

**CANADIAN EXHAUST SYSTEMS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of May 26, 2020

Between

**SHERIDAN CHEVROLET CADILLAC LTD., THE PICKERING AUTO MALL LTD.,
and DARREN EWERT**

(the “**Plaintiffs**”)

and

**EBERSPÄCHER GRUPPE GMBH & CO. KG, EBERSPÄCHER EXHAUST
TECHNOLOGY GMBH (formerly EBERSPÄCHER EXHAUST TECHNOLOGY GMBH
& CO. KG), EBERSPÄCHER NORTH AMERICA, INC., and EBERSPÄCHER
CLIMATE CONTROL SYSTEMS CANADA INC. (formerly ESPAR PRODUCTS INC.)**

(the “**Settling Defendants**”)

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**CANADIAN EXHAUST SYSTEMS CLASS ACTIONS
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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 Second Ontario Action was commenced by the Ontario Plaintiffs relating to the same alleged conduct, and the Ontario Plaintiffs intend to consolidate the Second Ontario Action within the Ontario Action;

C. WHEREAS the Proceedings allege that some or all of the Releasees participated in an unlawful conspiracy with other manufacturers of Exhaust Systems to rig bids for, and to raise, fix, maintain or stabilize the prices of Exhaust Systems sold in Canada and elsewhere as early as January 1, 2002 until at least March 25, 2014 contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 and the Canadian common law;

D. WHEREAS the Settlement Class Members were permitted an opportunity to opt out, the deadline to opt out of the Proceedings has passed, and two Persons validly and timely exercised the right to opt out;

E. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, the Second Ontario Action 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;

F. 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;

G. 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;

H. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Ontario Court, the BC Court 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 Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

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

J. 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 Plaintiffs seek to represent, subject to approval of the Ontario Court and the BC Court;

K. 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 in 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 Settlement Classes they seek to represent;

L. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all of the Proceedings and any Other Actions as against the Releasees;

M. WHEREAS the Parties consent to certification of the Proceedings as class proceedings and to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purpose of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approval by the Ontario Court and the BC Court 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;

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

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

P. WHEREAS Klein Lawyers LLP commenced the Kett Action in British Columbia and the Dallaire Action in Quebec and has agreed to dismiss the Kett Action and discontinue the Dallaire Action as against the Settling Defendant, without costs and without prejudice to the named plaintiffs being able to participate in any distribution of the Settlement Amount;

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 Proceedings be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the Settlement Classes they seek to represent, or the Settling Defendants, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement only, 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) ***Automotive Vehicle*** means passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs).

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

- (4) **BC Counsel** means Camp Fiorante Matthews Mogergerman LLP.
- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **BC Plaintiff** means Darren Ewert.
- (7) **BC Settlement Class** means the settlement class in respect of the BC Action as defined in Schedule A.
- (8) **Case Management Direction** means the case management direction regarding the settlement approval process issued by the Ontario Court on September 21, 2018 and by the BC Court on April 24, 2019.
- (9) **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 Ontario Court or the BC 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.
- (10) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Ontario Court or the BC Court, as applicable, to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (11) **Class Counsel** means Ontario Counsel and BC Counsel.
- (12) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings or the Second Ontario Action, as well as any adverse costs awards issued against the Plaintiffs in the Proceedings or the Second Ontario Action.
- (13) **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, including the Fonds d'aide aux actions collectives in Quebec.
- (14) **Class Period** means January 1, 2002 to December 10, 2019.

- (15) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Exhaust Systems in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (16) **Counsel for the Settling Defendants** means McMillan LLP.
- (17) **Courts** means the BC Court and the Ontario Court.
- (18) **Dallaire Action** means *Dallaire v Bosal International NV et al* (Court No. 200-06-000240-195, previously Court No. 500-06-000988-192).
- (19) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (20) **Defendants** means the entities named as defendants in any of the Proceedings or the Second Ontario Action as set out in Schedule A, and any Persons added as defendants in any of the Proceedings or the Second Ontario Action in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.
- (21) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Ontario Court and the BC Court.
- (22) **Effective Date** means the date when Final Orders have been received
- (a) from all Courts, approving this Settlement Agreement, and
 - (b) from the BC Court dismissing the Kett Action and from the Quebec Court discontinuing the Dallaire Action as against the Settling Defendants.
- (23) **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 Proceedings in accordance with the order of the Ontario Court or the BC Court, as applicable.

(24) **Exhaust Systems** means the system installed in an Automotive Vehicle to carry gases away from the combustion chamber. Exhaust Systems may include, to the extent included in the relevant request for quotation, manifolds, flex pipes, catalytic converters, converters, diesel oxidation catalysts, diesel particulate filters, oxygen sensors, isolators, gaskets, clamps, resonator assemblies, pipe accessories, mufflers, muffler assemblies, and tubes.

(25) **Final Order** means a final order, judgment or equivalent decree entered by the Ontario Court or the BC Court, as applicable, 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.

(26) **Government Entity** means the Canadian Competition Bureau, the United States Department of Justice, the Japan Fair Trade Commission, or the European Commission.

(27) **Kett Action** means *Kett et al v Bosal International NV et al* (Supreme Court of British Columbia, Vancouver Registry, File No: VLC-S-S-180166).

(28) **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 or the Second Ontario Action have been dismissed or discontinued, either before or after the Date of Execution.

(29) **Ontario Action** means the Ontario Action as defined in Schedule A, and any action subsequently consolidated into the Ontario Action, including the Second Ontario Action.

(30) **Ontario Counsel** means Siskinds LLP and Sotos LLP.

(31) **Ontario Court** means the Ontario Superior Court of Justice.

(32) **Ontario Plaintiffs** means Sheridan Chevrolet Cadillac Ltd. and The Pickering Auto Mall Ltd.

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

(34) **Other Actions** means actions or proceedings, excluding the Proceedings and Second Ontario Action, relating to Released Claims and commenced by a Settlement Class Member either before or after the Effective Date, including the Kett Action and the Dallaire Action.

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

(36) **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.

(37) **Plaintiffs** means the BC Plaintiff and the Ontario Plaintiffs.

(38) **Proceedings** means the BC Action and the Ontario Action.

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

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

(41) **Quebec Court** means the Superior Court of Quebec.

(42) **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, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may

exist in the future, on account of, or in any way related to, the purchase, sale, pricing, discounting, manufacturing, marketing, offering, or distributing of Exhaust Systems, whether purchased or leased 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 at any time prior to the Date of Execution, including the conduct alleged (or which was previously or could have been alleged) in the Proceedings or the Second Ontario Action. However, the Released Claims do not include: (i) claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, or breach of product warranty, or breach of contract claims or similar claims between the Parties that relate to Exhaust Systems but do not relate to alleged anti-competitive conduct; (ii) claims brought (whether before or after the Effective Date) outside of Canada relating to purchases of Exhaust 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 Exhaust Systems outside of Canada; or (iv) claims concerning any automotive part other than Exhaust Systems, where such claims do not concern Exhaust Systems.

(43) **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' related entities.

(44) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and all of their respective parents, subsidiaries, divisions, affiliates, predecessors, successors, purchasers, heirs, executors, administrators, insurers, and assigns of each of the foregoing.

(45) **Second Ontario Action** means the action commenced in the Ontario Court bearing File No. CV-17-00584400-00CP.

(46) **Settled Defendants** means any Defendant that, either alone or jointly with other Defendants, executes its own settlement agreement in the Proceedings or the Second Ontario Action 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.

(47) **Settlement Agreement** means this agreement, including the recitals and schedules.

(48) **Settlement Amount** means CAD\$190,000.

(49) **Settlement Classes** means the BC Settlement Class and the Ontario Settlement Class.

(50) **Settlement Class Member** means a member of a Settlement Class.

(51) **Settling Defendants** means Eberspächer Gruppe GmbH & Co. KG, Eberspächer Exhaust Technology GmbH & Co. KG, Eberspächer North America Inc., and Eberspächer Climate Control Systems Canada Inc. (formerly Espar Products Inc.).

(52) **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*, S.C. 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.

(53) **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 Exhaust Systems, in which some or all of the Settling Defendants are named as parties in the United States District Court for the Eastern District of Michigan, Southern Division, including the actions under the captions *In re Automotive Parts Antitrust Litigation*, Exhaust Systems Cases, No. 2:16-cv-03701 (MOB), *In re Automotive Parts Antitrust Litigation*, Exhaust Systems Cases, No. 2:16-cv-03702 (MOB), and *In re Automotive Parts Antitrust Litigation*, Exhaust Systems Cases, No. 2:16-cv-03703 (MOB), 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 Exhaust Systems, to the extent that the Settling Defendants are named as parties.

(54) ***U.S. Protective Order*** means “Stipulation and Protective Order Governing the Production and Exchange of Confidential Information” issued in the U.S. Litigation on July 10, 2012 in *In re: Automotive Parts Antitrust Litigation*, Master File No. 12-MD-02311-MOB-MKM, Docket No. 200, and any order(s) entered that supplement, modify or supersede such order.

(55) ***U.S. Settlement Agreements*** includes any settlement reached with a Settling Defendant 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 and to secure the prompt, complete and final dismissal with prejudice of the Proceedings and all Other Actions as against the Settling Defendants.

2.2 Motions Seeking Approval of Notice and Certification

(1) The Plaintiffs shall file motions before the Ontario Court and the BC Court, 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 Proceedings as class proceedings as against the Settling Defendants (for settlement purposes only). The Plaintiffs will make best efforts to file the aforementioned motion before the BC Court no later than thirty (30) days after the Ontario Court has granted an order 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 order of the Ontario Court 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 order of the BC Court 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 Court and the BC Court for 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 order of the Ontario Court approving this Settlement Agreement shall be substantially in the form attached as Schedule C. The corresponding order of the BC Court approving this Settlement Agreement shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario Court order.

2.4 Conduct of the Approval Motions

(1) The Plaintiffs may 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 may elect to request that the Ontario Court and the BC Court 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 shall not oppose any such request.

2.5 Disposition of Other Actions

(1) The Plaintiffs shall bring, or cause to be brought, a motion for the dismissal of the Kett Action, with prejudice, as against the Settling Defendants, together with or as part of the settlement approval motion brought before the BC Court pursuant to Section 2.3 above.

(2) The Plaintiffs shall bring, or cause to be brought, a motion for the discontinuance of the Dallaire Action, with prejudice, as against the Settling Defendants before the Quebec Court as soon as practicable after the orders referred to in Section 2.2(1) have been granted.

2.6 Pre-Motion Confidentiality

(1) Until the first of the motions required by Section 2.2 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.

2.7 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 thirty (30) days of the Date of Execution, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP, for deposit into the Trust Account.

(2) Payment of the Settlement Amount shall be made by wire transfer. At least ten (10) 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, without limitation, 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, the Second Ontario Action, or any Other Actions.

(6) Once a Claims Administrator has been appointed, 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 orders of the Ontario Court or the BC Court, as applicable, 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 acceptable to the Settling Defendants, acting reasonably, that may be brought by or on behalf of the Plaintiffs

to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and information subject to a protective order that are relevant to the Proceedings or the Second Ontario Action, provided such application is not otherwise inconsistent with the terms of this Settlement Agreement, including Section 4. 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. Any steps the Plaintiffs require of the Settling Defendants or the Releasees to comply with any order arising from such application shall be at the sole expense of the Plaintiffs and without cost to the Settling Defendants or Releasees.

SECTION 4 – COOPERATION

4.1 Limits on Cooperation

(1) 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.

(2) 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.

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

4.2 Attorney Proffer

(1) Before the expiration of sixty (60) days from the Date of Execution, or at such other time as Class Counsel and the Settling Defendants may reasonably agree, Counsel for the Settling Defendants (or counsel for the Settling Defendants in other jurisdictions) will meet with Class Counsel, in Toronto, or by videoconference, or at such other place or by such other mode as Class Counsel and the Settling Defendants may reasonably agree, to provide an oral evidentiary proffer over a period of up to one (1) business day. Thereafter, proffering counsel for the Settling Defendants will make themselves available for reasonable follow-up conversations in connection with the proffer, and will use best efforts to respond to questions posed by Class Counsel. The proffer shall include information originating with the Settling Defendants relating to the allegations in the Proceedings and the Second Ontario Action, including information about the Exhaust Systems market. 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 the Ontario Court or the BC Court, as applicable. Further, absent an Ontario or BC Court order, Class Counsel will not attribute any factual information obtained from the proffer to the Settling Defendants and/or Counsel for the Settling Defendants. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer in the prosecution of the Proceedings and the Second Ontario Action, 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) may 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 an order of the Ontario Court or the BC Court, as applicable, 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.

4.3 Transaction Information

(1) Within sixty (60) days of a request, made after the Certification Date, by Class Counsel, acting in good faith and as reasonably required for oral discovery and the trial of the Proceedings,

or at a later time mutually agreed upon by the Parties, the Settling Defendants shall make reasonable efforts to provide to Class Counsel:

- (a) transactional sales data reflecting the Settling Defendants' global sales of Exhaust Systems between January 1, 2000 and March 25, 2016, to the extent such data relates to Exhaust Systems known or expected by the Settling Defendants to be included in Automotive Vehicles that were sold in Canada. The transactional sales data shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel. The Settling Defendants will produce transaction data only from existing electronic transaction databases except that, to the extent the Settling Defendants have not recorded or maintained electronic transaction data relating to Exhaust Systems for any period between January 1, 2000 and March 25, 2016, then the Settling Defendants will use reasonable efforts to locate and produce existing hard copy summary records of sales data not recorded or maintained electronically in the existing electronic sales transaction database. The transactional sales data or hard copy records shall be delivered as a separate production from the documents to be delivered pursuant to any other provision of this Settlement Agreement;
- (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 personnel or consultants knowledgeable about the sales data; and
- (c) after conducting a reasonable search, the identity of Automotive Vehicles sold in Canada from January 1, 2000 to March 25, 2016 that contain Exhaust Systems sold by the Settling Defendants.

4.4 Previously Produced Documents

- (1) Within sixty (60) days of a request, made after the Certification Date, by Class Counsel, acting in good faith and as reasonably required for oral discovery and the trial of the Proceedings,

or at a later time mutually agreed upon by the Parties, the Settling Defendants shall make reasonable efforts to provide to Class Counsel:

- (a) electronic copies of any documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) regarding Exhaust Systems produced or made available by the Settling Defendants in the U.S. Litigation, including any documents produced by the Settling Defendants pursuant to the U.S. Settlement Agreements, and any pre-existing translations of those 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;
- (b) the identity of all current and former employees, directors and officers of the Releasees:
 - (i) who were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging and market allocation of Exhaust Systems; or
 - (ii) who appeared before the grand jury in the U.S. Department of Justice investigation into alleged antitrust violations with respect to Exhaust Systems; or
 - (iii) who 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 Exhaust Systems; and
- (c) electronic copies of any documents (as defined in Rule 30.01 of the Ontario Rules of Civil Procedure), including any pre-existing translations of those documents, produced or made available by the Settling Defendants to any Government Entity, to the extent such productions are not duplicative; and

4.5 Cost Data

(1) Within sixty (60) days of a request, made after the Certification Date, by Class Counsel, acting in good faith and as reasonably required for oral discovery and the trial of the Proceedings, the Settling Defendants shall make reasonable efforts to provide to Class Counsel the following information regarding the Settling Defendants' standard costs per part number from 2010 onwards: (i) the customer name, (ii) a general part description and (iii) the cost amount.

4.6 Interviews and Witnesses

(1) 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 evidentiary proffer or interview of representatives of the Settling Defendants that occurs in the U.S. Litigation pursuant to the U.S. Settlement Agreements.

(2) In the event that any employee interviews provided for in the U.S. Settlement Agreements: (i) have already occurred; (ii) occur within six (6) months of the Effective Date, but Class Counsel is unable to attend or is not given reasonable advance notice of the time and location of the interviews; or (iii) do not occur within six (6) months of the Effective Date, the Settling Defendants shall, at the request of Class Counsel, upon at least sixty (60) days' 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 and the Second Ontario Action to provide information regarding the allegations raised in the Proceedings and the Second Ontario Action in a personal interview with Class Counsel and/or experts retained by Class Counsel. Class Counsel shall use reasonable efforts to limit this requirement to a single current employee. Such personal interviews shall take place in a North American location, or via video conference if necessary or appropriate, and shall not exceed one (1) business day or seven (7) hours for each individual, 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. The expenses of the interviewee in relation to such interviews, including travel costs and the costs of an interpreter or otherwise related to foreign language translation in connection with interviews, shall be the responsibility of Class Counsel. If

a proposed interviewee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use best efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The Settling Defendants shall have the right to have counsel present at any interviews by 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.

(3) 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 or Second Ontario Action (including through affidavit evidence) one or more representatives qualified to establish for admission into evidence: (i) the Settling Defendants' transactional sales data and cost data; (ii) the Settling Defendants' other documents provided as cooperation that is reasonable and necessary for the prosecution of the Proceedings or the Second Ontario Action (with Class Counsel using its best efforts to authenticate documents for use at trial or otherwise without use of a live witness); and (iii) the Settling Defendants' other information, all as provided by the Settling Defendants as cooperation pursuant to Section 4 of this Settlement Agreement. Class Counsel shall use all reasonable efforts to limit this requirement to a single witness. 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. Class Counsel shall be responsible for all associated costs incurred by such representatives in connection with fulfilling the Settling Defendants' obligations under this Section.

4.7 General Provisions

(1) The obligation to produce documents pursuant to Section 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 or are produced in the U.S. Litigation.

(2) To the extent that the Settling Defendants make oral evidentiary proffers pursuant to the U.S. Settlement Agreements that contain information not previously proffered to the Plaintiffs pursuant to Section 4.2, 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. Litigation is relevant to the Proceedings or the Second Ontario Action.

(3) It is understood that the evidentiary proffers and/or interviews of employees described in Section 4.16 might take place before the Effective Date. In such event:

- (a) any documents or information provided in the course of those evidentiary 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 evidentiary 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 or the Second Ontario Action, and such information shall not be discoverable by any Person or treated as evidence of any kind, unless otherwise ordered by the Ontario Court or the BC Court, as applicable. In the event of such non-approval, termination or failure to take effect, Class Counsel will return all copies of any documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about) those evidentiary proffers and/or interviews and any summaries thereof, and to provide written confirmation to the Settling Defendants of having done so.

(4) 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, Counsel for the Settling Defendants have created a relevant privilege log, or there is some other pre-existing document containing identifying information regarding the withheld documents, the Settling Defendants will provide Class Counsel with a copy of such log or document, and it shall be delivered as a separate production from the documents to be delivered pursuant to Sections 4.2, 4.3, 4.4, or 4.5 or identified by bates number as part of the production of documents to be delivered pursuant to Sections 4.2, 4.3, 4.4, or 4.5.

(5) 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.

(6) 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 and the Second Ontario Action against all Defendants.

(7) Subject to Sections 4.7(8) and (9), 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.

(8) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings and the Second Ontario Action as against an officer, director and/or employee of the Settling Defendants put forward to participate in employee interviews, or provide testimony at trial or otherwise pursuant to Sections 4.2, 4.3, 4.4, 4.5, or 4.6 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.

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

(10) 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.

4.8 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 the Second Ontario Action, 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 and the Second Ontario Action 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.

(2) If the Plaintiffs intend to produce or file in any of the Proceedings or the Second Ontario Action 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” or “Highly Confidential – Outside Attorneys Only,” and there is not already a confidentiality order issued in the relevant Proceeding or the Second Ontario Action 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 intervene for the purposes of obtaining 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 resolution of the motions, the Plaintiffs and Class Counsel may, so as not to delay prosecution of the relevant Proceeding or the Second Ontario Action, (i) file such documents or information with the Ontario Court or the BC Court, as applicable, in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the action 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 Ontario Court or the BC Court (as applicable)" and such records shall not form part of the public record in the relevant Proceeding or the Second Ontario Action except upon order of the Ontario Court or the BC Court, as applicable, 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 Defendants' motions have 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 Non-Settling Defendant for the purposes of the relevant Proceeding or the Second Ontario Action, 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 the Second Ontario Action, 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 the 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 4.88(2) shall comply with Practice Direction 35—Sealing Order in Civil and Family Proceedings.

(3) In the event that a Person requests disclosure of documents or information provided by the Settling Defendants and/or Counsel for 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 4.8(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 one or more Proceedings or the Second Ontario Action 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 production of such 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 the Ontario Court or the BC Court, as applicable; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the Proceedings or the Second Ontario Action, Class Counsel may provide, on an interim basis, documents or information to counsel for the Non-Settling Defendant provided that counsel for the Non-Settling Defendant agree and give assurances that, until the Settling Defendants’ 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 Non-Settling Defendant for the purposes of the Proceedings or the Second Ontario Action, 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 the Second Ontario Action, 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 of the Proceedings or the Second Ontario Action that applies to the documents and information provided as cooperation by the Settling Defendants, 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. Once a confidentiality or protective order(s) is issued in one or more Proceedings or the Second Ontario Action, that order(s) shall govern any documents and information received from the Settling Defendants.

SECTION 5– TERMINATION OF SETTLEMENT AGREEMENT

5.1 Right of Termination

- (1) In the event that:
 - (a) the Ontario Court or the BC Court declines to certify the Proceedings for the purposes of the Settlement Agreement;
 - (b) the BC Court declines to dismiss the BC Action or the Ontario Court declines to dismiss the Ontario Action, all as against the Settling Defendants;
 - (c) the Ontario Court or the BC Court declines to approve this Settlement Agreement or any material part hereof;
 - (d) the Ontario Court or the BC Court approves this Settlement Agreement in a materially modified form;
 - (e) the Ontario Court or the BC 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;
 - (f) any order approving this Settlement Agreement made by the Ontario Court or the BC Court does not become a Final Order;
 - (g) the Quebec Court declines to discontinue the Dallaire Action as against the Settling Defendants; or
 - (h) the BC Court declines to dismiss the Kett Action as against the Settling Defendants.

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) If the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to either terminate this Settlement Agreement, by delivering a written notice to the Settling Defendants pursuant to Section 14.17 in which the Settling Defendants are provided with

a fifteen (15) day period within which to cure such default, or move before the Courts to enforce the terms of this Settlement Agreement.

(3) Any order, ruling or determination made or rejected by the Ontario Court or the BC 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) Except as provided for in Section 5.4, if the Settlement Agreement is terminated, 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.

(2) 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 Proceedings as 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 certifying the Proceedings as 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 Party shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceedings as 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, the Second Ontario Action, or any Other Actions or other litigation; and

- (d) within ten (10) days of such termination having occurred, Class Counsel shall 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 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 actually incurred costs of notices required by Section 10.1(1) and any translations required by Section 14.11. For these purposes, the proportional share shall be the percentage that the Settlement Amount is of the sum of all settlement amounts in all settlements to which the notices or translations relate.

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(8), 3.2(3), 5.2(1), 5.2, 5.3, 5.4, 8.1, 8.2, 10.1(3) 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(8), 3.2(3), **Error! Reference source not found.**5.2(1), 5.2, 5.3, 5.4, 8.1, 8.2, 10.1(3) 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 Releasers 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, after the Date of Execution 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 Section 6.1 shall be deemed partial for the purposes of article 1687 and following of 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 members of the Settlement Class who are resident in Quebec against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees.

6.2 Release by Releasees

(1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

6.3 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 other than Quebec where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead the Releasers 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.

6.4 No Further Claims

(1) Upon the Effective Date, each Releaser 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 and the Second Ontario Action against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings or Second Ontario Action are not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings or Second Ontario Action 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 Releasers shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

6.5 Dismissal of the Proceedings

(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.

6.6 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Settlement Class 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 Exhaust Systems.
- (2) Upon the Effective Date, all Other Actions (except the Dallaire Action) commenced by any Settlement Class Member, to the extent such Other Actions relate to Exhaust Systems, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.
- (3) Upon the Effective Date, the Dallaire Action shall be discontinued as against the Releasees, without costs, with prejudice and without reservation.

6.7 Material Term

- (1) The releases, covenants, dismissals, discontinuance and granting of consent contemplated in this Section 6 shall be considered a material term of the Settlement Agreement, and the failure of the Ontario Court or the BC Court or the Quebec Court to approve the releases, covenants, dismissals, discontinuance 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 Bar Order

- (1) Class Counsel shall seek bar orders from the Ontario Court and the BC Court 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, Second Ontario Action 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 (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);

- (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 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 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 the 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 Court or the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding or the Second Ontario Action, 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 or the Second Ontario Proceeding and any determination by the Ontario Court or the BC Court, as applicable, in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding or the Second Ontario Action and shall not be binding on the Releasees in any other proceeding;
- (c) after the relevant Proceeding and/or the Second Ontario Action 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 applicable, seek an Order for the following, which order shall be determined as if the Settling Defendants remained parties to the relevant Proceeding and were a party to the Second Ontario Action:
- (i) documentary discovery and affidavit(s) of documents (list of documents in British Columbia) from Settling Defendant(s) in accordance with the applicable rule of procedure of the Ontario Court or the BC Court;
 - (ii) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;

- (iii) leave to serve a request(s) to admit (notice to admit in British Columbia) on Settling Defendant(s) in respect of factual matters; and/or
 - (iv) the production of a representative(s) of Settling Defendant(s) 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 the 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 Court and the BC Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario Court or the BC Court, as applicable, 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 a Settling Defendant 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 reservation of rights contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Ontario Court or the BC Court to approve the bar orders and reservation of rights contemplated in this Section 7 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, 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 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, the Second Ontario Action, or 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 and Second Ontario Action against any Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings or the Second Ontario Action are not certified, the continuation of the claims asserted in the Proceedings or the Second Ontario Action on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the Second Ontario Action 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 of this Settlement Agreement.

SECTION 9– CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

(1) The Parties agree that the Proceedings 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 Court or the BC Court.

(2) The Plaintiffs agree that, in the motions for certification of the Proceedings as 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.

(3) The Parties agree that the certification of the Proceedings 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 Proceedings as class proceedings as against the Settling Defendants for settlement purposes; (ii) the hearing at which each of the Ontario Court and the BC Court will be asked to approve the Settlement Agreement; and (iii) if brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.
- (2) The notice advising Settlement Class Members of the hearing to approve the Settlement Agreement in Section 10.1 must provide that Quebec residents wishing to object to the Settlement Agreement will be permitted to present submissions on the Settlement Agreement, in French or English, before the competent Court(s) and inform them of the procedure to do so.
- (3) 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 Court and the BC Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Ontario Court or the BC Court, as applicable.
- (2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Ontario and the BC Court, as applicable, 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 Court and the BC Court, as applicable.

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 Court and the BC Court, as applicable, on motions brought by Class Counsel.

11.2 Information and Assistance

(1) The Settling Defendants will make best efforts to provide to Class Counsel a list of the names and addresses (including any relevant email addresses) of those Persons in Canada who received delivery of Exhaust Systems from the Settling Defendants during the Class Period and the Purchase Price paid by each such Person for such purchases. The information shall be delivered in Microsoft 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 4.3, 4.4 or 4.5 or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.3, 4.4 or 4.5.

(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 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 thirty (30) 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 Exhaust Systems from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings or the Second Ontario Action, any related approval hearings, and any other major steps in the Proceedings or the Second Ontario Action;
- (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 or the Second Ontario Action; 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 terminated, all information provided by the Settling Defendants pursuant to Section 11.2(1) shall be dealt with in accordance with Section 5.2(2)(d) and no record of the information so provided shall be retained by Class Counsel, any Court-appointed notice-provider 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 and the Second Ontario Action 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 Court and the BC Court 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) 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.

(4) The notice advising Settlement Class Members of the hearing to approve the Distribution Protocol must provide that Quebec residents wishing to object to the Distribution Protocol will be permitted to present submissions on the Distribution Protocol before the competent Court(s) and inform them of the procedure to do so.

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 100 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 approval of the Ontario Court and the BC Court 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 Court or the BC Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Ontario Court or the BC Court order otherwise, motions for directions that do not relate specifically to matters 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.

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) The Ontario Court and the BC Court, as applicable, 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 the Ontario Court or the BC Court to make any order or give any direction in respect of any matter of shared jurisdiction unless the order or direction is conditional upon a complementary order or direction being made or given by the Ontario Court or the BC Court, as applicable, with which it shares jurisdiction over that matter.
- (3) Notwithstanding Section 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 Ontario and/or BC Court 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 the Ontario Court or the BC 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
linda.visser@siskinds.com

David Sterns and Jean Marc Leclerc
SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1250
Toronto, ON M5G 1Z8
Tel: 416.977.0007
Fax: 416.977.0717
Email: dsterns@sotosllp.com
jleclerc@sotosllp.com

David Jones
CAMP FIORANTE MATTHEWS
MOGERMAN
4th Floor, 856 Homer Str.
Vancouver, BC V6B 2W5
Tel: 604.689.7555
Fax: 604.689.7554
Email: djones@cfmlawyers.ca

For the Settling Defendants:

David Kent and John Clifford
McMillan LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON M5J 2T3
Tel: 416.865.7000
Fax: 416.865.7048
Email: david.kent@mcmillan.ca
John.clifford@mcmillan.ca

14.18 Date of Execution

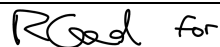
- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

SHERIDAN CHEVROLET CADILLAC LTD. and THE PICKERING AUTO MALL LTD., on their own behalf and on behalf of the Ontario Settlement Class, by their counsel

Name of Authorized Signatory:

Rebecca Coad for David G.A. Jones

Signature of Authorized Signatory:

 for

Sotos LLP
Ontario Counsel

RCoad for

Siskinds LLP
Ontario Counsel

DARREN EWERT on their own behalf and on behalf of the BC Settlement Class, by their counsel

Name of Authorized Signatory:

Rebecca Coad for David G.A. Jones

Signature of Authorized Signatory:

RCoad for

Camp Fiorante Matthews Mogerman LLP
BC Counsel

EBERSPÄCHER GRUPPE GMBH & CO. KG, EBERSPÄCHER EXHAUST TECHNOLOGY GMBH (formerly EBERSPÄCHER EXHAUST TECHNOLOGY GMBH & CO. KG), EBERSPÄCHER NORTH AMERICA INC., and EBERSPÄCHER CLIMATE CONTROL SYSTEMS CANADA INC. (formerly ESPAR PRODUCTS INC.) by their counsel

Name of Authorized Signatory:

David Kent

Signature of Authorized Signatory:

David Kent

McMillan LLP
Counsel for the Settling Defendants

**SCHEDULE “A”
Proceedings and Second Ontario Action**

Court and File No.	Plaintiffs’ Counsel	Plaintiff	Defendants	Settlement Class
Ontario Actions				
Ontario Superior Court of Justice Court File No. CV-17-582446-00CP (the “Ontario Action”)	Siskinds LLP and Sotos LLP	Sheridan Chevrolet Cadillac Ltd. and The Pickering Auto Mall Ltd.	Tenneco Inc., Tenneco GmbH, Tenneco Automotive Operating Company Inc., Tenneco Canada Inc., Bosal International NV, Bosal Nederland, B.V., Bosal Industries-Georgia, Inc. o/a Bosal International North America, Bosal USA, Inc., Eberspächer Gruppe GmbH & Co. KG, Eberspächer Exhaust Technology GmbH & Co. KG, Eberspächer North America, Inc., Espar Products Inc., Faurecia SA, Faurecia Emissions Control Technologies Canada, Ltd., Faurecia Emissions Control Technologies USA LLC, Faurecia Exhaust Systems, Inc., Faurecia USA Holdings, Inc., Meritor, Inc., Friedrich Boyson GmbH & Co. KG, and Boysen USA, LLC	All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, Exhaust Systems; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle containing Exhaust Systems; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing Exhaust Systems. Excluded Persons and Persons who are included in the BC Settlement Class are excluded from the Ontario Settlement Class.
Ontario Superior Court of Justice Court File No. CV-17-00584400-00CP (the “Second Ontario Action”)	Siskinds LLP and Sotos LLP	Sheridan Chevrolet Cadillac Ltd. and The Pickering Auto Mall Ltd.	Faurecia Abgastechnik GmbH, Faurecia Systems D’Echappement, NGK Spark Plug Co., Ltd., Woojin Industry Co., Ltd., NGK Spark Plugs (U.S.A.), Inc., NGK Spark Plugs Canada Limited, Denso Corporation, Denso International Korea Corporation, Denso Korea Automotive Corporation, Denso International America, Inc. Denso Manufacturing Canada, Inc., and Denso Sales Canada, Inc.	Not Applicable.

Court and File No.	Plaintiffs' Counsel	Plaintiff	Defendants	Settlement Class
BC Action				
British Columbia Supreme Court File No. S-192096 (Vancouver Registry) (the "BC Action")	Camp Fiorante Matthews Mogerman LLP	Darren Ewert	Bosal International NV, Bosal Nederland, B.V., Bosal Industries-Georgia, Inc. o/a Bosal International North America, Bosal USA, Inc., Friedrich Boysen GmbH & Co. KG, Boysen USA, LLC, Denso Corporation, Denso International Korea Corporation, Denso Korea Automotive Corporation, Denso International America, Inc. Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., Eberspächer Gruppe GmbH & Co. KG, Eberspächer Exhaust Technology GmbH & Co. KG, Eberspächer North America, Inc. Espar Products Inc., Faurecia SA, Faurecia Emissions Control Technologies Canada, Ltd., Faurecia Emissions Control Technologies USA LLC, Faurecia Exhaust Systems, Inc., Faurecia USA Holdings, Inc., Faurecia Abgastechnik GmbH, Faurecia Systems D'Echappement, Meritor, Inc., NGK Spark Plug Co., Ltd., Wootin Industry Co., Ltd., NGK Spark Plugs (U.S.A.), Inc., NGK Spark Plugs Canada Limited, Tenneco Inc., Tenneco GmbH, Tenneco Automotive Operating Company Inc., and Tenneco Canada Inc.	All Persons in British Columbia who, during the Class Period, (a) purchased, directly or indirectly, Exhaust Systems s; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle containing Exhaust Systems; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing Exhaust Systems. Excluded Persons are excluded from the BC Settlement Class.

SCHEDULE "B"

Court File No. CV-17-582446-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2019

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD., and
THE PICKERING AUTO MALL LTD.**

Plaintiffs

- and -

**TENNECO INC., TENNECO GMBH, TENNECO AUTOMOTIVE OPERATING
COMPANY INC., TENNECO CANADA INC., BOSAL INTERNATIONAL NV, BOSAL
NEDERLAND, B.V., BOSAL INDUSTRIES-GEORGIA, INC. o/a BOSAL
INTERNATIONAL NORTH AMERICA, BOSAL USA, INC., EBERSPÄCHER GRUPPE
GMBH & CO. KG, EBERSPÄCHER EXHAUST TECHNOLOGY GMBH & CO. KG,
EBERSPÄCHER NORTH AMERICA, INC., ESPAR PRODUCTS INC., FAURECIA SA,
FAURECIA EMISSIONS CONTROL TECHNOLOGIES CANADA, LTD., FAURECIA
EMISSIONS CONTROL TECHNOLOGIES, USA, LLC, FAURECIA EXHAUST
SYSTEMS, INC., FAURECIA USA HOLDINGS, INC., MERITOR, INC., FRIEDRICH
BOYSEN GMBH & CO. KG, and BOYSEN USA, LLC**

Defendants

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

ORDER

- Exhaust Systems -

- Eberspächer Notice Approval and Consent Certification -

THIS MOTION made by the 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 Eberspächer Gruppe GmbH & Co. KG, **Eberspächer Exhaust Technology**

GmbH (formerly Eberspächer Exhaust Technology GmbH & Co. KG), Eberspächer North America Inc., and Eberspächer Climate Control Systems Canada Inc. (formerly Espar Products Inc.) (collectively, the “Settling Defendants”) was read this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement with the Settling Defendants dated as of ●, 2020 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on reading the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

AND WHEREAS a parallel class proceeding relating to the pricing of Exhaust Systems was commenced under Court File No. CV-17-00584400-00CP (the “Second Ontario Action”) and is being case managed with the Ontario Action;

AND ON BEING ADVISED that the 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, Exhaust Systems; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle containing Exhaust Systems; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing Exhaust Systems. 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. and The Pickering Auto Mall Ltd. are appointed as the representative plaintiffs for the Settlement Class.

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

Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Exhaust Systems in Canada and 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 or the Second 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 or the Second Ontario Action, as against the Non-Settling Defendants.

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

The Honourable Justice Belobaba

SCHEDULE "C"

Court File No. CV-17-582446-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2019

BETWEEN:

SHERIDAN CHEVROLET CADILLAC LTD., and
THE PICKERING AUTO MALL LTD.

Plaintiffs

- and -

TENNECO INC., TENNECO GMBH, TENNECO AUTOMOTIVE OPERATING
COMPANY INC., TENNECO CANADA INC., BOSAL INTERNATIONAL NV, BOSAL
NEDERLAND, B.V., BOSAL INDUSTRIES-GEORGIA, INC. o/a BOSAL
INTERNATIONAL NORTH AMERICA, BOSAL USA, INC., EBERSPÄCHER GRUPPE
GMBH & CO. KG, EBERSPÄCHER EXHAUST TECHNOLOGY GMBH & CO. KG,
EBERSPÄCHER NORTH AMERICA, INC., ESPAR PRODUCTS INC., FAURECIA SA,
FAURECIA EMISSIONS CONTROL TECHNOLOGIES CANADA, LTD., FAURECIA
EMISSIONS CONTROL TECHNOLOGIES, USA, LLC, FAURECIA EXHAUST
SYSTEMS, INC., FAURECIA USA HOLDINGS, INC., MERITOR, INC., FRIEDRICH
BOYSEN GMBH & CO. KG, and BOYSEN USA, LLC

Defendants

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

ORDER
- Exhaust Systems -
- Eberspächer Settlement Approval -

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered into with Eberspächer Gruppe GmbH & Co. KG, **Eberspächer Exhaust Technology GmbH (formerly Eberspächer Exhaust Technology GmbH & Co. KG)**, Eberspächer North America Inc., and Eberspächer Climate Control Systems Canada Inc. (formerly Espar Products

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 dated ●, 2020, attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

AND WHEREAS a parallel class proceeding relating to the pricing of Exhaust Systems was commenced under Court File No. CV-17-00584400-00CP (the “Second Ontario Action”) and is being case managed with the Ontario Action;

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 and the Second Ontario Action has passed, and two Persons validly exercised the right to opt out;

AND ON BEING ADVISED that the 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 and the Second Ontario Action against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings or the Second Ontario Action are not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings or the Second Ontario Action 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, the Second Ontario Action 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 Proceeding).

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*) 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*) 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 or the Second 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 or the Second Ontario Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action or the Second 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*) or judgment against them in favour of Ontario Settlement Class Members in the Ontario Action or the Second 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 was party to the Second 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 and/or Second 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, the 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 Actio or the Second Ontario 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 Ontario 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 Ontario Settlement Class in the continued prosecution of the Ontario Action or the Second Ontario Action against the Non-Settling Defendants. This

paragraph shall not be interpreted as affecting the rights of the Ontario Plaintiffs or the Ontario Settlement Class 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. If such an order is not secured, 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 the approval of the Settlement Agreement 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 the Second 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 or the Second Ontario Action as against the Non-Settling Defendants.

The Honourable Justice Belobaba