings of the shareholders and/or directors of HSRC, the text of any resolutions passed at such meetings, and all necessary information concerning a potential transaction that is being considered by HSRC, including a copy of the draft Blue Carbon Agreement.

2. HSRC denies that Mr. George was denied access to documents, records, accounts and other information associated with the business and corporate opportunities of HSRC which he was entitled to see and review. As described in paragraphs 71 and 72 of this Response, Mr. George was provided with access to such documents, records, accounts and other information. Moreover, much if not all of the information that Mr. George has demanded from HSRC is stored on the data server that Mr. George misappropriated as described in paragraphs 63 of this Response.

3. Further, HSRC denies that it has provided no substantive response to the Plaintiffs' demands for the delivery and review of the records and documents of HSRC. As described in paragraphs 71 and 72 of this Response, HSRC has provided substantive responses to the Plaintiffs' demands for the delivery and review of HSRC's records and documents.

OPC's Right to Appoint Directors of HSRC

4. The Shareholder Agreement is not binding on, or enforceable against, OMEDC. KLCDC did not directly or indirectly assign or otherwise transfer its shares in HSRC to OMEDC, nor has OMEDC assumed the rights and obligations of KLCDC under the Shareholder Agreement.

5. Consequently, OPC has no enforceable right to nominate for election, and elect and appoint, directors to the Board of HSRC. For the same reason, the agreement between KLCDC and OPC that the Board of Directors of HSRC shall be limited to four members is not binding or enforceable as against OMEDC or HSRC.

The License Agreement

6. The License Agreement is void, or alternatively unenforceable, or alternatively subject to rescission, on the ground that:

- (a) HSRC was induced to enter into the License Agreement by the Representations; and
 - (b) HSRC was induced to enter into the License Agreement by the failure of Mr. George, in breach of his fiduciary duty and in contravention of the *Business Corporations Act*, to make timely and adequate disclosure of his interest in the transaction.
7. Further, or in the alternative:
- (a) the Plaintiffs hold no interest, proprietary, beneficial or otherwise, in any intellectual property or other assets generated by the Project, pursuant to the License Agreement or otherwise. All information, technology, know-how or intellectual property used in, developed by, or contributed to the Project was either widely available in the public domain or contributed or developed by persons other than the Plaintiffs;
 - (b) HSRC denies that any management or other fee or payment was required pursuant to the License Agreement, as alleged in the Amended Notice of Civil Claim, and denies that it breached the License Agreement by failing to pay any amount.
8. In the further alternative, OPC fundamentally breached the License Agreement by failing to provide the License Services, and HSRC lawfully terminated the Contract following the Defendant's fundamental breach of the License Agreement.

Breach of Fiduciary Duty/Appropriation of Corporate Opportunity

9. The opportunities generated by the Project are corporate opportunities belonging to HSRC alone. OPC has no interest, claim or right in respect of such opportunities, as shareholder or otherwise.
10. HSRC owes no fiduciary duty to OPC, as a shareholder of HSRC, or to Mr. George, as a director. At all material times, the fiduciary duties of the Director Defendants were owed exclusively to HSRC.
11. The Plaintiffs do not have standing, without leave of the Court, to prosecute an action in respect of an appropriation of corporate opportunity or other breach of the duties owed by the Director Defendants to HSRC. Further, HSRC denies that the duties owed to it by the Director Defendants were breached.

Oppression and Unfair Prejudice

12. Mr. George is not a shareholder within the meaning of s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 and as such:
- (a) Mr. George has no standing to bring a claim against the Defendants based on oppression; and

- (b) conduct which is oppressive of Mr. George personally is not a proper ground for relief based on oppression.

13. HSRC denies that the affairs of HSRC have been conducted, or that the powers of the Director Defendants have been exercised, in a manner that has breached the reasonable expectations of OPC.

14. Alternatively, if the reasonable expectations of OPC have been breached by HSRC or the Director Defendants, then HSRC denies that such expectations have been breached in a manner that is oppressive of, or unfairly prejudicial to, OPC.

Damages and Mitigation

15. If HSRC has breached any obligation to the Plaintiffs, or either of them, then:

- (a) HSRC denies that the Plaintiffs have suffered any damages, injury or loss caused by such breach; or
- (b) in the alternative, the Plaintiffs have failed to act reasonably so as to mitigate their damages.

Costs

16. HSRC seeks an order that the Plaintiffs' action be dismissed with costs payable to HSRC.

COUNTERCLAIM

Filed by: The Defendant Haida Salmon Restoration Corporation ("HSRC")

To: The Plaintiffs, Ocean Pastures Corporation and Russ George

This action has been brought by the Plaintiffs against the Defendants for the relief set out in the Amended Notice of Civil Claim filed in this action

TAKE NOTICE that the Defendant HSRC claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this Counterclaim, or if you have a set-off or Counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a Response to Counterclaim in Form 4 in the above-named registry of this Court within the time for Response to Counterclaim described below and SERVE a copy of the filed Response to Counterclaim on the address for service of the Defendants bringing this Counterclaim.

YOU OR YOUR LAWYER may file the Response to Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Counterclaim within the time for Response to Counterclaim described below.

Time for Response to Counterclaim

A Response to Counterclaim must be filed and served on the Defendants bringing this Counterclaim,

- (a) if you were served with the Counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Counterclaim has been set by order of the Court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. HSRC repeats the facts stated in Part 1, Divisions 2 and 3 of HSRC's Response to Civil Claim ("**Response**"). Capitalized terms referenced herein are defined in the Response.

Part 2: RELIEF SOUGHT

1. HSRC claims against the Plaintiff OPC for:
 - (a) rescission of the Agreements; and/or
 - (b) a declaration that the Agreements are void *ab initio*.
2. In the alternative, HSRC claims against the Plaintiff OPC for:
 - (a) a declaration that neither OMEDC nor HSRC is bound by the Shareholder Agreement, and that the Shareholder is not enforceable by OPC as against any person;
 - (b) a declaration that HSRC has properly terminated, or alternatively is entitled to terminate, the License Agreement; and

- (c) general and special damages for misrepresentation and breach of the License Agreement.
3. HSRC further claims against the Plaintiff OPC for general damages for knowing assistance in Mr. George's breach of fiduciary duty and conversion of the Company Assets.
4. HSRC claims against the Plaintiff Russ George for:
- (a) general and special damages for breach of fiduciary duty, misrepresentation and inducing OPC's breach of contract;
 - (b) restitution of the Company Assets converted by Mr. George, or alternatively their monetary equivalent; and
 - (c) damages for conversion.
5. HSRC further claims against both Plaintiffs for:
- (a) Costs;
 - (b) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended; and
 - (c) Such further and other relief as this Honourable Court may deem just or necessary.

Part 3: LEGAL BASIS

Rescission

6. The Representations were representations of fact and were false.
7. The Plaintiffs made the Representations with the intention that they be relied upon by HSRC.
8. HSRC was induced by the Representations to enter into the Agreements.
9. HSRC has acted promptly to disaffirm the Agreements, no third party rights have intervened and the parties are capable of being restored substantially to their positions prior to the Agreements.

Damages for Misrepresentation

10. The Plaintiffs owed a duty of care to HSRC with respect to the Representations.
11. The Representations were representations of fact and were false.

12. The Plaintiffs made the Representations knowing that they were false or, in the alternative, made the Representations negligently.

13. The Plaintiffs made the Representations with the intention that they be relied upon by HSRC.

14. HSRC reasonably relied upon the Representations in entering into the Agreements and otherwise acting to its detriment.

15. As a result of HSRC's reliance upon the Representations, HSRC has suffered loss and damage.

Breach of Contract

16. Pursuant to the License Agreement, OPC was obligated to provide the License Services to HSRC.

17. OPC has breached the License Agreement by failing or refusing to provide the License Services and is liable pursuant to the same.

18. As a result of OPC's breach of the License Agreement, HSRC has suffered loss and damage.

Inducing Breach of Contract

19. Mr. George, as OPC's sole director and controlling mind, personally directed, caused, and induced OPC to breach the License Agreement.

20. In inducing OPC to breach the License Agreement, Mr. George has committed the tort of inducing breach of contract and, as a result, HSRC has suffered loss and damage. Mr. George is liable to HSRC for the resulting damages, including but not limited to the loss of the benefit of the License Agreement and the loss of business opportunities HSRC would otherwise have received.

Breach of Fiduciary Duty

21. As a director of HSRC, Russ George owes a fiduciary duty to HSRC.

22. Russ George has breached his fiduciary duty to HSRC as described in the Response.

23. As a result of Russ George's breaches of his fiduciary duty, HSRC has suffered and continues to suffer loss and damage.

Knowing Assistance

24. As a result of participating with and assisting Mr. George in his breach of fiduciary duty, with actual knowledge that Mr. George's conduct was in breach of fiduciary duty, OPC is jointly

and severally liable with Mr. George for the loss suffered by HSRC, and is liable to account for the benefits received, based on the doctrine of knowing assistance.

Conversion

25. By taking control of the Company Assets, Mr. George wrongfully interfered with the property of HSRC in a manner that is inconsistent with the rights of HSRC.

26. Mr. George intended to control the Company Assets in a manner that is inconsistent with the rights of HSRC.

27. Mr. George has refused to deliver the Company Assets to HSRC following a demand for possession by HSRC.

Interest

28. HSRC is entitled to interest pursuant to the *Court Order Interest Act*.

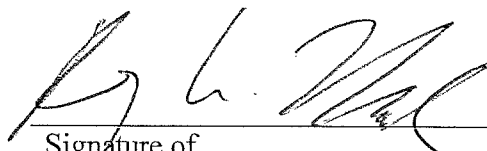
HSRC's address for service: Blake, Cassels & Graydon LLP
Barristers and Solicitors
Suite 2600, Three Bentall Centre
595 Burrard Street, PO Box 49314
Vancouver, BC V7X 1L3
Attention: Roy Millen

Fax number address for service (if any): 604-631-3309

Email address for service (if any): N/A

The address of the registry is: 800 Smithe Street, Vancouver BC

Date: February 24, 2014



Signature of
☐ Defendant ☒ lawyer for filing party
Roy Millen

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (a) serve the list on all parties of record.