

PROPOSED AMENDED AMENDED STATEMENT OF CLAIM

Court File No. 00-CV-193186

ONTARIO**SUPERIOR COURT OF JUSTICE****BETWEEN:**

**MILOS MARKOVIC, NATASA MARKOVIC
and 1145959 ONTARIO LIMITED carrying on business
as MAESTRO PIZZA PLUS**

Plaintiff(s)**-and-**

**MIKE ABBOTT, ROBERT CORREA, DANIEL ROSS,
CHRIS HIGGINS, ANITA MANCUSO, DARREN COX, MARK DENTON,
PEDRO DIAZ, JOHN MACIEK, THE TORONTO POLICE SERVICES BOARD,
DAVID BOOTHBY, CHIEF OF POLICE OF THE TORONTO POLICE SERVICE and
THE TORONTO POLICE SERVICE**

Defendant(s)**AMENDED STATEMENT OF CLAIM**Notice of action issued on *(June 30, 2000)***CLAIM**

1. The plaintiffs' claim is for:
 - (a) damages in the amount of \$250,000.00, or such other amount as may be proven at trial, for conversion, fraud, negligence and breach of fiduciary duty in connection with the misappropriation by the Defendants, or any of them, of

certain monies belonging to the Plaintiffs or any of them at their residence, place of business and from their bank safety deposit boxes;

(b) damages in the amount of \$500,000.00, or such other amount as may be proven at trial and this Honourable Court deems just from the Defendants or any of them, for intimidation, assault and battery causing physical injury and emotional anguish and mental distress, and for infringement of the *Canadian Charter of Rights and Freedoms*;

(c) damages in the amount of \$100,000.00 or such other amount as may be proven at trial for loss of business and injury to reputation;

(d) punitive, exemplary and aggravated damages in the amount of \$500,000.00 or such other amount as, in its discretion, this Honourable Court deems just;

(e) pre-judgement and post-judgement interest, as applicable, pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;

(f) their costs of this action on a solicitor and client scale;

(g) such further and other relief as the Plaintiffs may request and this Honourable Court deems just;

2. The Plaintiffs, Milos and Natasha Markovic ("Milos" and "Natasha") are spouses residing in Richmond Hill, in the Province of Ontario;

3. The Plaintiff, 1145959 Ontario Limited, carrying on business as Maestro Pizza Plus ("Maestro"), is a corporation incorporated pursuant to the laws of the Province of Ontario whose principal and directing mind is Milos.

4. The individual Defendants are police officers who are members of The Toronto Police Service and who, at all material times, worked in conjunction, association or co-operation with or under the supervision of Central Field Command.
5. The Defendant, The Toronto Police Services Board is a civilian board that oversees and is responsible for the Toronto Police Service. The Toronto Police Services Board oversees the provision of police services, including law enforcement in the City of Toronto.
6. The Defendant, The Toronto Police Services, oversees, trains, supervises and directs the individual defendants.
7. The Defendant, David Boothby, was at all material times the Chief of Police of the Toronto Police Service, which trains, oversees and supervises the individual defendants.
8. At or about 7:30 p.m. on October 28, 1999, officers from Central Field Command executed search warrants at Maestro at 896 Wilson Ave in the City of Toronto, and the Markovic residence at 41 Kitsilano Crescent in the Town on Richmond Hill.
9. Natasha and Mila, her six year old daughter, were at the residence when police arrived to execute the search warrant.
10. Officer's Anita Mancuso ("Mancuso"), Darren Cox ("Cox"), Mark Denton ("Denton"), Pedro Diaz (Diaz), Mark Walsh ("Walsh"), Robert Correa ("Correa"), Daniel Ross ("Ross") and Mike Abbott ("Abbott") entered the residence.
11. Mancuso and other individual defendants seized bank documents and a safety deposit key from Natasha's purse. Mancuso also seized cash from Natasha's wallet. At the time, the wallet contained CDN \$330.00 and US \$500. Only the CDN \$330.00 was subsequently accounted for by police.

12. Officers Denton and Diaz and other individual defendants searched the basement area and located safety box keys, along with boxes of books and other items.

13. Officers Cox and Diaz and other individual defendants searched the residence and seized jewellery and a very large volume of personal and financial documents and records, including various bank records, mortgage papers, receipts, calendars, income tax returns, business records, employment records and financial statements, some of which dated back to the late 1980s and early 1990s.

14. Included in the documents seized were meticulous records of the amounts of money stored in two safety deposit boxes. The Plaintiff's records indicated that \$100,000.00 was in a safety deposit box at the Toronto Dominion Bank and \$261,000.00 Canadian and some foreign currency, including Milos's unique foreign currency collection, was in a safety deposit box at the Royal Bank of Canada. The documents particularized the dates of deposits and the specific denominations of the currency deposited. These documents have never been accounted for by police.

15. During the course of the search in the basement, Natasha retrieved a box containing \$35,000.00 and placed it under blankets on a chair.

16. Natasha was subsequently arrested and taken to 53 Division at approximately 10:30 p.m..

17. The purpose of the search and arrest was never explained to Natasha. She was never given her rights as guaranteed by the *Canadian Charter of Rights and Freedoms* ("Charter")

18. Upon being released from jail two days later and returning to her residence Natasha found the box that had contained the \$35,000.00 empty. This money has never been accounted for by police.

19. Natasha also discovered various personal effects were missing, including expensive designer clothing and a \$1,500.00 bottle of "Louis XIII Cognac". These items have never been accounted for by police.

20. At or about 7:30 p.m. a group of police officers, including Chris Higgins ("Higgins") And John Maciek ("Maciek"), with guns drawn, entered Milos's place of business, Maestro.

21. At the time, Milos was in a storage area of the establishment getting change. When police entered the basement Milos believed he was being robbed. He did not know that the individuals entering the establishment were police officers. He immediately handed over his cash box and placed his hands in the air.

22. The police officers immediately proceeded to tackle, kick, punch and slap him. Some time later, Milos was informed that he was being arrested. The force used to arrest him was excessive, unnecessary, unreasonable and abusive. In the course of executing the search warrants, Milos was assaulted and battered by certain individual Defendants and badly injured. At no time did Milos ever resist arrest.

23. After numerous blows to the head, Milos lapsed in and out of consciousness.

24. The Defendants conducted a search of one of Milos's storage areas from which \$1,000.00 cash was taken and has never been accounted for by police.

25. After approximately two hours of being beaten, Milos was arrested and taken to 53 Division.

26. Upon arriving at 53 Division, officers were instructed to immediately take Milos to Sunnybrook Hospital as he was obviously in very poor physical condition as a result of the physical abuse that he had sustained at the hands of the defendants. He was then taken to Sunnybrook Hospital.

27. At Sunnybrook Hospital, Milos underwent a series of tests, including a CT scan. He received stitches to his head and was kept under observation over night due to his head injuries.
28. Milos asked to be permitted to make a telephone call. This request was denied contrary to his rights guaranteed by the *Charter*.
29. On October 29th, 1999 at or about 11:05 a.m. Abbott and Ross attended the Royal Bank of Canada at 8165 Yong Street, in Thornhill to execute search warrants on Natasha's safety deposit box.
30. A total of \$261,000.00 and an amount of foreign currency was in the safety deposit box. The entire contents were removed by Abbott.
31. At or about 11:53 a.m., October 29, 1999, Correa accompanied Abbott and Ross for the execution of the search warrant at the Toronto Dominion Bank located at 9350 Yong Street, Richmond Hill.
32. There was \$100,000.00 in this safety deposit box. All of the contents of the box were emptied by Correa.
33. On or about November 2, 1999, Abbott, Ross and Correa prepared reports on the contents of the safety deposit boxes. With respect to the contents at the Royal Bank, they reported the contents as follows:

a)	\$127,000.00	Canadian
b)	\$20.00	United States
c)	120	Pesos
d)	10	Gulden
e)	10,000	Banco Central Uruguay

34. With respect to the contents at the Toronto Dominion Bank, they reported that there were 500 one hundred dollar bills (Canadian) totalling \$50,000.00.

35. Therefore the Defendants have failed to account for the full \$361,000.00 and all of the foreign currency.

36. It was only in the course of other legal proceedings, sometime between mid-February 2000 and March 2000, that the discrepancy between what the Defendants claimed to remove from the aforementioned premises and safety deposit boxes, and what they actually took became known to the Plaintiffs.

37. At or about 7:30 p.m. on September 25, 2000 members of Central Field Command, including Higgins, again entered Milos' place of business, Maestro.

38. Milos, as well as the customers and staff in the store were immediately handcuffed. His request to phone his lawyer was denied contrary to his rights guaranteed by the Charter at that time.

39. The Defendants conducted a search of Maestro and in the process destroyed and damaged property of the business such as kitchenware.

40. The defendants removed \$160.00 Milos had in his pocket to purchase inventory for the store.

41. Milos was subsequently stripped and searched.

42. Milos was arrested and taken to 53 Division. It was only at the police station that Milos was informed of the charges against him.

43. Milos was incarcerated from September 25, 2000 to October 2, 2000.

44. In the course of the execution of the search warrants, the individual Defendants intimidated the individual Plaintiffs and abused and ignored their *Charter* rights (including ss. 7, 8, 9 and 10) and caused them extreme anxiety, mental anguish and distress.

45. As a result of the aforementioned actions of the Defendants, the Plaintiffs, and in particular, the corporate Plaintiff, suffered considerable loss of business and injury to reputation the particulars of which will be provided at or prior to trial.

45A. The Defendant, The Toronto Police Services Board is liable for aggravated and punitive damages in respect of the manner in which it investigated the individual Defendants' misconduct after October 2000. Between October 2000 and XXXX 2006, the Toronto Police Services Board either directly or through its employees and agents initiated three investigations of the individual Defendants' misconduct in relation to the Plaintiffs. These investigations were conducted with gross negligence and/or in bad faith. Without limiting the generality of the foregoing, the deficiencies in the investigations are as follows:

- (a) civilian witnesses to the individual Defendants' misconduct were not interviewed promptly, or at all;
- (b) employees of the defendant Toronto Police Services Board who were witness officers were not interviewed promptly, or at all;
- (c) there was a lack of continuity with respect to the investigators assigned to investigation of the individual Defendants;
- (d) the defendant Toronto Police Services Board failed to allocate sufficient resources to fully and competently investigate the individual Defendants;
- (e) the financial background and affairs of the individual Defendants were not investigated;
- (f) strikingly similar allegations of misconduct on the part of the individual Defendants against other members of the public were not adequately investigated;
- (g) the investigators failed to consider the impact of the pattern of misconduct on the part of the individual Defendants in determining whether there were adequate grounds to substantiate the Plaintiffs' allegations;

- (h) the investigators failed to offer adequate protections to the Plaintiffs and other members of the public to facilitate their cooperation in the investigations.
- (i) the investigators issued false and misleading reports suggesting, *inter alia*, that the investigations were terminated because of a lack of cooperation from the Plaintiffs; and,
- (j) the investigators issued false and misleading reports suggesting, *inter alia*, that there was insufficient evidence to commence criminal proceedings against the individual Defendants, in circumstances in which they honestly believed on reasonable grounds that the individual Defendants had committed criminal misconduct in relation to the Plaintiffs.

45B. The Toronto Police Services Board, through its employees and/or agents, solicited the cooperation of the Plaintiffs in the investigations based on the promise, express or implied, that the investigations would be conducted in a competent and unbiased fashion, regardless of how the results of the investigation would portray the Toronto Police Service. The Plaintiffs cooperated in these investigation based on this implied or express promise. In proceeding in the fashion as described above, this Defendant's employees and/or agents failed to reach truthful and objective conclusions regarding the misconduct of the individual Defendants, and indeed deliberately misrepresented the truth with respect to their misconduct.

45C. The Toronto Police Services Board and its employees and/or agents involved in the investigations knew or ought to have known that all of the Plaintiffs herein represent victims whose trust in enforcement authorities is extremely fragile and tentative. In proceeding with the investigations as outlined above, this Defendant has completely betrayed any trust the Plaintiffs could hope to have in enforcement authorities. All of the aforesaid conduct respecting the investigations represents misconduct by members of the Toronto Police Service for whose misconduct the Board is vicariously liable.

45D. Without limiting the generality of the foregoing, the Plaintiffs state that conduct of the investigations of the individual Defendants by the employees and agents of the Toronto Police Services Board, as plead aforesaid, represents bad faith by members of the Toronto Police

Service for which this Defendant is at law responsible. The plaintiffs are thus entitled to aggravated and punitive damages.

46. The Defendant, The Toronto Police Services Board is liable under statute and at law for the actions, omissions of and injuries and losses caused by the individual Defendants.

47. The Defendant, The Toronto Police Service, is liable for the wrongful actions of its members, including those of the individual Defendants.

48. The Defendant, David Boothby is liable, in his capacity as Chief of Police at all material times, for the wrongful actions of the other individual defendants to the extent that such actions resulted from any failure to adequately train, supervise, oversee, monitor, instruct or discipline those individual Defendants. This Defendant was negligent in his supervision of the individual Defendants, the particulars of which, without limiting the generality of the foregoing are as follows:

(a) this Defendant failed to administer any form of auditing procedure to properly account for seizures of monies and valuable made by specialized drug enforcement units of which the individual Defendants were members;

(b) this Defendant failed to implement and ensure compliance with appropriate policies and procedures for the seizure of monies and valuables by specialized drug enforcement units;

(c) this Defendant failed to ensure that members of specialized drug enforcement units, including the individual Defendants, were properly supervised by senior officers;

(d) this Defendant was aware, or ought to have been aware, that the individual Defendants had engaged in similar misconduct in relation to seizures of monies and valuables from other individuals who were the subject of investigations;

(e) this Defendant was aware or ought to have been aware that specialized drug enforcement units were susceptible to corruption, theft, and other forms of misconduct but failed to implement adequate procedures, policies and auditing mechanisms to identify and/or prevent wrongdoing;

(f) this Defendant knew or ought to have known that a specialized drug enforcement unit led by Detective John Shertzer (the Shertzer team) was engaged in course of conduct including theft, assault, and obstruction of justice, and that there was a close working relationship between the Shertzer team and the individual Defendants;

(g) this Defendant knew or ought to have known that the individual Defendants had breached applicable policies and procedures concerning the seizure of monies and valuables, but failed to take steps to institute discipline or otherwise investigate the misconduct; and,

(h) this Defendant was aware that the individual Defendants were unsuitable to perform the duties of police officers.

48A. The Plaintiffs state that the injuries and losses suffered as pleaded aforesaid were caused by the negligence of the Defendant Boothby, and that this Defendant knew or ought to have known that such damages would be the result of his negligence.

49. The Plaintiffs plead and rely upon the provisions of the following statutes, as amended:

Police Services Act, R.S.O. 1990, c. P.15;

Canadian Charter of Rights and Freedoms, ss. 7, 8, 9, 10 and 24;

Negligence Act, R.S.O. 1990, c. N.1;

Courts of Justice Act, R.S.O. 1990, c.C.43

50. The plaintiffs propose that this action be tried in the City of Toronto.

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