

**AMENDMENT TO:**  
**CANADIAN AIR CONDITIONING SYSTEMS CLASS ACTIONS**  
**NATIONAL SETTLEMENT AGREEMENT**

Made as of July 21, 2021

Between

**SHERIDAN CHEVROLET CADILLAC LTD., THE PICKERING AUTO MALL LTD.,  
FADY SAMAHA, JORDAN RAMSAY, and DARREN EWERT**

(the "Plaintiffs")

and

**MAHLE BEHR GMBH & CO. KG and MAHLE BEHR USA INC.**

(the "Settling Defendants")

Whereas the parties have entered into the Canadian Air Conditioning Systems National Settlement Agreement dated April 6, 2021 (the "Mahle ACS Agreement");

Whereas the Parties wish to amend the Mahle ACS Agreement to reflect a revised process for implementation of the Settlement Agreement in British Columbia:

Now therefore it is agreed by the parties that the Mahle ACS Agreement is amended as set out in Schedule A to this agreement.

**FADY SAMAHA** on his own behalf and on behalf of the Ontario Settlement Class that he proposes to represent, by his counsel

Name of Authorized Signatory:

Jonathan Fung, by permission

Signature of Authorized Signatory:

Jonathan Fung  
Siskinds LLP  
Ontario Counsel

**JORDAN RAMSAY** on her own behalf and on behalf of the Ontario Settlement Class that she proposes to represent, by her counsel

Name of Authorized Signatory:

Jonathan Fung, by permission

Signature of Authorized Signatory:

Jonathan Fung  
Siskinds LLP  
Ontario Counsel

**SHERIDAN CHEVROLET CADILLAC LTD. and THE PICKERING AUTO MALL LTD.**, on their own behalf and on behalf of the Ontario Settlement Classes that they propose to represent, by their counsel

Name of Authorized Signatory:

Jonathan Fung, by permission

Signature of Authorized Signatory:

Jonathan Fung  
Sotos LLP  
Ontario Counsel

**DARREN EWERT** on his own behalf and on behalf of the BC Settlement Class that he proposes to represent, by his counsel

Name of Authorized Signatory:

Jonathan Fung

Signature of Authorized Signatory:

Jonathan Fung  
Camp Fiorante Matthews Mogerman LLP  
BC Counsel

**MAHLE BEHR GMBH & CO. KG and MAHLE BEHR USA INC.**, by their counsel

Name of Authorized Signatory:

Paul J. Martin

Signature of Authorized Signatory:

Paul J. Martin  
Fasken Martineau DuMoulin LLP  
Counsel for the Settling Defendants

**SISKINDS DESMEULES S.E.N.C.R.L.**

Per:

Jonathan Fung

Name:

Jonathan Fung, by permission

Title:

Lawyer

I have authority to bind the Partnership

## SCHEDULE "A"

### CANADIAN AIR CONDITIONING SYSTEMS CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT

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**CANADIAN AIR CONDITIONING SYSTEMS CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS the Proceedings were commenced by the BC Plaintiff in British Columbia and the Ontario Plaintiffs in Ontario and the Plaintiffs claim class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Ontario Action and the BC Action allege that some or all of the Releasees participated in an unlawful conspiracy to rig bids for, and to raise, fix, maintain or stabilize the prices of Air Conditioning Systems sold in Canada and elsewhere as early as January 1, 2001 until at least March 1, 2010, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 and the common law and/or the civil law;

C. WHEREAS the Settlement Class Members were permitted an opportunity to opt out of the Ontario Action and the BC Action, the deadline to opt out of the Ontario Action and the BC Action has passed, and three Persons validly and timely exercised the right to opt out of the Ontario Action and the BC Action;

D. WHEREAS the Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or in any Other Actions, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceedings and any Other Actions or otherwise;

E. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendants;

F. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Classes in the Proceedings and any Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Ontario Action and the BC Action or as expressly provided in this Settlement Agreement with respect to the Proceedings;

H. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement related to Canada;

I. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes the Ontario Plaintiffs seek to represent, subject to approval of the Ontario Courts;

J. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Classes, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense associated with prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the proposed Settlement Class the Ontario Plaintiffs they seek to represent;

K. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Ontario Action and the BC Action and any Other Actions as against the Releasees;

L. WHEREAS the Parties consent to certification of the Ontario Action ~~and the BC Action~~ as a class proceedings and to the Settlement Classes and a Common Issue in respect of ~~each of~~ the Ontario Action ~~and the BC Action~~ solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Ontario Courts as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this

Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

M. WHEREAS the Ontario Plaintiffs assert that they are adequate class representatives for the Settlement Classes they seek to represent and will seek to be appointed as representative plaintiffs in their respective Proceeding; and

N. WHEREAS the Parties intend to pursue the approval of this Settlement Agreement ~~first~~ through the Ontario Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Ontario Action ~~and the BC Action~~ be settled and dismissed with prejudice as to the Settling Defendants only, and the BC Action be discontinued as against the Settling Defendants. all without costs as to the Plaintiffs, the Settlement Classes they seek to represent, and the Settling Defendants, subject to the approval of the Ontario Courts, on the following terms and conditions:

## SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

(1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

(2) ***Air Conditioning Systems*** are systems that cool the interior environment of an Automotive Vehicle and are part of an Automotive Vehicle's thermal system. An Air Conditioning System may include, to the extent included in the relevant request for quotation, compressors, condensers, HVAC units (blower motors, actuators, flaps, evaporators, heater cores, and filters embedded in a plastic housing), control panels, sensors, and associated hoses and pipes.

(3) ***Automotive Vehicle*** means passenger cars, sport utility vehicles (SUVs), vans, and light trucks (up to 10,000 lbs).



(4) **BC Action** means the BC Action as defined in Schedule A, and includes any action subsequently consolidated into the BC Action.

(5) **BC Counsel** means Camp Fiorante Matthews Mogerman LLP.

(6) **BC Court** means the Supreme Court of British Columbia.

(7) **BC Plaintiff** means Darren Ewert.

~~(8) **BC Settlement Class** means the settlement class in respect of the BC Action as defined in Schedule A.~~

~~(9) **Case Management Direction** means the case management direction regarding the settlement approval process issued by the Ontario Court on September 21, 2018 and the BC Court on April 24, 2019.~~

~~(10)~~(8) **Certification Date** means the later of the date on which an order granting certification of a Proceeding against one or more Non-Settling Defendants is issued by the Court, excluding an order granting certification solely for settlement purposes, and the time to appeal such certification has expired without any appeal being taken, or if an appeal is taken the date of the final disposition of such appeal.

~~(11)~~(9) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Ontario Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.

~~(12)~~(10) **Class Counsel** means Ontario Counsel and BC Counsel.

~~(13)~~(11) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in the Proceedings.

~~(14)~~(12) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.

~~(15)~~(13) **Class Period** means January 1, 2001 to December 10, 2019.

~~(16)~~(14) **Common Issue** means: Did the Settling Defendants, or any of them, conspire to fix, raise, maintain, and/or stabilize the prices of Air Conditioning Systems in Canada and/or elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

~~(17)~~(15) **Counsel for the Settling Defendants** means Fasken Martineau DuMoulin LLP.

~~(18)~~(16) **Courts** means the Ontario Court and the BC Court.

~~(19)~~(17) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

~~(20)~~(18) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule A, and any Persons added as defendants in any of the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.

~~(21)~~(19) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Ontario Courts.

~~(22)~~(20) **Effective Date** means the date when Final Orders have been received from all the Ontario Courts approving this Settlement Agreement, and the BC Action has been discontinued as against the Settling Defendants.

~~(23)~~(21) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who validly and timely opted-out of the Ontario Action and the BC Action in accordance with the orders of the applicable Court.

~~(24)~~(22) **Final Order** means a final order, judgment or equivalent decree entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.

~~(25)~~(23) **Government Entity or Entities** means the Canadian Competition Bureau, the United States Department of Justice, the Japanese Fair Trade Commission, the European Commission, or any other government entity that enforces or investigates violations of competition laws.

~~(26)~~(24) ***Non-Settling Defendant*** means any Defendant that is not: (i) a Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Date of Execution.

~~(27)~~(25) ***Ontario Action*** means the Ontario Action as defined in Schedule A and includes any actions subsequently consolidated into the Ontario Action.

~~(28)~~(26) ***Ontario Counsel*** means Siskinds LLP and Sotos LLP.

~~(29)~~(27) ***Ontario Court*** means the Ontario Superior Court of Justice.

~~(30)~~(28) ***Ontario Plaintiffs*** means Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd., Fady Samaha, and Jordan Ramsay.

~~(31)~~(29) ***Ontario Settlement Class*** means the settlement class in respect of the Ontario Action as defined in Schedule A.

~~(32)~~(30) ***Other Actions*** means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

~~(33)~~(31) ***Party and Parties*** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

~~(34)~~(32) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

~~(35)~~(33) ***Plaintiffs*** means the BC Plaintiff and the Ontario Plaintiffs.

~~(36)~~(34) ***Proceedings*** means the BC Action, the Ontario Action and the Related Action, and “Proceeding” means the BC Action or the Ontario Action or the Related Action, as applicable.

~~(37)~~(35) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario Court ~~or BC Court, as applicable,~~ would have apportioned to the Releasees.

~~(38)~~(36) **Purchase Price** means the sale price paid by Settlement Class Members for Air Conditioning Systems during the Class Period, less any rebates, delivery, or shipping charges, taxes, and any other form of discounts.

~~(39)~~(37) **Related Action** means the Related Action, as defined in Schedule A and includes any action subsequently consolidated into the Related Action.

~~(40)~~(38) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now has or hereafter can, shall or may have, relating in any way to the purchase, sale, pricing, discounting, manufacturing, marketing, offering or distributing of Air Conditioning Systems, whether purchased directly or indirectly, including as part of an Automotive Vehicle, including any claims for consequential, subsequent or follow-on harm that arises after the Date of Execution in respect of any agreement, combination, conspiracy or conduct that occurred during the Class Period. However, the Released Claims do not include: (i) claims based on negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, breach of warranty, securities, or similar claims between the Parties that relate to Air Conditioning Systems (unless such claims allege anticompetitive conduct or anticompetitive communications among competitors); (ii) claims brought (whether before or after the Effective Date) outside of Canada relating to purchases of Air Conditioning Systems outside of Canada; (iii) claims brought (whether before or after the Effective Date) under laws other than those of Canada relating to purchases of Air Conditioning Systems outside of Canada; or (iv) claims concerning any automotive part other than Air Conditioning Systems, where such claims do not concern Air Conditioning Systems.

~~(41)~~(39) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and the Non-Settling Defendants' present and former direct and indirect parents, owners, subsidiaries, divisions, and affiliates.

~~(42)~~(40) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, or representative of any kind, other than Persons who validly and timely opted out of the BC Action or the Ontario Action in accordance with orders of the Courts.

~~(43)~~(41) **Settled Defendants** means any Defendant (excluding the Settling Defendants) that executes its own settlement agreement with the Plaintiffs in the Proceedings and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.

~~(44)~~(42) **Settlement Agreement** means this agreement, including the recitals and schedules.

~~(45)~~(43) **Settlement Amount** means USD\$195,000.00.

~~(46)~~(44) **Settlement Classes** means the ~~BC Settlement Class and the~~ Ontario Settlement Class.

~~(47)~~(45) **Settlement Class Member** means a member of ~~the~~ Settlement Class.

~~(48)~~(46) **Settling Defendants** means MAHLE Behr GmbH & Co. KG and MAHLE Behr USA Inc.

~~(49)~~(47) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

~~(50)~~(48) **U.S. Litigation** means the consolidated class action proceedings, in which a plaintiff alleges that certain auto parts manufacturers rigged bids for, and/or conspired to raise, fix, maintain or stabilize the prices of Air Conditioning Systems, in which the Settling Defendants are named as parties, currently pending in the United States District Court for the Eastern District of Michigan, Southern Division, including the action under the caption *In re Automotive Parts Antitrust Litigation, Air Conditioning Systems Case No. 2:13 -cv-02703*, and includes all class actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all class actions pending such transfer, all class actions that may be transferred in the future, and all class proceedings alleging price fixing of Air Conditioning Systems, to the extent that the Settling Defendants are named as parties.

~~(51)~~(49) **U.S. Protective Order** means the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information No. 12-md-2311 (E.D. Mich. July 10, 2012) (ECF No. 200) issued in the U.S. Litigation.

~~(52)~~(50) **U.S. Settlement Agreements** includes any class settlement reached with the Settling Defendants in the U.S. Litigation.

## SECTION 2 – SETTLEMENT APPROVAL

### 2.1 Best Efforts

(1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Ontario Action ~~and the BC Action~~ as against the Settling Defendants, and a discontinuance of the BC Action as against the Settling Defendants.

## 2.2 Motions Seeking Approval of Notice and Certification

(1) The Ontario Plaintiffs shall file motions before the Ontario Courts, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 10.1(1) and certifying ~~each of the Ontario Action and the BC Action as a~~ class proceedings as against the Settling Defendants (for settlement purposes only). ~~The Plaintiffs will make best efforts to file the aforementioned motions before the BC Court no later than thirty (30) days after the Ontario Court has granted orders approving the notices described in Section 10.1(1) and certifying the Ontario Action as a class proceeding as against the Settling Defendants (for settlement purposes only).~~

(2) The Ontario order approving the notices described in Section 10.1(1) and certifying the Ontario Action for settlement purposes shall be substantially in the form attached as Schedule B. ~~The BC order approving the notices described in Section 10.1(1) and certifying the BC Action for settlement purposes shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario order.~~

## 2.3 Motions Seeking Approval of the Settlement Agreement

(1) The Plaintiffs shall make best efforts to file motions before the Ontario Courts for an orders approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2(1) have been granted; and
- (b) the notices described in Section 10.1(1) have been published.

(2) The Ontario order approving this Settlement Agreement shall be substantially in the form attached as Schedule C. ~~The BC order approving this Settlement Agreement shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario order.~~

## 2.4 Discontinuance of the BC Action and Recognition Order

(1) After the Ontario order referred to in section 2.3 is issued, the BC Plaintiff will:

- (a) Have the Ontario order referred to in Section 2.3 registered at the court registry in British Columbia in accordance with the Enforcement of Canadian Judgments and Decrees Act, SBC 2003, ch 28, or failing this, commence an application in the BC

Court for an order registering the Ontario order referred to in Section 2.3, all without costs to any Parties; and

(b) Discontinue the BC Action as against the Settling Defendants without costs to any Parties.

#### **2.4 — Conduct of the Approval Motions**

~~(1) — In Ontario and British Columbia, the Plaintiffs can elect to request that the motions contemplated in Sections 2.2 and 2.3 proceed in accordance with the Case Management Direction. The Settling Defendants shall not oppose any such requests.~~

~~(2) — Further or alternatively, the Plaintiffs can elect to request that the Courts hold joint hearings seeking approval of this Settlement Agreement pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. The Settling Defendants will not oppose any such request.~~

#### **2.5 Pre-Motion Confidentiality**

(1) Until the first of the motions required by Section 2.2(1) is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

#### **2.6 Settlement Agreement Effective**

(1) This Settlement Agreement shall only become final on the Effective Date.

### **SECTION 3 – SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

(1) Within sixty (60) days of the Date of Execution, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP, for deposit into the Trust Account. The Settlement Amount shall be converted to Canadian Dollars upon deposit.



(2) Payment of the Settlement Amount shall be made by wire transfer. At least thirty (30) days prior to the Settlement Amount becoming due, Siskinds LLP will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest, costs, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Proceedings, or any Other Actions.

(6) Once a Claims Administrator has been appointed in the Proceedings, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.

(7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) Siskinds LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Ontario Courts obtained after notice to the Parties.

### **3.2 Taxes and Interest**

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Siskinds LLP or the Claims Administrator, as appropriate, shall be solely

responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Siskinds LLP or the Claims Administrator.

### **3.3 Intervention in the U.S. Litigation**

(1) The Settling Defendants and other Releasees shall not oppose any application that may be brought by or on behalf of the Plaintiffs to: (i) intervene in the U.S. Litigation in order to gain access to discovery Documents and other Documents and information subject to any protective order granted in the U.S. Litigation that are relevant to the Proceedings; or (ii) compel a U.S. resident to “giv[e] his testimony or statement or to produc[e] a document or other thing for use in a proceeding in a foreign or international tribunal” pursuant to Title 28 of the United States Code §1782 for the prosecution of the Proceedings; provided such application is not otherwise inconsistent with the terms of this Settlement Agreement, including Section 4.1(16). However, it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application.

## **SECTION 4 – COOPERATION**

### **4.1 Extent of Cooperation**

(1) The scope of the Settling Defendants’ obligations to cooperate under this Settlement Agreement as set out in this Section 4.1 is limited to only those Proceedings which, at the time of delivery of the cooperation specified herein, are ongoing against one or more Non-Settling Defendants.

(2) Within thirty (30) days of the Effective Date, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, subject to the other provisions of this Settlement Agreement, Counsel for the Settling Defendants will meet with Class Counsel by videoconference or teleconference, should Class Counsel request such a meeting, to provide an oral proffer which will include information originating with the Settling Defendants that is not covered by privilege relating to the allegations in the Proceedings. The proffer shall not exceed one (1) business day. Counsel for the Settling Defendants shall also respond to reasonable follow-up questions by Class Counsel at a time as Class Counsel and the Settling Defendants may reasonably agree. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by Counsel for the Settling Defendants are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by a Court. The Plaintiffs and Class Counsel agree that they will not use the information provided in the proffer under this paragraph for any purpose other than the prosecution of the Proceedings against Non-Settling Defendants, and will not make public by filing with or disclosing to a Court or otherwise any information beyond that which is reasonably necessary for the prosecution of the Proceedings, or as otherwise required by law. Further, absent a Court order, Class Counsel will not attribute any information obtained from the proffer to the Settling Defendants and/or Counsel for the Settling Defendants. The Parties agree that the proffer itself is settlement privileged, does not constitute evidence, that there shall be no audio or video recording or written transcription or record of any statements made or information provided by Counsel for the Settling Defendants at the proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Classes. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer in the prosecution of the Proceedings, including for the purpose of developing the Distribution Protocol or any other allocation plan relating to any settlement or judgment proceeds, except the prosecution of any claims against Releasees; and (ii) rely on such information to certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but, absent a Court order, the Plaintiffs shall not introduce any information from a proffer into the record or subpoena any Counsel for the Settling Defendants related to a proffer.

(3) After the Certification Date, at the request of Class Counsel acting in good faith and as reasonably necessary for the contested prosecution of the Proceedings, the Settling Defendants shall make reasonable efforts to provide to Class Counsel within ninety (90) days of receiving the request, or at a time mutually agreed upon by the Parties, the following:

- (a) transactional sales data regarding Air Conditioning Systems as has already been produced or as agreed to be produced in the context of the U.S. Litigation or the U.S. Settlement Agreements and any pre-existing translations into English of such data. The transactional sales data will be provided in Excel or such other format in which it was produced in connection with the U.S. Litigation or U.S. Settlement Agreements, or such other form as may be agreed upon by the Parties, and shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1(3)(c) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3)(c);
- (b) reasonable assistance in understanding the transactional sales data produced by the Settling Defendants, through Counsel for the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel;
- (c) electronic copies of any documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) regarding Air Conditioning Systems produced or made available by the Settling Defendants in the U.S. Litigation, including any documents produced or as agreed to be produced by the Settling Defendants pursuant to the U.S. Settlement Agreements, and any pre-existing translations into English of such documents, and any pre-existing and non-privileged electronic coding or metadata produced in the U.S. Litigation. In addition, where the documents previously produced in the U.S. Litigation contain bates stamps on their face, a field will be produced containing the corresponding bates stamps of the first page of each document;
- (d) electronic copies of transcripts and video recordings of all depositions or other testimony of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation, and any pre-existing

translations into English. If transcripts or video recordings become available more than sixty (60) days from the Effective Date, such transcripts or video recordings shall be provided within thirty (30) days of becoming available. The transcripts or video recordings shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1(3)(c) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3)(c);

- (e) electronic copies of any declarations or affidavits of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation, and any pre-existing translations into English. If declarations or affidavits become available more than thirty (30) days from the Effective Date, such declarations or affidavits shall be provided within ten (10) days of becoming available. The declarations and affidavits shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1(3)(c) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3)(c);
- (f) electronic copies of any responses to written interrogatories by the Releasees, including all schedules thereto, taken in the U.S. Litigation, and any pre-existing translations into English. The responses to written interrogatories shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1(3)(c) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3)(c);
- (g) electronic copies of any responses to requests to admit provided by the Releasees in the U.S. Litigation and any pre-existing translations into English. The responses to requests to admit shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1(3)(c) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3)(c);
- (h) to the extent produced in the U.S. Litigation, the identity of all current and former employees, directors and officers of the Releasees who:

- (i) were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging and market allocation of Air Conditioning Systems;
  - (ii) appeared before the grand jury in the U.S. Department of Justice investigation into alleged antitrust violations with respect to Air Conditioning Systems; or
  - (iii) were disclosed to the U.S. Department of Justice as having knowledge or information relating to the U.S. Department of Justice's investigation into alleged antitrust violations with respect to Air Conditioning Systems; and
- (i) after conducting a reasonable search, the Settling Defendants shall provide a list to the best of its knowledge of Automotive Vehicles sold in Canada during the Class Period that contain Air Conditioning Systems manufactured or sold by the Settling Defendants.

(4) After the Effective Date, subject to the other provisions of this Settlement Agreement, Class Counsel may deliver a written request to the Settling Defendants pursuant to this Section. Within one hundred and twenty (120) days after Class Counsel's delivery of this written request, or at a time mutually agreed upon by the Parties, the Settling Defendants agree to use reasonable efforts to provide to Class Counsel:

- (a) pre-existing transactional cost data and further transactional sales data regarding Air Conditioning Systems, reflecting the Settling Defendants' sales of Air Conditioning Systems during the Class Period, if and to the extent pre-existing sales or cost data reflect that the sales or cost data relate to Air Conditioning Systems known or expected to be included in Automotive Vehicles that were sold in Canada. The transactional sales and cost data will be provided in Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel and shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1(3) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3); and

- (b) reasonable assistance in understanding the transactional cost and/or sales data produced by the Settling Defendants, through Counsel for the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel.
- (5) The obligation to produce documents pursuant to Sections 4.1(3) and 4.1(4) shall be a continuing obligation to the extent additional documents are identified by the Settling Defendants following the initial productions pursuant to this Settlement Agreement.
- (6) As to additional documents in the Settling Defendants' possession, custody, or control concerning Air Conditioning Systems, the Settling Defendants will consider in good faith any reasonable request by the Plaintiffs to collect and produce such documents, provided the request would not impose an undue burden on the Settling Defendants.
- (7) The Settling Defendants shall not object to the Plaintiffs' participation in any evidentiary proffers and/or interviews of the Settling Defendants' representatives that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreements. The Settling Defendants shall, where possible, provide notice to Class Counsel thirty (30) days before any proffer or interview of representatives of the Settling Defendants that occurs in the U.S. Litigation pursuant to the U.S. Settlement Agreements.
- (8) After the Effective Date, at the request of Class Counsel acting in good faith, and as is reasonably necessary for the ongoing prosecution of the Proceedings, to the extent that the Settling Defendants make oral evidentiary proffers pursuant to the U.S. Settlement Agreements that contains information not previously proffered to the Plaintiffs pursuant to Section 4.1(1), and Class Counsel is unable to attend or is not given reasonable advance notice of the time and location of such proffers, the Settling Defendants shall make supplemental proffers to the Plaintiffs, provided that the information proffered in the U.S. is relevant to the Proceedings.
- (9) It is understood that the proffer described in Section 4.1(1) and the proffers and/or interviews of witnesses described in Section 4.1(7) might take place before the Effective Date. In such event:

- (a) any documents or information provided in the course of those proffers and/or interviews shall be subject to the terms and protections of this Settlement Agreement; and
- (b) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the documents and information provided during the proffers and/or interviews shall not be used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Settling Defendants as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Settling Defendants or of the truth of any claims or allegations in the Proceedings, and such information shall not be discoverable by any Person or treated as evidence of any kind, unless otherwise ordered by a Court. In order to give effect to this agreement, Class Counsel agrees to make reasonable efforts to return all copies of any documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), these evidentiary proffers and/or interviews and to provide written confirmation to the Settling Defendants of having done so.

(10) In the event that Class Counsel are unable to participate in the interviews that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreements and/or no interviews occur within six (6) months of the Effective Date, the Settling Defendants shall, at the written request of Class Counsel, upon reasonable notice and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, up to two (2) current or former officers, directors or employees of the Settling Defendants who have knowledge about the allegations in the Proceedings to provide information regarding the allegations raised in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel. By agreement between the Parties, acting reasonably, such personal interviews may take place by video conference. Alternatively, such personal interviews will take place in a North American location. Such personal interviews shall not exceed one (1) business day or seven (7) hours for each interviewee, unless the interview is in a language other than English, in which case the interview shall be limited to a total of thirteen (13) hours over two (2) days. Costs incurred by, and the expenses of, the interviewee in relation to such interviews shall be the responsibility of the Settling Defendants. Costs of an interpreter or otherwise related to foreign language translation in



connection with interviews shall be the responsibility of Class Counsel. The failure of a proposed interviewee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement provided that the Settling Defendants made reasonable efforts to secure such interviewee's cooperation.

(11) Subject to the rules of evidence, any Court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to produce at trial or otherwise in the Proceedings (including through affidavit evidence) a reasonable number of representatives qualified to establish for admission into evidence (i) the Settling Defendants' transactional sales and cost data provided pursuant to Sections 4.1(3)(a) and 4.1(4)(a); (ii) any of the Settling Defendants' documents provided as cooperation pursuant to Sections 4.1(3), 4.1(4), and 4.1(5) of this Settlement Agreement that is reasonable and necessary for the prosecution of the Proceedings (with Class Counsel using its best efforts to authenticate documents for use at trial or otherwise without use of a live witness); and (iii) information provided in cooperation pursuant to Section 4 of this Settlement Agreement, provided that Class Counsel shall use all reasonable efforts to limit the number of witnesses and to the extent reasonably possible, a single witness will be used both to authenticate documents and provide the information at trial or otherwise contemplated by this Section in any Proceeding. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. The Settling Defendants shall be responsible for all associated costs incurred by such representatives in connection with fulfilling the Settling Defendants' obligations under this Section.

(12) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any jurisdiction.

(13) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, joint defence

privilege or any other privilege, doctrine, or law, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee. The Settling Defendants are not required to create a privilege log. However, if a relevant privilege log was created in the context of the U.S. Litigation, the Settling Defendants will provide Class Counsel with a copy of such log delivered as a separate production from the documents to be delivered pursuant to Section 4.1(3)(c) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3)(c).

(14) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents.

(15) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants or all Defendants in the Proceedings settle with the Plaintiffs and those settlements become effective in accordance with their terms. For greater certainty, the Plaintiffs' failure to strictly enforce any of the deadlines for the Settling Defendants to provide cooperation pursuant to this Section 4.1 is not a waiver of the cooperation rights granted by Section 4.1.

(16) Subject to Sections 4.1(17) and (18), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(17) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against knowledgeable officers, directors and/or employees of the Settling Defendants put forward to participate in employee interviews, or provide testimony at trial or otherwise pursuant to Sections 4.1(8) and 4.1(9), if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with those Sections and the provisions of this Settlement Agreement.

(18) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Ontario Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 4.1(14) and allowing the Plaintiffs to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained parties to the Proceeding, or seek such other remedy that is available at law.

(19) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

(20) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.

(21) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of any of the documents or information described in this Section 4.1, or that they have, can or will produce a complete set of any of the documents or information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

#### **4.2 Limits on Use of Documents and Information**

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendants and/or Counsel for the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information were, are, or become publicly available.

The Plaintiffs and Class Counsel agree they will not disclose the documents and information provided by the Settling Defendants and/or Counsel for the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, except to the extent that the documents or information were, are, or become publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information. Notwithstanding the foregoing, Class Counsel may disclose such information and documents to Siskinds Desmeules s.e.n.c.r.l. to the extent that Siskinds Desmeules s.e.n.c.r.l. is assisting Class Counsel in the prosecution of the Proceedings and they agree to keep such information confidential and only use it for the purpose of providing such assistance.

(2) If the Plaintiffs intend to produce or file in any of the Proceedings, any documents or other information provided by the Settling Defendants and/or Counsel for the Settling Defendants as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement) which, at the time of being provided, were marked or designated by the Settling Defendants as “Confidential – Subject to Procedure Under Section 4.2 of the Settlement Agreement,” and there is not already a confidentiality order issued in the relevant Proceeding that applies to the documents and information provided as cooperation by the Settling Defendants, Class Counsel shall provide the Settling Defendants with an advance description of the documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may move to obtain a sealing or confidentiality order or similar relief. If, within the thirty (30) day period, a Settling Defendant does not so move, the Plaintiffs and Class Counsel can produce or file the information or documents in the ordinary course. If, within that thirty (30) day period, a Settling Defendant so moves, the Plaintiffs and Class Counsel shall not produce or file the confidential information or documents until the Settling Defendant’s motion has been decided and all applicable appeal periods have expired, except as follows. Pending the resolution of the motion(s), the Plaintiffs and Class Counsel may, so as not to delay prosecution of the relevant Proceeding, (i) file such documents or information with the relevant Court in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the Proceeding and the following statement: “This envelope/box/container containing documents which are filed by

[name of Party] and subject to a pending confidentiality motion is not to be opened nor the contents thereof to be displayed or revealed to any non-Court personnel except by order of the Court” and such records shall not form part of the public record in the relevant Proceeding except upon order of the relevant Court or by agreement of all Parties and/or the Settling Defendant whose confidential information is contained therein; and (ii) provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that, until the Settling Defendant’s motion has been decided and all applicable appeal periods have expired, the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings, or a competitor of the Settling Defendants. In addition, if a Settling Defendant intervenes for this purpose, the Plaintiffs and Class Counsel shall not oppose a motion to intervene made by the Settling Defendants for this purpose, provided that the form and content of the requested order is similar in substance to the order issued by the Ontario Court in Ontario Superior Court of Justice Court File No. CV-12-44673700CP, dated July 15, 2015. In the BC Action, any application for a sealing order brought pursuant to this Section 4.2(2) shall comply with Practice Direction 35—Sealing Orders in Civil and Family Proceedings.

(3) In the event that a Person requests disclosure of documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement which, at the time of being provided, were marked or designated by the Settling Defendants as “Confidential — Subject to Procedure Under Section 4.2(2) of the Settlement Agreement”, whether or not the Person applies for an order requiring the Plaintiffs to disclose or produce any documents or other information, and there is not already a confidentiality order issued in the relevant Proceeding that applies to the documents and information provided as cooperation by the Settling Defendants, Class Counsel shall provide notice to the Settling Defendants promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or documents until the Settling Defendants’ motion has been decided and a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information

or documents, except: (i) to the extent such information or documents are or become otherwise publicly available; (ii) as ordered to do so by a Court; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the relevant Proceeding(s), Class Counsel may provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that, until a final order has been issued required the Plaintiff and/or Class Counsel to produce the relevant information or documents, all applicable appeal periods have expired, the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the relevant Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the relevant Proceeding or a competitor of the Settling Defendants.

(4) In addition, until such a time as a confidentiality order is in place in one or more Proceedings that applies to the documents and information provided as cooperation by the Settling Defendants and except as otherwise provided for in this Section 4.2, Class Counsel shall treat any documents received from the Settling Defendants and designated as Confidential or Highly Confidential in accordance with the provisions of the U.S. Protective Order (as adapted to the Proceedings, as required). Once a confidentiality or protective order(s) is issued in one or more Proceedings, that order(s) shall govern any documents and information received from the Settling Defendants in that Proceeding(s).

## SECTION 5 - TERMINATION OF SETTLEMENT AGREEMENT

### 5.1 Right of Termination

(1) In the event that:

- (a) ~~any the Ontario~~ Court declines to certify the Ontario Action ~~and the BC Action~~ for the purposes of the Settlement Agreement;
- (b) ~~the BC Ontario~~ Court declines to dismiss the ~~BC Ontario~~ Action against the Settling Defendants;
- (c) ~~the Ontario order described in Section 2.3 is not registered in British Columbia under the Enforcement of Canadian Judgments and Decrees Act, and the BC Court~~

denies any application for an order recognizing the Ontario order referred to in Section 2.3;

~~(b)(d) the BC Action is not discontinued against the Settling Defendants; or the Ontario Court declines to dismiss the Ontario Action as against the Settling Defendants;~~

~~(e)(e) any the Ontario Court declines to approve this Settlement Agreement or any material part, or approves this Settlement Agreement in a materially modified form;~~

~~(d)(f) any the Ontario Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule C; or~~

~~(e)(g) any order approving this Settlement Agreement made by a Court does not become a Final Order;~~

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 14.17, within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 14.17, within thirty (30) days after such non-payment, or move before the Ontario Courts to enforce the terms of this Settlement Agreement.

(3) Except as provided for in Section 5.4, if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(4) Any order, ruling or determination made or rejected by any Court with respect to:

(a) Class Counsel Fees or Class Counsel Disbursements; or

(b) the Distribution Protocol

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## 5.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify the Ontario Action ~~and the BC Action~~ as a class proceedings on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order(s) certifying the Ontario Action ~~and the BC Action~~ as a class proceedings on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Person shall be estopped from asserting otherwise;
- (c) any prior certification of the Ontario Action ~~and the BC Action~~ as a class proceedings on the basis of this Settlement Agreement, including the definitions of the Settlement Classes and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings, or any Other Actions or other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall make reasonable efforts to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel



of such destruction. Nothing contained in this Section 5.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the relevant Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

### **5.3 Allocation of Settlement Amount Following Termination**

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Siskinds LLP shall, within thirty (30) days of the written notice pursuant to Section 5.1(1), return to the Settling Defendants the amount they have paid to Siskinds LLP, plus all accrued interest thereon, but less the Settling Defendants' proportional share of the costs of notices required by Section 10.1(1) and any translations required by Section 14.11.

### **5.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(7), 3.2(3), 4.1(9)(b), 5.1(3), 5.2, 5.3, 5.4, 8.1, 8.2, 10.1(2) and 11.2(4), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.1(7), 3.2(3), 4.1(9)(b), 5.1(3), 5.2, 5.3, 5.4, 8.1, 8.2, 10.1(2) and 11.2(4) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

## SECTION 6 – RELEASES AND DISMISSALS

### 6.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 6.3, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

(3) Notwithstanding any of the foregoing, the releases granted pursuant to this Section 6.1 shall be deemed partial for the purposes of article 1687 and following the *Civil Code of Quebec*, shall inure only to the benefit of the Releasees and shall not preclude, foreclose or otherwise limit the rights of Settlement Class Members who are residents of Quebec against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees.

### 6.2 Covenant Not to Sue

(1) Upon the Effective Date, and notwithstanding Section 6.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead the Releasors covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. For greater certainty, Section 6.1(3) continues to apply to residents of Quebec.

### 6.3 No Further Claims

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or

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indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c N 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified as class proceedings with respect to the Non-Settling Defendants, the continuation of the claims asserted in any of the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

#### **6.4 Dismissal of the Ontario Action ~~and the BC Action~~**

(1) Upon the Effective Date, the Ontario Action ~~and the BC Action~~ shall be dismissed with prejudice and without costs as against the Settling Defendants.

#### **6.5 Dismissal of Other Actions**

(1) Upon the Effective Date, each member of the Settlement Classes shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent such Other Actions relate to Air Conditioning Systems.

(2) Upon the Effective Date, all Other Actions commenced in Ontario ~~or British Columbia~~ by any Settlement Class Member, to the extent such Other Actions relate to Air Conditioning Systems, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

#### **6.6 Material Term**

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of ~~any the Ontario~~ Court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

## SECTION 7 – BAR ORDER AND RESERVATION OF OTHER CLAIMS

### 7.1 Ontario and British Columbia Bar Order

(1) Class Counsel shall seek a bar order from the Ontario Courts providing for the following:

(a) to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section 7.1 (unless such claim is made in respect of a claim by a Person who has validly opted-out of the BC Action or the Ontario Action);

(b) if the Ontario Court ~~or BC Court, as applicable~~, ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

(i) the Ontario ~~and BC~~ Plaintiffs and the Ontario ~~and BC~~ Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c 34) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

(ii) the Ontario ~~and BC~~ Plaintiffs and the Ontario ~~and BC~~ Settlement Class Members shall limit their claims against the Non-Settling

Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c 34) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario ~~and BC~~ Plaintiffs and Ontario ~~and BC~~ Settlement Class Members, if any, and, for greater certainty, the Ontario ~~and BC~~ Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

(iii) the Ontario ~~and BC~~ Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding, whether or not the Releasees remain in the relevant Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant Proceeding and any determination by the Ontario Court ~~or BC Court, as applicable,~~ in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;

(c) after the relevant Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted and on at least twenty (20) days' notice to Counsel for the Settling Defendants, a Non-Settling Defendant may, on motion to the Ontario Court ~~or the BC Court, as appropriate,~~ seek an Order for

the following, which order shall be determined as if the Settling Defendants remained parties to the relevant Proceeding:

- (i) documentary discovery and affidavit(s) of documents ~~(list of documents in British Columbia) from~~ the Settling Defendants in accordance with the Ontario Court's rules of procedure;
  - (ii) oral discovery of a representative(s) of the Settling Defendants, the transcripts of which may be read in at trial;
  - (iii) leave to serve a request to admit ~~(notice to admit in British Columbia)~~ on the Settling Defendants in respect of factual matters; and/or
  - (iv) the production of a representative(s) of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) the Settling Defendants retain all rights to oppose any motion brought pursuant to Section 7.1(1)(c) , including any such motion brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with Section 7.1(1)(c);
- (e) on any motion brought pursuant to Section 7.1(1)(c), the Ontario Court ~~or BC Court, as applicable,~~ may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;

- (g) the Ontario ~~and BC~~ Courts will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario ~~and BC~~ Courts for these purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 7.1(1)(c) on the Settling Defendants by service on Counsel for the Settling Defendants.

## **7.2 Claims Against Other Entities Reserved**

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

## **7.3 Material Term**

- (1) The Parties acknowledge that the bar orders and reservations of rights contemplated in this Section 7 shall be considered a material term of the Settlement Agreement and the failure of ~~any~~ the Ontario Court to approve the bar orders and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

# **SECTION 8 – EFFECT OF SETTLEMENT**

## **8.1 No Admission of Liability**

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, any Other Actions, or any other pleading filed by the Plaintiffs.

## **8.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

## **8.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified as class proceedings, the continuation of the claims asserted in such Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, Class Counsel or anyone currently or hereafter employed by or a partner with Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court, and subject to Section 4.2 of this Settlement Agreement, except that such information can be disclosed to Siskinds Desmeules s.e.n.c.r.l. to the extent that Siskinds Desmeules s.e.n.c.r.l. is assisting Class Counsel in the prosecution of the Proceedings and they agree to keep such information confidential and only use it for the purpose of providing such assistance.

(2) Section 8.3(1) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.



## SECTION 9 – CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

- (1) The Parties agree that the Ontario Action ~~and the BC Action~~ shall be certified as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Ontario Courts.
- (2) The Plaintiffs agree that, in the motions for certification of the Ontario Action ~~and the BC Action~~ as a class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes. The Parties agree that the certification of the Ontario Action ~~and the BC Action~~ as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

## SECTION 10 – NOTICE TO SETTLEMENT CLASSES

### 10.1 Notices Required

- (1) The proposed Settlement Classes shall be given a single notice of: (i) the certification of the Ontario Action ~~and the BC Action~~ as a class proceedings as against the Settling Defendants for settlement purposes; (ii) the hearing(s) at which the Ontario Courts will be asked to approve the Settlement Agreement; and (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.
- (2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Classes shall be given notice of such event.

### 10.2 Form and Distribution of Notices

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Ontario Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Ontario Courts.
- (2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Ontario Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Ontario Courts.

## SECTION 11 – ADMINISTRATION AND IMPLEMENTATION

### 11.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Ontario Courts on motions brought by Class Counsel.

### 11.2 Information and Assistance

(1) The Settling Defendants will make reasonable efforts to provide to Class Counsel a list of the names and addresses (including any relevant email addresses) of Persons in Canada who purchased Air Conditioning Systems directly from the Settling Defendants during the Class Period and the Purchase Price paid by each such Person for such purchases, to the extent such information is reasonably available and to the extent not previously provided. The information shall be delivered in Microsoft Excel format, or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel, and shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1 or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1.

(2) The name and address information required by Section 11.2(1) shall be delivered to Class Counsel within thirty (30) days of the Date of Execution, but no later than ten (10) days after the orders required by Section 2.2(1) have been obtained, or at a time mutually agreed upon by the Parties. The Purchase Price information required by Section 11.2(1) shall be delivered to Class Counsel within sixty (60) days of the Effective Date, or at a time mutually agreed upon by the Parties.

(3) Class Counsel may use the information provided under Section 11.2(1):

- (a) to facilitate the dissemination of the notices required in Section 10.1;
- (b) to advise Persons in Canada who purchased Air Conditioning Systems directly from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;

- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) achieved or court awards issued in the Proceedings; and
- (d) as otherwise authorized in Section 4.

(4) All information provided by the Settling Defendants pursuant to Section 11.2(1) shall be dealt with in accordance with Section 4, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to Section 11.2(1) to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 11.2(3). Any Court-appointed notice provider and/or the Claims Administrator shall be bound by the same confidentiality obligations set out in Section 4. If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, all information provided by the Settling Defendants pursuant to Section 11.2(1) shall be dealt with in accordance with Section 5.2(1)(d) and no record of the information so provided shall be retained by Class Counsel, any Court-appointed notice-provider and/or the Claims Administrator in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 11.2(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section 11.2 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 11.2.

## SECTION 12 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

### 12.1 Distribution Protocol

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will bring motions seeking orders from the Ontario Courts approving the Distribution Protocol. The motions can be brought before the Effective Date, but the orders approving the Distribution Protocol shall be conditional on the Effective Date occurring.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

(3) In addition, the Distribution Protocol shall treat residents of Quebec in the equivalent manner to residents elsewhere in Canada and must comply with the requirements of Quebec law, including in respect of remittances to the Fonds d'Aide aux actions collectives and in case of any remaining balance to be allocated *cy pres* to one or more recipients to be approved by the Ontario Court, *The Act Respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Quebec Class Members.

### 12.2 No Responsibility for Administration or Fees

(1) Except as otherwise provided for in this Settlement Agreement, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the administration of the Settlement Agreement or the investment, distribution or administration of monies in the Trust Account including, but not limited to Administration Expenses.

## SECTION 13 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

### 13.1 Responsibility for Fees, Disbursements and Taxes

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained

by Class Counsel, the Plaintiffs or the Settlement Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

### **13.2 Responsibility for Costs of Notices and Translation**

(1) Siskinds LLP shall pay the costs of the notices required by Section 10 and any costs of translation required by Section 14.11 from the Trust Account, as they become due. Subject to Section 5.3, the Releasees shall not have any responsibility for the costs of the notices or translation.

### **13.3 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel may seek the Ontario Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

## **SECTION 14 – MISCELLANEOUS**

### **14.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants may apply to the Ontario Courts ~~as may be required~~ for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Ontario Courts orders otherwise, motions for directions that do not relate to matters specifically affecting the BC Action shall be determined by the Ontario Court.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those applications concerned solely with the implementation and administration of the Distribution Protocol.

#### 14.2 Headings, etc.

- (1) In this Settlement Agreement:
  - (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
  - (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

#### 14.3 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
  - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
  - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

#### 14.4 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, and the Parties and the Class Counsel Fees in that Proceeding.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter. Notwithstanding the foregoing, the Ontario Court has jurisdiction to approve Class Counsel Fees and Class Counsel Disbursements for Ontario and BC Counsel.

(3) Notwithstanding Sections 14.4(1) and 14.4(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the BC Action shall be determined by the Ontario Court.

#### **14.5 Governing Law**

(1) Subject to Section 14.5(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(2) Notwithstanding Section 14.5(1), for matters relating specifically to the BC Action, the BC Court shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

#### **14.6 Entire Agreement**

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **14.7 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court(s) with jurisdiction over the matter to which the amendment relates.

#### **14.8 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each

and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

#### **14.9 Counterparts**

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### **14.10 Negotiated Agreement**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **14.11 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required to by a Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **14.12 Transaction**

(1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.



#### **14.13 Recitals**

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

#### **14.14 Schedules**

(1) The schedules annexed hereto form part of this Settlement Agreement.

#### **14.15 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

#### **14.16 Authorized Signatures**

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

#### **14.17 Notice**

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be

provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**For the Plaintiffs and for Class Counsel in the Proceedings:**

Charles M. Wright and Linda Visser  
SISKINDS LLP  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8  
Tel: 519.672.2121  
Fax: 519.672.6065  
Email: [charles.wright@siskinds.com](mailto:charles.wright@siskinds.com)  
[linda.visser@siskinds.com](mailto:linda.visser@siskinds.com)

David Sterns and Jean Marc Leclerc  
SOTOS LLP  
Barristers and Solicitors  
180 Dundas Street West, Suite 1200  
Toronto, ON M5G 1Z8  
Tel: 416.977.0007  
Fax: 416.977.0717  
Email: [dsterns@sotosllp.com](mailto:dsterns@sotosllp.com)  
[jleclerc@sotosllp.com](mailto:jleclerc@sotosllp.com)

David Jones  
CAMP FIORANTE MATTHEWS  
MOGERMAN LLP  
4th Floor, 856 Homer St.  
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Tel: 604.689.7555  
Fax: 604.689.7554  
Email: [djones@cfmlawyers.ca](mailto:djones@cfmlawyers.ca)

**For the Settling Defendants:**

Paul Martin  
Fasken Martineau DuMoulin LLP  
333 Bay Street  
Suite 2400  
P.O. Box 20  
Toronto, ON M5H 2T6  
Tel: 416.865.4439  
Fax: 416.364.7813  
Email: [pmartin@fasken.com](mailto:pmartin@fasken.com)

**14.18 Date of Execution**

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**FADY SAMAHA** on his own behalf and on behalf of the Ontario Settlement Class that he proposes to represent, by his counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
Siskinds LLP  
Ontario Counsel

**JORDAN RAMSAY** on her own behalf and on behalf of the Ontario Settlement Class that she proposes to represent, by her counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
Siskinds LLP  
Ontario Counsel

**SHERIDAN CHEVROLET CADILLAC LTD. and THE PICKERING AUTO MALL LTD.**, on their own behalf and on behalf of the Ontario Settlement Classes that they propose to represent, by their counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
Sotos LLP  
Ontario Counsel

**DARREN EWERT** on his own behalf and on behalf of the BC Settlement Class that he proposes to represent, by his counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
Camp Fiorante Matthews Mogerman LLP  
BC Counsel

**MAHLE BEHR GMBH & CO. KG** and **MAHLE BEHR USA INC.**, by their counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_

Fasken Martineau DuMoulin LLP  
Counsel for the Settling Defendants

**SISKINDS DESMEULES S.E.N.C.R.L.**

Per: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

I have authority to bind the Partnership

**SCHEDULE “A”  
Proceedings**

Court and File No.	Plaintiff(s)' Counsel	Plaintiff(s)	Defendants	Settlement Class
<b>Ontario Action</b>				
Ontario Superior Court of Justice Court File No. CV-14-506637-00CP	Siskinds LLP and Sotos LLP	Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd., Fady Samaha, and Jordan Ramsay	Valeo S.A., Valeo Incorporated, Valeo Japan Co. Ltd., Valeo Climate Control Corp, Valeo Compressor North America, Inc., Valeo Electrical Systems, Inc., Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries Climate Control, Inc., Denso Corporation, Denso International America, Inc., Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., Calsonic Kansei Corporation, Calsonic Kansei North America, Inc., Sanden Holdings Corporation, Sanden International (USA) Inc., Sanden Automotive Climate Systems Corporation, Sanden Automotive Components Corporation, MAHLE Behr GmbH & Co. KG, MAHLE Behr USA Inc., Panasonic Corporation, Panasonic Corporation of North America, and Panasonic Canada, Inc.	All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, an Air Conditioning System; and/or (b) purchased or leased, directly or indirectly, a new Automotive Vehicle containing an Air Conditioning System and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing an Air Conditioning System. Excluded Persons <del>and Persons who are included in the BC Settlement Class</del> are excluded from the Ontario Settlement Class.
<b>BC Action</b>				
British Columbia Supreme Court File No. S-137598 (Vancouver Registry)	Camp Fiorante Matthews Mogerman LLP	Darren Ewert	Denso Corporation, Denso International America, Inc., Techma Corporation, Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., TD Automotive Compressor Georgia LLC, Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries Automotive Thermal Systems Co., Ltd., MHI Energy & Service Co., Ltd., Shinryo Corporation, Valeo SA, Valeo Japan Co. Ltd., Valeo, Inc., Calsonic Kansei Corporation, Calsonic Kansei North America, Inc., MAHLE Behr GmbH & Co. KG <i>fka</i> Behr GmbH & Co. KG, and MAHLE Behr USA Inc. <i>fka</i> Behr America Inc.	<del>All Persons in British Columbia who, during the Class Period, (a) purchased, directly or indirectly, an Air Conditioning System; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle containing an Air Conditioning System; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing an Air Conditioning System. Excluded Persons are excluded from the BC Air</del>

Court and File No.	Plaintiff(s)' Counsel	Plaintiff(s)	Defendants	Settlement Class
				<del>Conditioning Systems Settlement Class.</del> <u>Not applicable.</u>
<b>Related Action</b>				
British Columbia Supreme Court File No. S-170745	Camp Fiorante Matthews Mogerman LLP	Darren Ewert	Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada, Inc., Sanden Corporation, Sanden Automotive Components Corporation, Sanden Automotive Climate Systems Corporation and Sanden International (U.S.A.), Inc.	

**SCHEDULE "B"**

Court File No. CV-14-506637-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE BELOBABA ) OF , 2020

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,  
THE PICKERING AUTO MALL LTD., FADY SAMAHA,  
and JORDAN RAMSAY**

Plaintiffs

- and -

**VALEO S.A., VALEO INCORPORATED, VALEO JAPAN CO. LTD., VALEO  
CLIMATE CONTROL CORP, VALEO COMPRESSOR NORTH AMERICA, INC.,  
VALEO ELECTRICAL SYSTEMS, INC., MITSUBISHI HEAVY INDUSTRIES, LTD.,  
MITSUBISHI HEAVY INDUSTRIES CLIMATE CONTROL, INC., DENSO  
CORPORATION, DENSO INTERNATIONAL AMERICA, INC., DENSO  
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., CALSONIC  
KANSEI CORPORATION, CALSONIC KANSEI NORTH AMERICA, INC., SANDEN  
HOLDINGS CORPORATION, SANDEN INTERNATIONAL (USA) INC., SANDEN  
AUTOMOTIVE CLIMATE SYSTEMS CORPORATION, SANDEN AUTOMOTIVE  
COMPONENTS CORPORATION, MAHLE BEHR GMBH & CO. KG, MAHLE BEHR  
USA INC., PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH  
AMERICA, and PANASONIC CANADA, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER**

**- Air Conditioning Systems -**

**- MAHLE Behr Notice Approval and Consent Certification -**

**THIS MOTION** made by the Ontario Plaintiffs for an Order approving the abbreviated, publication, and long-form notices of settlement approval hearings and the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement

purposes as against MAHLE Behr GmbH & Co. KG and MAHLE Behr USA Inc. (the “Settling Defendants”) was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**ON READING** the materials filed, including the settlement agreement with MAHLE Behr GmbH & Co. KG and MAHLE Behr USA Inc. dated as of ●, 2020 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on reading the submissions of counsel for the Ontario Plaintiffs and Counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

**AND ON BEING ADVISED** that the Ontario Plaintiffs and the Settling Defendants consent to this Order;

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the abbreviated, publication, and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the plan of dissemination for the abbreviated, publication, and long-form notices of settlement approval hearing (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “E” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.



5. **THIS COURT ORDERS** that the “Ontario Settlement Class” is certified as follows:

All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, an Air Conditioning System; and/or (b) purchased or leased, directly or indirectly, a new Automotive Vehicle containing an Air Conditioning System and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing an Air Conditioning System. Excluded Persons ~~and Persons who are included in the BC Settlement Class~~ are excluded from the Ontario Settlement Class.

6. **THIS COURT ORDERS** that Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd., Fady Samaha, and Jordan Ramsay are appointed as the representative plaintiffs for the Ontario Settlement Class.

7. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendants, or any of them, conspire to fix, raise, maintain, and/or stabilize the prices of Air Conditioning Systems in Canada and/or elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

8. **THIS COURT ORDERS** that this Order, including but not limited to the certification of the Ontario Action as against the Settling Defendants for settlement purposes and the definition of the Ontario Settlement Class and Common Issue, and any reasons given by the Court in connection with this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Action, as against the Non-Settling Defendants.

9. ~~**THIS COURT ORDERS** that paragraphs 2-7 of this Order are contingent upon a parallel order being made by the BC Court, and the terms of this Order shall not be effective unless and until such an order is made by the BC Court.~~

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The Honourable Justice Belobaba

**SCHEDULE "C"**

Court File No. CV-14-506637-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE BELOBABA ) OF , 2020

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,  
THE PICKERING AUTO MALL LTD., FADY SAMAHA,  
and JORDAN RAMSAY**

Plaintiffs

- and -

**VALEO S.A., VALEO INCORPORATED, VALEO JAPAN CO. LTD., VALEO  
CLIMATE CONTROL CORP, VALEO COMPRESSOR NORTH AMERICA, INC.,  
VALEO ELECTRICAL SYSTEMS, INC., MITSUBISHI HEAVY INDUSTRIES, LTD.,  
MITSUBISHI HEAVY INDUSTRIES CLIMATE CONTROL, INC., DENSO  
CORPORATION, DENSO INTERNATIONAL AMERICA, INC., DENSO  
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., CALSONIC  
KANSEI CORPORATION, CALSONIC KANSEI NORTH AMERICA, INC., SANDEN  
HOLDINGS CORPORATION, SANDEN INTERNATIONAL (USA) INC., SANDEN  
AUTOMOTIVE CLIMATE SYSTEMS CORPORATION, SANDEN AUTOMOTIVE  
COMPONENTS CORPORATION, MAHLE BEHR GMBH & CO. KG, MAHLE BEHR  
USA INC., PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH  
AMERICA, and PANASONIC CANADA, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER  
- Air Conditioning Systems -  
- MAHLE Behr Settlement Approval -**

**THIS MOTION** made by the Plaintiffs for an Order approving the settlement of this action with MAHLE Behr GmbH & Co. KG and MAHLE Behr USA Inc. (collectively, the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**AND ON READING** the materials filed, including the settlement agreement entered into with MAHLE Behr GmbH & Co. KG and MAHLE Behr USA Inc. dated ●, 2020, attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Ontario Plaintiffs and counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ● written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting out of the Ontario Action has passed, and three Persons validly exercised the right to opt out;

**AND ON BEING ADVISED** that the Ontario Plaintiffs and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action.

4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the

continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified as class proceedings with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

10. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those members of the Ontario Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party, are barred, prohibited and enjoined in accordance

with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the BC Action or the Ontario Action).

13. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (a) the Ontario Plaintiffs and the Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the Ontario Plaintiffs and the Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is

not a Releasee to the Ontario Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action, whether or not the Releasees remain in the Ontario Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceeding.

14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) or judgment against them in favour of Ontario Settlement Class Members in the Ontario Action or the rights of the Ontario Plaintiffs and the Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Ontario Action, and on at least twenty (20) days' notice to Counsel for the Settling Defendants, and not to be brought



unless and until the Ontario Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and affidavit(s) of documents from Settling Defendant(s) in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 194;
- (b) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;
- (c) leave to serve request(s) to admit on Settling Defendant(s) in respect of factual matters; and/or
- (d) the production of representative(s) of Settling Defendant(s) to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.

16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.

17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above by service on Counsel for the Settling Defendants.

18. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Ontario Settlement Class has or may have in the Ontario Action against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of the Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Classes in the continued prosecution of the Proceedings against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Classes to claim such Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.

22. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
24. **THIS COURT ORDERS** that the ~~approval of the Settlement Agreement is contingent upon approval by the BC Court, and the~~ terms of this Order shall not be effective unless and until ~~the Settlement Agreement is approved by the BC Court and the BC Action has been dismissed as against the Settling Defendants with prejudice and without costs by the BC Court~~this order has been registered in British Columbia under the *Enforcement of Canadian Judgments and Decrees Act*, and the BC Action has been discontinued as against the Settling Defendants without costs. If such ~~an order~~a discontinuance is not secured in British Columbia, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Action and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
25. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Action be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.
26. **THIS COURT ORDERS** that this Order and any reasons given by the Court in relation thereto, except any reasons given in connection with paragraphs 12-17 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection

with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Action as against the Non-Settling Defendants.

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The Honourable Justice Belobaba