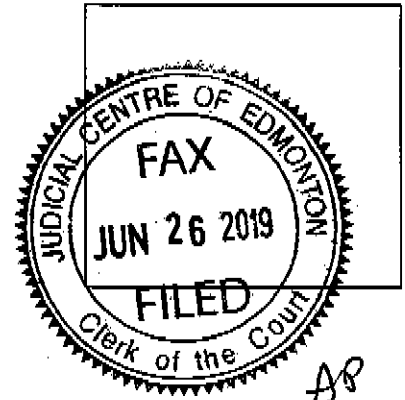


Clerk's stamp

**FORM 10
[RULE 3.25]**



COURT FILE NUMBER 1903.13250

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

PLAINTIFF NORMAN KLASSEN

Invoice No. 005271

DEFENDANT CANADIAN NATIONAL RAILWAY COMPANY

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

BRANCH MACMASTER LLP
Barristers
1410 - 777 Hornby Street
Vancouver, British Columbia V6Z 1S4

Luciana P. Brasil
Avichay Sharon
Trevor Siemens
Phone: 604-654-2999
Fax: 604-684-3429
File: X01-058

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP
Barristers
800, 304 - 8 Avenue SW
Calgary, Alberta T2P 1C2

Kajal Ervin
Sean Carrie
Gavin Price
Phone: 403 571 1520
Fax: 403 571 1528
File: 14499.001

NOTICE TO DEFENDANT

You are being sued. You are a defendant.
Go to the end of this document to see what you
can do and when you must do it.

Statement of facts relied on:

The Parties

1. The Plaintiff, Norman Klassen, is an individual resident in the County of Parkland (“Parkland”), in the province of Alberta. Mr. Klassen makes this claim on his own behalf and on behalf of Class Members, pursuant to the *Class Proceedings Act, SA 2003, c C-16.5*, as amended (the “CPA”).
2. The Defendant, Canadian National Railway Company (“CNR”), is a corporation duly incorporated pursuant to the laws of Alberta as a Federal Corporation, with headquarters at 935 de La Gauchetière Street West, Montreal, Quebec.

Overview

3. This claim is brought by the Plaintiff, Norman Klassen, who, along with all of the Class Members, as defined below, have suffered a substantial and unreasonable interference with the enjoyment and/or use of properties on which they reside due to the Defendant’s use of audible train whistles at designated public grade crossings in Parkland from September 2017 to present (the “Action”).
4. CNR is a federally regulated national transportation network company, and operates a transcontinental railway in Canada (the “Railway”).
5. The Railway passes through cities, towns, municipalities, and villages. Transport Canada estimates that there are nearly 14,000 public grade crossings along more than 40,000 kilometers of federally regulated railway track in Canada. Transport Canada identifies a grade crossing as an intersection where a road, sidewalk, path or trail crosses railway tracks at the same level. A crossing is deemed public if the railway track intersects with a road that is owned, open and maintained by a public authority, such as a province, municipality or band council, and is used by the public (“public grade crossing”).
6. Pursuant to federal Regulations the Defendant is obligated to conduct periodic testing and assessments of all public grade crossings, including a detailed safety assessment every five years.
7. Where the Railway crosses a public grade crossing, the federal *Canadian Rail Operating Rules* (“CROR”) requires all trains to sound a train whistle. The rule applies 24 hours a day and the whistle must be sounded even if a crossing has lights, bells and crossing arms. The train whistle must begin at least a quarter mile before each crossing, and is sounded in a sequence of 2 long – 1 short – 1 long distinct whistles. The sequence may be repeated according to the speed of the movement, with the last long whistle held until the crossing is fully occupied by the train. In areas where there are crossings in close proximity, the whistle must still be sounded at each crossing.

8. The train whistle volume is similarly regulated by the federal government and does not change depending on the time of day or neighbourhood characteristics of a given crossing.
9. There are 12 public grade crossings in Parkland.
 - (a) Range Road 13 (“Crossing 1”);
 - (b) Range Road 14 (“Crossing 2”);
 - (c) Range Road 15 (“Crossing 3”);
 - (d) Range Road 20 (“Crossing 4”);
 - (e) Range Road 21 (“Crossing 5”);
 - (f) Range Road 22 (“Crossing 6”);
 - (g) Range Road 25 (“Crossing 7”);
 - (h) Range Road 32 (“Crossing 8”);
 - (i) Range Road 40 (“Crossing 9”);
 - (j) Range Road 262 (“Crossing 10”);
 - (k) Range Road 265 (“Crossing 11”); and
 - (l) Range Road 271 (“Crossing 12”);

(collectively, the “Crossings”).
10. Since 2018 the Defendant’s trains operate in two directions along the railway corridor to accommodate increased train activity in recent years. Due to the addition of the second track there has been a significant increase of noise pollution caused by the train whistles. Dozens of trains travel along the railway corridor and Crossings each day, at all hours of the day and night. At times trains travelling in both directions approach the same public grade crossing at or nearly the same time, thereby prolonging the noise pollution caused by the train whistles.
11. On December 31, 2002, in recognition of the impact of the train whistles on surrounding municipalities, the federal government created a procedure for transitioning to whistle cessation at designated public grade crossings.

12. In creating a procedure to transition to whistle cessation, the federal government created an alternative to audible train whistles which ensures public safety while minimizing noise pollution associated with the use of train whistles.
13. In order to cease the use of train whistles, a municipality is required to follow Transport Canada's eight step procedure for obtaining and maintaining whistle cessation (the "Whistle Cessation Procedure").
14. The Whistle Cessation Procedure incorporates the applicable sections and appendices from the *Railway Safety Act*, *Grade Crossing Regulations*, and *Grade Crossings Standards*.
15. In brief, the Whistle Cessation Procedure (described in more detail below) outlines that a municipality must: consult with the railway company to assess the feasibility of the request; provide notice to the public and other interested parties of its intent to switch to non-audible train signals at the designated crossings; and pass a resolution requesting that the rail operator cease the use of the train whistle.
16. The Whistle Cessation Procedure is a joint initiative which aims to promote collaboration between the railway company and municipality to ensure crossings remain safe, while minimizing unnecessary noise pollution caused by train whistles. Lacking cooperation, the Whistle Cessation Procedure can become an ineffective, drawn out process.
17. In late 2016, Parkland consulted Transport Canada regarding the Whistle Cessation Procedure. Transport Canada advised Parkland of the requirement to follow the eight step process. Transport Canada further advised that the eight steps did not need to be followed sequentially.
18. In or about January 2017, Parkland passed the first reading of the whistle cessation bylaw which prohibits the use of the train whistle at the Crossings (the "Bylaw").
19. In or about the Spring or Summer of 2017, Transport Canada's regional engineering manager, Bruce Kavanagh ("Engineer Kavanagh"), informed Parkland that, by default, a crossing that is equipped with lights, gates, and bells meets the requirement of s. 23.1(1)(a) of the *Railway Safety Act*. Mr. Kavanagh further noted that Parkland was still required to satisfy s. 23.1(1)(b): passing a resolution declaring train whistles are prohibited at the Crossings.
20. In or about July 2017, Parkland informed 25 interested organizations, including the Defendant, that on August 22, 2017 Parkland would hold a meeting to entertain the second and third reading of the Bylaw. At or about this time, Parkland also provided public notice of its intent to pass the Bylaw through advertisement in the local paper, the County-wide newsletter, and the Parkland internet website.

21. On August 22, 2017, the Parkland council passed the second and third reading of Bylaw 2016-27, Being a Bylaw to Provide for the Regulation of Train Whistles Within Parkland County, in the Province of Alberta.
22. On August 30, 2017, Parkland notified the Defendant of the passing of the Bylaw and completion of the requisite steps pursuant to s. 23.1(1) of the *Railway Safety Act* and s. 104 of the *Grade Crossings Regulations*.
23. In or about September 2017, Parkland engaged in discussions with the Defendant and Transport Canada regarding the Defendant's obligation to refrain from using train whistles pursuant to s. 23.1 of the *Railway Safety Act* and inform Transport Canada of its intent to cease blowing the train whistle as required by *Canadian Rail Operating Rules* ("CROR") No 14.
24. Contrary to its statutory obligations to s. 23.1(1) of the *Railway Safety Act* and s. 104 of the *Grade Crossings Regulations* and the eight step process established by the Ministry of Transport, the Defendant did not cooperate with Parkland. The Defendant was non responsive and uncooperative in the process leading up to, and after, the passing of the Bylaw. Further, the Defendant knowingly misled Parkland and the Ministry of Transport when it claimed it did not have the requisite crossing studies to determine whether the Crossings met the safety requirements for whistle cessation. The Defendant knew or ought to have known that it had in its possession material safety assessments pursuant to its obligations under the *Grade Crossing Regulations* and associated Standards and federal guidelines.
25. In or about October 2017, more than a month after Parkland provided notice of the passing of the Bylaw, the Defendant informed Parkland that it would not entertain whistle cessation without a crossing safety assessment or a letter from Transport Canada stating the Crossings met the requirements of the *Grade Crossing Regulations* and associated Standards.
26. The Defendant made false statements to Parkland and the Ministry of Transportation by asserting it did not have crossing studies in relation to the Crossings despite the fact that such studies were in its possession.
27. Due to the Defendant's non-compliance with its statutory obligations, Parkland was forced to pursue step 5A of the eight step process and requested that the Ministry of Transportation make a final decision regarding whistle cessation.
28. It was later discovered that at the time the Defendant claimed it did not have the requisite crossing studies it was in fact in the possession of crossing studies as required by the *Grade Crossing Regulations* and associated Standards. The Defendant knowingly concealed the material crossing studies for many months, thereby unnecessarily prolonging the process of whistle cessation.

29. Upon review of the studies obtained from the Defendant's offices, Transport Canada determined Crossings 1 – 5, complied with the requirements for whistle cessation. As such, on April 17, 2018, Transportation Canada ordered the Defendant to cease using the train whistle at Crossings 1 – 5 by May 1, 2018. The Defendant complied with that order on May 1, 2018.
30. Given that the Defendant had the required crossing studies, the Defendant ought to have ceased the use of the train whistle at Crossings 1 – 5 shortly after being notified of the passing of the Bylaw on August 30, 2017. Thus, for the period of September 2017 through May 1, 2018, the Defendant was unlawfully using the train whistles at Crossings 1 – 5.
31. Further, on the basis of the reports obtained by Transportation Canada, Parkland was notified that Crossings 6, 7 and 12 required minor upgrades to satisfy the Whistle Cessation Process. Said upgrades were completed on or about the summer of 2018. However, to this day the Defendant has still failed to comply with its statutory obligations under section 23.1 of the *Railway Safety Act* and has not ceased whistle cessation at these three crossings.
32. Further, from the period of September 2017 to present, the Defendant has and continues to frustrate Parkland's ability to satisfy the Whistle Cessation Process at Crossings 8 – 11. Beyond concealing the crossing studies, the Defendant has failed to make the necessary upgrades to the crossings, to the extent any are required, nor has it cooperated with Parkland in order to ensure the necessary upgrades are made to the crossings that the Defendant owns and operates.

The Class Members

33. This claim is brought by the Plaintiff, who seeks Court approval to advance this Action as a class action on behalf of the proposed Class Members, being all persons who have lived within 1.75 miles from each of the Crossings from September 30, 2017 onwards ("**Class Members**" or "**Proposed Class Members**").

The Plaintiff's Experience

34. The Plaintiff, Mr. Klassen, resides at #5-2311 Township Road 530, Parkland County, Alberta (the "Klassen Property"). The Klassen Property is within 1.5 miles from Crossing 5.
35. The Defendant's failure to meet its statutory and common law obligations has resulted in a substantial and unreasonable interference of Mr. Klassen's right to the use and enjoyment of the Klassen Property.

36. Further, the Defendant's failure to cooperate with, or at minimum to refrain from actively frustrating Parkland in its effort to achieve whistle cessation at the Crossings has delayed whistle cessation at the Crossings.
37. Specifically, the Defendant's uncooperative behaviour as well as its active concealment of material crossing studies has delayed the implementation of the Bylaw as follows:
 - (a) for Crossings 1 – 5, whistle cessation was delayed from notice of the passing of the Bylaw on August 30, 2017 until May 1, 2018;
 - (b) for Crossings 6, 7 and 12 had the Defendant cooperated with Parkland, as is contemplated by the Whistle Cessation Procedure, Parkland would have had knowledge of the required upgrades at an earlier date. Further, even following the completion of upgrades by the Defendant in the summer of 2018 the Defendant continues to use the train whistles; and,
 - (c) at Crossings 8 – 11, whistle cessation continues to be delayed, in part, due to the Defendant's lack of cooperation and failure to ensure the crossings would meet the requirements in order to achieve whistle cessation.
38. The severity of the noise pollution caused by the Defendant has and continues to have a detrimental impact on Mr. Klassen and other Class Members' ability to enjoy the use of the property on which they reside. The noise pollution caused by the train whistles causes ongoing disturbance to natural sleep routines. This in turn has and continues to cause members of the Class physical injury as well as mental distress.
39. Further, due to the noise pollution caused by the train whistles Class Members cannot fully enjoy their yards, and must constantly pause during conversations. Family members and friends refrain from visiting Class members at their homes, especially overnight, due to the noise pollution caused by the train whistles. Overall, the noise pollution caused by train whistles has forced members of the Class to alter their normal lifestyles and has diminished their enjoyment of their homes, especially since the summer of 2018 when Class Members experienced a significant increase in train activity.
40. But for the actions and omissions of the Defendant the injuries to the Class Members caused or exacerbated by the noise pollution would have been avoided or reduced at an earlier date.

Breaches of Statutory Obligations

Railway Safety Act

41. Under section 3 of the *Railway Safety Act* (RSC 1985) c 32, 4th Supp. (the "Act"), the Defendant has an obligation to:

- (a) promote and provide for the safety and security of the public and personnel, and the protection of property and the environment, in railway operations;
 - (b) encourage the collaboration and participation of interested parties in improving railway safety and security;
 - (c) recognize the responsibility of companies to demonstrate, by using safety management systems and other means at their disposal, that they continuously manage risks related to safety matters; and
 - (d) facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety and security.
42. Contrary to its statutory obligations, the Defendant actively discouraged collaboration with Parkland. By refusing to cooperate with Parkland as well as concealing material information from Parkland and Transport Canada the Defendant has actively undermined and delayed the process of whistle cessation.
43. Section 23.1(1) of the *Act* states that no person “shall use the whistle on any railway equipment in an area within a municipality if:
- (a) the area meets the requirements prescribed for the purposes of this section; and
 - (b) the government of the municipality by resolution declares that it agrees that such whistles should not be used in that area and has, before passing the resolution,
 - i. consulted the railway company that operates the relevant line of railway,
 - ii. notified each relevant association or organization, and
 - iii. given public notice of its intention to pass the resolution.”
44. The Defendant has breached its duties under section 23.1 by failing to refrain from using train whistles at Crossings 1-5 and 6, 7 and 11.

The Grade Crossing Regulations and Standards

45. Section 104 of the *Grade Crossing Regulations and Standards* outline the prescribed requirements of s. 23.1(1)(a). The *Grade Crossing Regulations* are incorporated and reflected in the eight step Whistle Cessation Procedure.
46. In 2017 the Ministry of Transport amalgamated the *Railway Safety Act* and the *Grade Crossing Regulations and Standards* and established a seven step process for whistle

cessation and an eighth step post whistle cessation in order to ensure safety requirements are maintained as described below.

The Eight Step Procedure for Eliminating use of Whistles at Public Grade Crossings

Step 1

47. Step 1 requires the municipality to express interest in whistle cessation.
48. Parkland satisfied this step when it contacted Transport Canada in late 2016 to discuss whistle cessation.

Step 2

49. Step 2 requires the municipality to consult with the railway company operating the railway corridor at issue.
50. Parkland satisfied this step when it notified the Defendant, on or about July 2017, that it was entertaining whistle cessation at the Crossings and invited it to participate in the process.

Step 3

51. Step 3 requires the municipality to notify all relevant associations or organizations and issue a public notice of its intention to pass a resolution that whistles should not be used at specific crossings along a railway corridor.
52. Parkland satisfied this step on or about Summer 2017, when it notified 25 relevant organizations and associations, including the Defendant, of its intention to pass a resolution prohibiting use of the train whistle at the Crossings. Parkland also provided public notice on July 21, 2017.

Step 4

53. Step 4 requires the municipality and railway to assess the crossings against the prescribed requirements in s. 104 of the *Grade Crossing Regulations* and Appendix D of the *Grade Crossing Standards*.
54. Parkland took all steps in its power to satisfy this step, including by contacting Transport Canada and ensuring all relevant Crossings were fully equipped with the requisite bells, lights and arms per Appendix D of the *Grade Crossing Standards*.
55. The Defendant failed to cooperate with Parkland and actively concealed material information to the assessment of the Crossings.

Step 5

56. Step 5 requires the municipality and railway company to agree that the crossings in question meet the prescribed requirements of the *Grade Crossing Regulations*. In the event the municipality and railway company do not agree, step 5 outlines they are to try to resolve the conflict. If the parties cannot resolve the disagreement, Transport Canada may issue a final determination.
57. The Defendant failed to make good faith efforts to reach an agreement with Parkland. The Defendant further undermined and delayed whistle cessation by refusing to cooperate with Parkland and concealing the fact that it was in the possession of the requisite crossing safety assessments.
58. Due to the Defendant's lack of cooperation, Parkland was forced to seek a final determination from Transport Canada. This was achieved when Transport Canada obtained the crossing studies from the Defendant and subsequently ordered the Defendant to comply with the Bylaw in relation to Crossings 1-5.
59. In regards to Crossings 6, 7 and 12 the Defendants continues to use train whistles despite being fully aware that as of the summer of 2018 all three Crossings meet the requisite safety standards.

Step 6

60. Step 6 requires the municipality to pass a resolution declaring that it agrees that whistles should not be used in the area, thereby prohibiting train whistling.
61. Parkland satisfied this step on August 22, 2017, when it passed the Bylaw.

Step 7

62. Step 7 requires the railway company to notify Transport Canada and inform the municipality that it has arranged to cease whistling at specific crossings. The railway company must issue notice within 30 days of ceasing to blow the train whistle.
63. In relation to Crossings 1-5, based on the information it had at the time, including the safety assessments of the Crossings, the Defendant was obligated to issue special instructions to Transport Canada and inform the effective date upon which it would cease use of the train whistles by not later than September 30, 2017.
64. In relation to Crossings 6, 7 and 12 the Defendant has yet to issue the requisite notice to Transport Canada.

Step 8

65. Step 8 establishes that the municipality and railway company are to share the responsibility of monitoring and maintaining the conditions that support the cessation of train whistling at the crossings.
66. Step 8 is an ongoing obligation for the municipality and the Defendant. The Defendant has failed to meet its duty to cooperate with the municipality in order to achieve whistle cessation and monitor its implementation.

Private Nuisance

67. The noise pollution created by the train whistles is a substantial interference with Class Members' ordinary use of the properties of residence. Class Members have suffered and continue to suffer severe harm from the noise pollution of the train whistles all hours of the day and night. There is no regular schedule for train activity and Class Members cannot establish normal daily routines, especially sleep routines.
68. On the other hand, the noise pollution caused by the Defendant can be entirely avoided, except for real emergencies, by complying with the regulations and process established by Transport Canada.
69. In failing to cease the use of the train whistles at the Crossings that have met the requirements of the Whistle Cessation Procedure and in failing to implement measures that would allow for operation of the trains without the use of whistles at the remaining Crossings, the Defendant has substantially and unreasonably interfered with the Class Members' use and enjoyment of their residences.

Damages – Particulars

70. The Plaintiff and the Class Members claim that the Defendant is liable and responsible for damages sustained through its breach of statutory and common law obligations resulting from the nuisance it created and continues to create.
71. As a consequence of the Defendant's acts or omissions, as described above and which will be further particularized prior to Trial, the Plaintiff and all Class Members have suffered significant losses and damages including the substantial and unreasonable loss of enjoyment and/or use of properties they reside on, which was and is the direct result of the illegal conduct by the Defendants.
72. The Plaintiff pleads that the Defendant's conduct as particularized above was willful, reckless, wanton, negligent, callous and in total disregard for the rights of the Plaintiff and Class Members, and was indifferent to the consequences of their acts and/or omissions and, as such, renders the Defendant liable to pay punitive and aggravated damages.

73. The Defendant's acts, omissions, wrongdoings, breaches of legal and/or statutory duties or other obligations have materially contributed to losses and damages suffered by the Plaintiff and Class Members.
74. The Plaintiff and Class Members have suffered losses and damages arising from the aforesaid acts, omissions, wrong-doing, breaches of legal or statutory duties, or other obligations.

A Class Proceeding is Appropriate

75. All of the Class Members have in common that they are residents of Parkland whose primary use of the properties within the vicinity of one or more of the Crossings is for residential purposes, and have suffered or continue to suffer harm as a result of the Defendant's failure to meet its statutory and common law obligations to cease the use of train whistles at the Crossings. The acts or omissions that have given rise to their harm are identical. Further, the Defendant owed all Class Members the same obligation to promote railway safety, refrain from using train whistles where appropriate and cooperate with Parkland community, including by providing Parkland and Transport Canada material information it had in its possession upon request and in a timely manner.
76. There are questions of law and fact that are common to the Class Members which predominate over potential questions affecting only individual Class Members. Common questions include, but are not limited to the following:
 - (a) Did the Defendant breach its obligations to refrain from the use of audible train warning signals pursuant to s. 23.1 of the *Railway Safety Act*?
 - (b) Did the Defendant breach its duty to refrain from causing nuisance once it was notified of Parkland's passing of the Bylaw?
 - (c) Did the Defendant owe the Class Members a duty to refrain from engaging in unfair practices and act in good faith, including but not limited to cooperate with the municipality once advised of the desire to transition from audible to non-audible train warning signals? If so, did the Defendants breach that duty? If so, was it reasonably foreseeable that the Class Members would suffer harm as a result of that statutory breach?
 - (d) If it is established that the Defendant breached any of its duties referred to above, are the Class Members entitled to an award of damages? If so, what is the appropriate quantum of damages? If so, are the Class Members entitled to an aggregate assessment of damages for part or all of the damages they suffered? If so, which part of the damages? How will the damages be distributed among the Class Members?

- (e) Are the Class Members entitled to punitive and/or aggravated damages? If so, in what amount?
 - (f) Should the Defendant be ordered to pay pre-judgment interest?
 - (g) Should the Defendant pay the cost of administering and distributing recovery? If so, in what amount?
 - (h) Should the Defendant be ordered to cease use of audible train warning signals at or near Crossings 6, 7 and 12? Or, in the alternative, should the Defendant be ordered to pay damages to Class members who live in the vicinity of these crossings until it ceases use of audible train warning signals?
 - (i) Should the Defendant be ordered to make the necessary upgrades to crossings 8-11 and subsequently cease use of audible train warning signals? Or, in the alternative, should the Defendant be ordered to pay damages to Class members who live in the vicinity of these crossings until it ceases use audible train warning signals?
77. A determination of the common issues will substantially advance the proceeding even if some individual issues may remain to be determined.
78. The Class is composed of an unknown number of Parkland residents who reside upon residential property within the vicinity of the Crossings. However, the identity of each affected Class Member is documented in the Parkland records. The identities of the Class Members will be easily ascertained using the Parkland records.
79. Class Members, as individuals, cannot match the resources of the Defendant. The individual claims of each Class Member would not be economical to pursue individually. The Class Members would be denied access to justice in the absence of a class proceeding.
80. It is unlikely that an individual Parkland resident could or would seek prospective relief to deter future misconduct by the Defendant. The Defendant is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on its policies, procedures and practices. This class proceeding will impact the Defendant such that it will have to ensure that its policies, procedures and practices are sufficient to meet its statutory and common law obligations.
81. This class proceeding is an appropriate method for the fair and efficient adjudication of the issues and of achieving fairness and justice without over-burdening the Court system with a multiplicity of individual claims. The prosecution of potentially thousands of individual claims would be inefficient and would create the risk of conflicting decision on the same facts and issues.

82. All of the Class Members have in common that they suffered a loss as a result of the Defendant's failure to meet its obligations and cease using the train whistle at the Crossings at the relevant time. Members of the Class are so numerous that joinder of individual claims in a single action is not practical. As such, a class proceeding is the most efficient, economical and fair method of proceeding under the circumstances.
83. Once the identity of all Class Members is known they can be notified of the commencement of this Class Action directly by mail or through advertisements in newspapers and other media as well as through social media and other methods for providing notice as this Honourable Court may deem appropriate under the circumstances. The Plaintiff and Class Members shall request that the Defendant bear the cost of this notice program.
84. The Plaintiff is committed to prosecuting this Class Proceeding and has retained competent counsel experienced in Class Action litigation. The Plaintiff's claim is typical of the claim of other Class Members and on the common issues, and he has no interest which is in conflict with other Class Members.
85. The Plaintiff will fairly and adequately protect the interests of the other Class Members.
86. The Representative Plaintiff and Class Members propose that the Trial of the common issues take place at the Law Courts in the City of Edmonton, in the Province of Alberta.
87. The Representative Plaintiff and Class Members plead and rely on the *CPA*, the *Alberta Rules of Court*, Alta Reg 124/2010, the *Railway Safety Act*, RSC 1985, C 32 (4th Supp), the *Canada Transportation Act*, SC 1996, c 10, the *Canadian Rail Operating Rules*, the *Grade Crossing Regulations*, SOR/2014-275 and the *Grade Crossings Standards*.

Punitive Damages

88. The conduct of the Defendants merits punitive damages in that the conduct constituted high-handed, malicious and reprehensible conduct that departs to a marked degree from the standards expected of them.

Real and Substantial Connection to Alberta

89. The Plaintiff proposes to serve this claim on the Defendant, CNR outside of Alberta. Service outside of Alberta is necessary, and permitted pursuant to Rule 11.25(1) and (3) of the *Alberta Rules of Court*, Alta Reg 124/2010 in that the Defendant, CNR is incorporated outside of Alberta, and there is no head office or address for service in Alberta.

90. Where this claim is served on Defendant outside of Alberta, it will be served on the basis that a real and substantial connection exists between Alberta and the facts on which the claim is based. That connection arises from the following:

- (a) A tort was committed in Alberta:
 - i. CNR operated and/or provided services in Alberta;
 - ii. The Plaintiff is a resident of the Province of Alberta. The breach of the Defendant's duties and obligations led to the unlawful and unauthorized operation of the train whistles which resulted in a substantial and unreasonable interference with the Plaintiff's use and enjoyment of his property.

Remedy sought:

91. The Representative Plaintiff and Class Members seek:
- (a) An Order pursuant to the *CPA* certifying this action as a class proceeding and appointing the Plaintiff as the representative of a class to be certified by the Court;
 - (b) A finding that the Defendants have created a nuisance as between the Defendant and the Class Members;
 - (c) A finding that the Defendants contravened their statutory duties under the *Railway Safety Act, Grade Crossing Regulations, and Grade Crossings Standards*.
 - (d) A finding that the Defendants engaged in unfair practices and breaches of good faith contrary to the *Railway Safety Act* and common law;
 - (e) An award of damages in an amount to be proven at Trial comprised of one or more of the following:
 - i. Damages for breach of common law nuisance;
 - ii. Damages for breach of the Defendants' duty of care owed to Class Members;
 - iii. Damages for breach of good faith;
 - iv. General damages;
 - v. Aggravated damages;
 - (f) Punitive damages;

- (g) Special damages and out-of-pocket incurred by the Plaintiff and Class Members, including:
 - i. Costs of counselling or therapy for sleep disorders;
 - ii. Compensation for lost time and/or loss of income;Or such other amount as may be proven at Trial or as the Court may deem just and appropriate in the circumstances;
- (h) An order, pursuant to s. 30 of the *CPA* directing an aggregate monetary award;
- (i) An order, pursuant to s. 32 of the *CPA* allowing for the use of standard claim forms or other documentary evidence or such other procedure as warranted under the circumstances;
- (j) An order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- (k) An order or declaration that the Defendants take specific steps to:
 - i. Cease the use of audible train warning signals at Crossings 6, 7 and 12;
 - ii. Implement the procedure for transitioning to non-audible train warning signals at Crossings 8 - 11;
 - iii. Implement and enforce protocols or procedures regarding the manner in which requests from municipalities to transition to non-audible train warning signals are received and executed;
 - iv. Ensure internal compliance with the procedures for transitioning to the use of non-audible train warning signals at properly-equipped grade crossings;
 - v. Educate, train and supervise employees, agents, servants and third parties engaged by the Defendant for the purposes of monitoring and assessing the safety and suitability of grade crossings to non-audible train warning signals;
- (l) Pre-judgment interest and post-judgment interest;
- (m) The costs of this action on a substantial indemnity basis;
- (n) The costs of administering the plan of distribution of the recovery in this action;

92. Such further and other relief as may be required and as this Honourable Court deems to be just and appropriate in the circumstances.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at EDMONTON, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.