

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

Made as of December 13, 2022

Between

**GAZAREK REALTY HOLDINGS LTD., 5045320 ONTARIO LTD.,
FADY SAMAHA, JORDAN RAMSAY, and DARREN EWERT**

(the “**Plaintiffs**”)

and

MITSUBISHI HEAVY INDUSTRIES, LTD. and MHI CLIMATE CONTROL, INC.

(the “**Settling Defendants**”)

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

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

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

E. WHEREAS on March 1, 2021, The Pickering Auto Mall Ltd. amalgamated with 2061222 Ontario Ltd. to form 5045320 Ontario Ltd, and Sheridan Chevrolet Cadillac Ltd. amalgamated with Gazarek Realty Holdings Ltd. and Gerald A. Gazarek Holdings Ltd. to form Gazarek Realty Holdings Ltd.;

F. WHEREAS Mitsubishi Heavy Industries Climate Control Inc., is in the process of being dissolved, and has changed its name to MHI Climate Control, Inc.

G. 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;

H. 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 Class in the Proceedings and any Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

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

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

K. 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 Class the Ontario Plaintiffs seek to represent, subject to approval of the Ontario Court;

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

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

N. WHEREAS the Parties consent to certification of the Ontario Action as a class proceeding and to the Settlement Class and a Common Issue in respect of the Ontario Action solely for the purposes of implementing this Settlement Agreement and contingent on approval by the Ontario 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;

O. WHEREAS the Ontario Plaintiffs assert that they are adequate class representatives for the Settlement Class they seek to represent and will seek to be appointed as representative plaintiffs in the Ontario Action; and

P. WHEREAS the Parties intend to pursue the approval of this Settlement Agreement through the Ontario Court and to discontinue the BC Action as against the Releasees named in the BC Action;

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

SECTION 1 – DEFINITIONS

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

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

(2) ***Air Conditioning Systems*** are systems that cool the interior environment of an Automotive Vehicle and are part of an Automotive Vehicle's thermal system. An Air Conditioning System

may include, to the extent included in the relevant request for quotation, compressors, condensers, HVAC units (blower motors, actuators, flaps, evaporators, heater cores, and filters embedded in a plastic housing), control panels, sensors, and associated hoses and pipes.

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

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

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

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

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

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

(9) ***Class Counsel*** means Ontario Counsel and BC Counsel.

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

(11) ***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.

(12) ***Class Period*** means January 1, 2001 to December 10, 2019.

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

(14) ***Counsel for the Settling Defendants*** means McMillan LLP.

- (15) **Courts** means the Ontario Court and the BC Court.
- (16) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (17) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule A. For greater certainty, Defendants includes the Settling Defendants, Mitsubishi Heavy Industries Automotive Thermal Systems Co., and the Settled Defendants.
- (18) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Ontario Court.
- (19) **Effective Date** means the date when Final Orders have been received from the Ontario Court approving this Settlement Agreement, and the BC Action has been discontinued as against the Releasees named in the BC Action.
- (20) **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 orders of the applicable Court.
- (21) **Final Order** means a final order, judgment or equivalent decree entered by the Ontario Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.
- (22) **Non-Settling Defendant** means any Defendant that is not: (i) a Settling Defendant or Mitsubishi Heavy Industries Automotive Thermal Systems Co.; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Date of Execution.
- (23) **Ontario Action** means the Ontario Action as defined in Schedule A and includes any actions subsequently consolidated into the Ontario Action.
- (24) **Ontario Counsel** means Siskinds LLP and Sotos LLP.

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

(26) **Ontario Plaintiffs** means Gazarek Realty Holdings Ltd., 5045320 Ontario Ltd., Fady Samaha, and Jordan Ramsay.

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

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

(29) **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.

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

(31) **Proceedings** means the BC Action and the Ontario Action, and “Proceeding” means the BC Action or the Ontario Action, as applicable.

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

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

(34) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or

contingent, liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now has or hereafter can, shall or may have, relating in any way to the purchase, sale, pricing, discounting, manufacturing, marketing, offering or distributing of Air Conditioning Systems, whether purchased directly or indirectly, including as part of an Automotive Vehicle, including any claims for consequential, subsequent or follow-on harm that arises after the Date of Execution in respect of any agreement, combination, conspiracy or conduct that occurred during the Class Period. However, the Released Claims do not include: (i) claims based on negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, breach of warranty, securities, or similar claims between the Parties that relate to Air Conditioning Systems (unless such claims allege anticompetitive conduct or anticompetitive communications among competitors); (ii) claims brought (whether before or after the Effective Date) outside of Canada relating to purchases of Air Conditioning Systems outside of Canada; (iii) claims brought (whether before or after the Effective Date) under laws other than those of Canada relating to purchases of Air Conditioning Systems outside of Canada; or (iv) claims concerning any automotive part other than Air Conditioning Systems, where such claims do not concern Air Conditioning Systems.

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

(36) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor,

administrator, insurer, devisee, assignee, or representative of any kind, other than Persons who validly and timely opted out of the BC Action or the Ontario Action in accordance with orders of the Courts.

(37) **Settled Defendants** means any Defendant (excluding the Settling Defendants and Mitsubishi Heavy Industries Automotive Thermal Systems Co.) that executes its own settlement agreement with the Plaintiffs in the Proceedings and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.

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

(39) **Settlement Amount** means US\$855,000.

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

(41) **Settlement Class Member** means a member of the Settlement Class.

(42) **Settling Defendants** means Mitsubishi Heavy Industries, Ltd. and MHI Climate Control, Inc.

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

(44) **U.S. Litigation** means the consolidated class action proceedings, in which a plaintiff alleges that certain auto parts manufacturers rigged bids for, and/or conspired to raise, fix, maintain or stabilize the prices of Air Conditioning Systems, in which the Settling Defendants are named

as parties, currently pending in the United States District Court for the Eastern District of Michigan, Southern Division, including the action under the caption *In re Automotive Parts Antitrust Litigation, Air Conditioning Systems* Case No. 2:13 -cv-02703, and includes all class actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all class actions pending such transfer, all class actions that may be transferred in the future, and all class proceedings alleging price fixing of Air Conditioning Systems, to the extent that the Settling Defendants are named as parties.

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

SECTION 2 – SETTLEMENT APPROVAL

2.1 Best Efforts

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

2.2 Motion Seeking Approval of Notice and Certification

(1) The Ontario Plaintiffs shall file a motion before the Ontario Court, as soon as practicable after the Date of Execution, for an order approving the notices described in Section 9.1(1) and certifying the Ontario Action as a class proceeding as against the Settling Defendants (for settlement purposes only).

(2) The Ontario order approving the notices described in Section 9.1(1) and certifying the Ontario Action for settlement purposes shall be substantially in the form attached as Schedule B.

2.3 Motion Seeking Approval of the Settlement Agreement

(1) The Plaintiffs shall make best efforts to file a motion before the Ontario Court for an order approving this Settlement Agreement as soon as practicable after:

- (a) the order referred to in Section 2.2(1) has been granted; and

(b) the notices described in Section 9.1(1) have been published.

(2) The Ontario order approving this Settlement Agreement shall be substantially in the form attached as Schedule C.

2.4 Discontinuance of the BC Action and Recognition Order

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

(a) have the Ontario order referred to in Section 2.3 registered at the court registry in British Columbia in accordance with the *Enforcement of Canadian Judgments and Decrees Act*, SBC 2003, ch 28, or failing this, commence an application in the BC Court for an order registering the Ontario order referred to in Section 2.3, all without costs to any Parties; and

(b) discontinue the BC Action as against the Releasees named in the BC Action without costs to any Parties.

2.5 Pre-Motion Confidentiality

(1) Until the first of the motions required by Section 2.2(1) is brought, the Parties shall keep all of the terms of this 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 stated in 2.5(2) and 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) Upon the Date of Execution, Class Counsel may disclose the existence and terms of this Settlement Agreement to the Courts and to the Non-Settling Defendants.

2.6 Settlement Agreement Effective

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

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within sixty (60) days of the Date of Execution, Mitsubishi Heavy Industries, Ltd. 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 thirty (30) days prior to the Settlement Amount becoming due, Siskinds LLP will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.
- (3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (4) The Settlement Amount shall be all-inclusive of all amounts, including interest, costs, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.
- (5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Proceedings, or any Other Actions.
- (6) Once a Claims Administrator has been appointed in the Proceedings, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.
- (7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) Siskinds LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Ontario Court 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 Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Siskinds LLP or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

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

3.3 Intervention in the U.S. Litigation

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

3.4 Cooperation

(1) If no settlement is reached with the remaining Non-Settled Defendants, or a settlement is reached but the settlement is not approved, terminates in accordance with its terms, or otherwise fails to take effect for any reason, Class Counsel shall advise Counsel for the Settling Defendants and the Parties, acting in good faith, shall reach an agreement on reasonable cooperation provisions, which provisions shall include provision of: (i) an evidentiary proffer; (ii) non-privileged transactional data and documents produced by the Settling Defendants in the context of the U.S. Litigation; (iii) any deposition transcripts, declarations or affidavits of current or former employees, officers or directors of the Releasees taken in the U.S. Litigation; (iv) copies of any responses to written interrogatories or requests to admit provided by the Releasees in the U.S. Litigation; and (v) representatives to authenticate documents or information provided as cooperation by Mitsubishi Heavy Industries, Ltd. at trial or otherwise in the Proceedings. In addition, the cooperation provisions shall include a provision requiring Mitsubishi Heavy Industries, Ltd. to consider in good faith any reasonable request by the Plaintiffs to collect and produce additional documents in Mitsubishi Heavy Industries, Ltd.'s possession, custody, or control concerning Air Conditioning Systems, provided the request would not impose an undue burden on Mitsubishi Heavy Industries, Ltd. Where possible, the cooperation provisions should rely on discovery that has already occurred in the U.S. Litigation. The cooperation provisions shall also contain terms acceptable to Mitsubishi Heavy Industries, Ltd. regarding protection of confidential and commercially sensitive information.

(2) Nothing in this Settlement Agreement or in any future cooperation provisions will require Mitsubishi Heavy Industries, Ltd. to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any jurisdiction, including any court order.

(3) 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 negotiating any cooperation provisions with Mitsubishi Heavy Industries, Ltd., and agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on Mitsubishi Heavy Industries, Ltd.

SECTION 4- TERMINATION OF SETTLEMENT AGREEMENT

4.1 Right of Termination

(1) In the event that:

- (a) the Ontario Court declines to certify the Ontario Action for the purposes of the Settlement Agreement;
- (b) the Ontario Court declines to dismiss the Ontario Action against the Settling Defendants;
- (c) the Ontario Court declines to approve this Settlement Agreement or any material part, or approves this Settlement Agreement in a materially modified form;
- (d) the Ontario Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule C;
- (e) any order approving this Settlement Agreement made by the Ontario Court does not become a Final Order;
- (f) the Ontario order described in Section 2.3 is not registered in British Columbia under the *Enforcement of Canadian Judgments and Decrees Act*, and the BC Court denies any application for an order recognizing the Ontario order referred to in Section 2.3; or
- (g) the BC Action is not discontinued against the Releasees named in the BC Action;

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17, within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17, within thirty (30) days after such non-payment, or move before the Ontario Court to enforce the terms of this Settlement Agreement.

(3) Except as provided for in Section 4.4, if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

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

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) the Distribution Protocol

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

4.2 If Settlement Agreement is Terminated

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

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

Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall make reasonable efforts to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section 4.2 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.

4.3 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 4.1(1), return to the Settling Defendants the amount they have paid to Siskinds LLP, plus all accrued interest thereon, but less the Settling Defendants' proportional share of the costs of notices required by Section 9.1(1) and any translations required by Section 13.11, to a maximum amount of \$15,000.

4.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(7), 3.2(3), 4.1(3), 4.2, 4.3, 4.4, 7.1, 7.2, 9.1(2) and 10.2(4), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited

purpose of the interpretation of Sections 3.1(7), 3.2(3), 4.1(3), 4.2, 4.3, 4.4, 7.1, 7.2, 9.1(2) and 10.2(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 5 – RELEASES AND DISMISSALS

5.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 5.3, 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 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 this Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

(3) Notwithstanding any of the foregoing, the releases granted pursuant to this Section 5.1 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 Settlement Class Members who are residents of Quebec against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees.

5.2 Covenant Not to Sue

(1) Upon the Effective Date, and notwithstanding Section 5.1 or the use of the terms Releasees and Releasers herein, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the 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. For greater certainty, Section 5.1(3) continues to apply to residents of Quebec.

5.3 No Further Claims

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c N 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified as class proceedings with respect to the Non-Settling Defendants, the continuation of the claims asserted in any of the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

5.4 Dismissal of the Ontario Action

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

5.5 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 Air Conditioning Systems.

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

5.6 Material Term

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Ontario

Court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 4.1 of the Settlement Agreement.

SECTION 6 – BAR ORDER AND RESERVATION OF OTHER CLAIMS

6.1 Bar Order

(1) Class Counsel shall seek a bar order from the Ontario 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 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 6.1 (unless such claim is made in respect of a claim by a Person who has validly opted-out of the BC Action or the Ontario Action);
- (b) if the Ontario Court 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 Plaintiff and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c 34) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Ontario Plaintiff and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c 34) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiff and Settlement Class Members, if any, and, for greater certainty, the 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 shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action, whether or not the Releasees remain in the Ontario Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action and any determination by the Ontario Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceeding;
- (c) after the 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 seek an Order for the following, which order shall be determined as if the Settling Defendants remained parties to the Ontario Action:

- (i) documentary discovery and affidavit(s) of documents the Settling Defendants in accordance with the Ontario Court's rules of procedure;
 - (ii) oral discovery of a representative(s) of the Settling Defendants, the transcripts of which may be read in at trial;
 - (iii) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
 - (iv) the production of a representative(s) of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) the Settling Defendants retain all rights to oppose any motion brought pursuant to Section 6.1(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 6.1(1)(c);
- (e) on any motion brought pursuant to Section 6.1(1)(c), the Ontario Court 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 will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario Court for these purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 6.1(1)(c) on the Settling Defendants by service on Counsel for the Settling Defendants.

6.2 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.

6.3 Material Term

(1) The Parties acknowledge that the bar orders and reservations of rights contemplated in this Section 6 shall be considered a material term of this Settlement Agreement and the failure of the Ontario Court to approve the bar orders and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 4.1 of this Settlement Agreement.

SECTION 7 – EFFECT OF SETTLEMENT

7.1 No Admission of Liability

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

7.2 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.

7.3 No Further Litigation

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

(2) Section 7.3(1) shall be inoperative to the extent that it is inconsistent with any of Class Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.

SECTION 8 – CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

(1) The Parties agree that the Ontario Action shall be certified as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Ontario Court.

(2) The Plaintiffs agree that, in the motion for certification of the Ontario Action as a class proceeding 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 class that they will assert is the Settlement Class. The Parties agree that the certification of the Ontario Action as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

SECTION 9 – NOTICE TO SETTLEMENT CLASS

9.1 Notices Required

(1) The proposed Settlement Class shall be given a single notice of: (i) the certification of the Ontario Action as a class proceeding as against the Settling Defendants for settlement purposes; (ii) the hearing at which the Ontario Court will be asked to approve this Settlement Agreement; and (iii) if they are brought with the hearing to approve this Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

9.2 Form and Distribution of Notices

(1) The notices shall be in a form agreed upon by the Parties and approved by the Ontario Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Ontario Court.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Ontario Court 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.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 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 on motions brought by Class Counsel.

10.2 Information and Assistance

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

(2) The name and address information required by Section 10.2(1) shall be delivered to Class Counsel within thirty (30) days of the Date of Execution, but no later than ten (10) days after the orders required by Section 2.2(1) have been obtained, or at a time mutually agreed upon by the Parties. The Purchase Price information required by Section 10.2(1) shall be delivered to Class Counsel within sixty (60) days of the Effective Date, or at a time mutually agreed upon by the Parties.

(3) Class Counsel may use the information provided under Section 10.2(1):

- (a) to facilitate the dissemination of the notices required in Section 9.1;
- (b) to advise Persons in Canada who purchased Air Conditioning Systems directly from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings; and
- (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.

(4) It is understood and agreed that all information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under Section 10.2(1) shall be treated as highly confidential and shall not be used directly or indirectly for any purpose other than as enumerated in Section 10.2(3). Subject to Section 10.2(5), the Plaintiffs and Class Counsel agree that they will not disclose the information provided by the Settling Defendants beyond what is reasonably necessary for the purposes enumerated in Section 10.2(3) or as otherwise required by law. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such information.

(5) All information provided by the Settling Defendants pursuant to Section 10.1(1) may be disclosed to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 10.2(3). Any Court-appointed notice provider and/or the Claims Administrator shall be bound by Section 10.2(4). If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, all information provided by the Settling Defendants pursuant to Section 10.2(1) shall be dealt with in accordance with Section 4.2(1)(d) and no record of the information so provided shall be retained by Class Counsel, any Court-appointed notice-provider and/or the Claims Administrator in any form whatsoever.

(6) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 10.2(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 5 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 10.2 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

(7) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 10.2.

SECTION 11 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

11.1 Distribution Protocol

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

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

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

11.2 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 this Settlement Agreement or the investment, distribution or administration of monies in the Trust Account including, but not limited to Administration Expenses.

SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

12.1 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.

12.2 Responsibility for Costs of Notices and Translation

(1) Siskinds LLP shall pay the costs of the notices required by Section 9 and any costs of translation required by Section 13.11 from the Trust Account, as they become due. Subject to Section 4.3, the Releasees shall not have any responsibility for the costs of the notices or translation.

12.3 Court Approval for Class Counsel Fees and Disbursements

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

SECTION 13 – MISCELLANEOUS

13.1 Motions for Directions

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

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

13.2 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of this 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.

13.3 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.

13.4 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, and the Parties and the Class Counsel Fees in that Proceeding. Notwithstanding the foregoing, the Ontario Court has jurisdiction to approve Class Counsel Fees and Class Counsel Disbursements for Ontario and BC Counsel.

(2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court with which it shares jurisdiction over that matter.

(3) Notwithstanding Sections 13.4(1) and 13.4(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.

13.5 Governing Law

(1) Subject to Section 13.5(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 13.5(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.

13.6 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.

13.7 Amendments

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

13.8 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.

13.9 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.

13.10 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.

13.11 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required to by a Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of this 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.

13.12 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.

13.13 Recitals

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

13.14 Schedules

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

13.15 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 understands this 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 this 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 this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.16 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.

13.17 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
275 Dundas Street, Unit 1
London, ON N6B 3L1
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 1200
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 LLP
4th Floor, 856 Homer St.
Vancouver, BC V6B 2W5
Tel: 604.689.7555
Fax: 604.689.7554
Email: djones@cfmlawyers.ca

For the Settling Defendants:

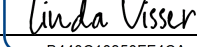
Jeffrey Simpson
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181 Bay Street
Brookfield Place, Suite 4400
Toronto, ON M5J 2T3
Tel: 416.307.4011
Fax: 416.865.7048
Email: jeffrey.simpson@mcmillan.ca

13.18 Date of Execution

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

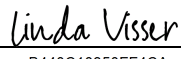
FADY SAMAHA and JORDAN RAMSEY on their own behalf and on behalf of the Settlement Class that they proposes to represent, by their counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: 
Siskinds LLP
Ontario Counsel

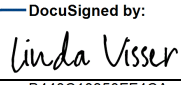
GAZAREK REALTY HOLDINGS LTD. and 5045320 ONTARIO LTD., on their own behalf and on behalf of the Settlement Classes that they propose to represent, by their counsel

Name of Authorized Signatory: Jean Marc Leclerc

Signature of Authorized Signatory: PP: 
Sotos LLP
Ontario Counsel

DARREN EWERT, by his counsel

Name of Authorized Signatory: David Jones

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

MITSUBISHI HEAVY INDUSTRIES, LTD. and MHI CLIMATE CONTROL, INC., by their counsel

Name of Authorized Signatory: Jeffrey Simpson

Signature of Authorized Signatory: 
McMillan LLP
Counsel for the Settling Defendants

SCHEDULE "A"
Proceedings

Court and File No.	Plaintiff(s)' Counsel	Plaintiff(s)	Defendants
Ontario Action			
Ontario Superior Court of Justice Court File No. CV-14-506637-00CP	Siskinds LLP and Sotos LLP	Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd., Fady Samaha, and Jordan Ramsay	Valeo S.A., Valeo Incorporated, Valeo Japan Co. Ltd., Valeo Climate Control Corp, Valeo Compressor North America, Inc., Valeo Electrical Systems, Inc., Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries Climate Control, Inc., Denso Corporation, Denso International America, Inc., Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., Calsonic Kansei Corporation, Calsonic Kansei North America, Inc., Sanden Holdings Corporation, Sanden International (USA) Inc., Sanden Automotive Climate Systems Corporation, Sanden Automotive Components Corporation, MAHLE Behr GmbH & Co. KG, MAHLE Behr USA Inc., Panasonic Corporation, Panasonic Corporation of North America, and Panasonic Canada, Inc.
BC Action			
British Columbia Supreme Court File No. S-137598 (Vancouver Registry)	Camp Fiorante Matthews Mogeran LLP	Darren Ewert	Denso Corporation, Denso International America, Inc., Techma Corporation, Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., TD Automotive Compressor Georgia LLC, Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries Automotive Thermal Systems Co., Ltd., MHI Energy & Service Co., Ltd., Shinryo Corporation, Valeo SA, Valeo Japan Co. Ltd., Valeo, Inc., Calsonic Kansei Corporation, Calsonic Kansei North America, Inc., MAHLE Behr GmbH & Co. KG <i>fka</i> Behr GmbH & Co. KG, and MAHLE Behr USA Inc. <i>fka</i> Behr America Inc.

SCHEDULE “B”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2022

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

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

ORDER

**- Air Conditioning Systems -
- Mitsubishi Heavy Notice Approval and Consent Certification -**

THIS MOTION made by the Ontario Plaintiffs for an Order approving the form and content of the notices of certification and settlement approval hearing (the “Notices”) and the method of dissemination of the Notices, and certifying this proceeding as a class proceeding for settlement purposes only as against Mitsubishi Heavy Industries, Ltd. and MHI Climate Control,

Inc. (formerly Mitsubishi Heavy Industries Climate Control, Inc.) (collectively, the “Settling Defendants”) was heard this day by judicial videoconference 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 ●, 2022 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Ontario Plaintiffs and Counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

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

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order for the purposes of this Order, the definitions set out in the Settlement Agreement apply to, and are incorporated into, this Order.
2. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
3. **THIS COURT ORDERS** that the “Settlement Class” is defined as:

All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, an Air Conditioning System; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle containing an Air Conditioning System and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing an Air Conditioning System. Excluded Persons are excluded from the Settlement Class.
4. **THIS COURT ORDERS** that Gazarek Realty Holdings Ltd. (formerly Sheridan Chevrolet Cadillac Ltd.), 5045320 Ontario Ltd. (formerly The Pickering Auto Mall Ltd.),

Fady Samaha, and Jordan Ramsay are hereby appointed as the representative plaintiffs on behalf of the Settlement Class.

5. **THIS COURT ORDERS** that Sotos LLP and Siskinds LLP are hereby appointed as Class Counsel in this action.
6. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Settlement Class:
 - (a) Claims for unlawful conspiracy pursuant to common law and s. 36 of the *Competition Act*.
7. **THIS COURT DECLARES** that the relief sought by the Settlement Class is:
 - (a) Damages in the amount of any unlawful overcharge.
8. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Did the Settling Defendants, or any of them, conspire to fix, raise, maintain, and/or stabilize the prices of Air Conditioning Systems in Canada and/or elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
9. **THIS COURT ORDERS** that the Settlement Class Members shall be given notice of the settlement approval hearing and the certification of this action in substantially the forms set out in Schedules “B” to “D” and in the manner set out in Schedule “E”.
10. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order, including certification for settlement purposes only, shall be set aside and declared null and void and of no force or effect without the need for any further order of this Court.

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

The Honourable Justice Belobaba

SCHEDULE “C”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2022

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

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

**ORDER
- Air Conditioning Systems -
- Mitsubishi Heavy Settlement Approval -**

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered into with Mitsubishi Heavy Industries, Ltd. and MHI Climate Control, Inc. (formerly Mitsubishi Heavy Industries Climate Control, Inc.) (collectively, the “Settling Defendants”) and

dismissing this action as against the Settling Defendants, was heard this day via judicial videoconference at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

AND ON READING the materials filed, including the settlement agreement dated ●, 2022, attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Ontario Plaintiffs and of counsel for the Settling Defendants;

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

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

AND ON BEING ADVISED that the Ontario Plaintiffs and the Settling Defendants consent to this Order and the Non-Settling Defendants take no position:

1. **THIS COURT ORDERS** that 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 the Settling Defendants in accordance with the terms thereof, and upon each member of the Settlement Class that did not validly opt out of this Action, 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 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 Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions they have 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 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 paragraphs 10 and 11, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed

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

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

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

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

named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

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

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

- (a) documentary discovery and affidavit(s) of documents from Settling Defendant(s) in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 194;
 - (b) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;
 - (c) leave to serve request(s) to admit on Settling Defendant(s) in respect of factual matters; and/or
 - (d) the production of representative(s) of Settling Defendant(s) to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above by service on Counsel for the Settling Defendants.

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

22. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Settlement Class.
24. **THIS COURT ORDERS** that the terms of this Order shall not be effective unless and until this order has been registered in British Columbia under the *Enforcement of Canadian Judgments and Decrees Act*, and the BC Action has been discontinued as against the Releasees named in the BC Action without costs. If such a discontinuance is not secured in British Columbia, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Action and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
25. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
26. **THIS COURT ORDERS** that this Order and any reasons given by the Court in relation thereto, except any reasons given in connection with paragraphs 12-17 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification

(including class definition) or the existence or elements of the causes of action asserted in the Ontario Action as against the Non-Settling Defendants.

The Honourable Justice Belobaba