

In the Supreme Court of British Columbia

Between:

MICHELLE FAIRHURST AND MARC KAZIMIRSKI

Plaintiffs

and:

DE BEERS CANADA INC., DB INVESTMENTS SOCIÉTÉ ANONYME, DE BEERS S.A., DE BEERS CONSOLIDATED MINES PROPRIETARY, LTD., THE DIAMOND TRADING COMPANY LIMITED, CSO VALUATIONS A.G., and DE BEERS CENTENARY A.G.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
SETTLEMENT APPROVAL**

BEFORE THE HONOURABLE MADAM JUSTICE WARREN)
)
) 02/Nov//2017

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 02/Nov/2017; on hearing Reidar Mogerman, Jennifer Winstanley, and Naomi Kovak on behalf of the plaintiffs and Katherine L. Kay on behalf of the defendants; on reading the materials filed, including the Settlement Agreement dated October 14, 2016, attached to this order as "**Appendix I**" (the "Settlement Agreement"); and on being advised that the parties consent to this order:

THIS COURT ORDERS that:

1. Except to the extent they are modified by this order, the definitions set out in the Settlement Agreement are incorporated into this order.

2. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
3. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.
4. The Settlement Agreement is incorporated by reference to and forms part of this order and is binding upon the representative plaintiffs and all BC Settlement Class Members.
5. All BC Settlement Class members are bound by the Settlement Agreement, and any putative member of the BC Settlement Class who has validly opted out of the BC Action is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the BC Action.
6. Upon the Effective Date, each BC Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. Upon the Effective Date, any Other Action commenced in British Columbia by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. This order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those persons who are minors or mentally incapable.
9. Upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
10. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain 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

action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto.

11. For purposes of administration of this order, this Court will retain an ongoing supervisory role and the Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement as to BC Settlement Class members, and subject to the terms and conditions set out in the Settlement Agreement.

12. The Defendants shall pay the Settlement Amount to BC Counsel as provided in section 3.1 of the Settlement Agreement.

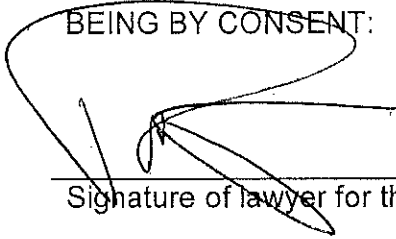
13. BC Counsel shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class and on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Settlement Agreement.

14. Approval of the Settlement Agreement is contingent upon approval by the Ontario Court and Quebec Court and the terms of this order shall not be effective unless and until the Settlement Agreement is approved by the Ontario Court and the Quebec Court, the Ontario Action has been dismissed with prejudice and without costs by the Ontario Court, the Quebec Action has been declared settled without costs and without reservation by the Quebec Court and the Saskatchewan Action has been permanently stayed or dismissed by the Saskatchewan Court. If such orders are not obtained in Ontario, Saskatchewan and Quebec, at the option of the Defendants and in their sole discretion, this order shall be null and void in accordance with the Settlement Agreement and without prejudice to the rights of the parties to proceed with this action and any agreement between the Parties incorporated in this order shall be deemed in any subsequent proceedings to have been made without prejudice.

15. This order shall be declared null and void on subsequent application made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

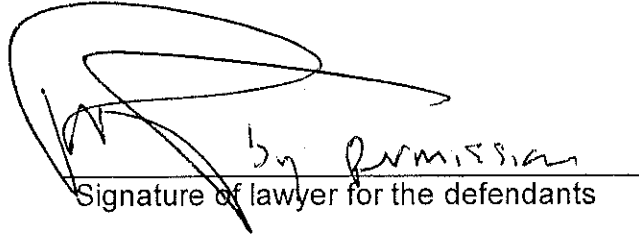
16. This action is hereby dismissed without costs and with prejudice, in accordance with the Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of lawyer for the plaintiffs

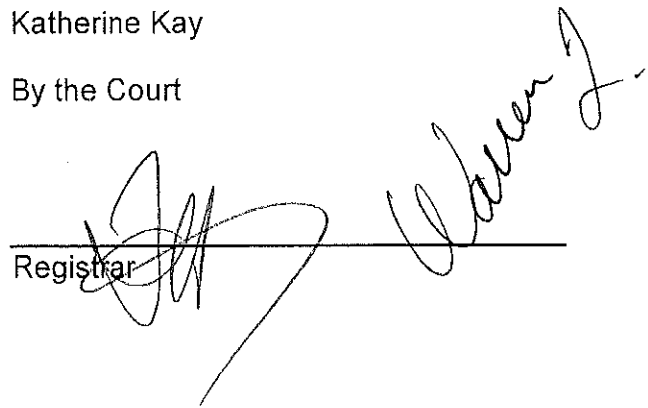
Reidar Mogerman



Signature of lawyer for the defendants

Katherine Kay

By the Court



Registrar

**CANADIAN DIAMONDS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of October____, 2016

Between

**KIRK BRANT, MICHELLE FAIRHURST, MARC KAZIMIRSKI and
ANDREA SANDERSON**

(the "Plaintiffs")

and

**DE BEERS CANADA INC., DB INVESTMENTS, SOCIÉTÉ ANONYME,
DE BEERS S.A., DE BEERS CONSOLIDATED MINES PROPRIETARY,
LTD., DE BEERS UK LIMITED (f/k/a THE DIAMOND TRADING
COMPANY LIMITED), CSO VALUATIONS A.G., and DE BEERS
CENTENARY A.G., DE BEERS CANADA HOLDINGS INC., ANGLO
AMERICAN PLC, CENTRAL HOLDINGS LIMITED**

(the "Settling Defendants")

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**CANADIAN DIAMONDS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

A. WHEREAS proceedings have been commenced in British Columbia, Ontario, Quebec and Saskatchewan which allege generally that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Gem Grade Diamonds, contrary to Part VI of the *Competition Act* and the common law and/or the civil law;

B. WHEREAS the BC Action was certified as a class proceeding under the BC *Class Proceedings Act* pursuant to the BC Certification Order, and whereas the Settling Defendants have defended the BC Action and an appeal of the BC Certification Order is pending;

C. WHEREAS the Ontario Action has not yet proceeded to a certification motion and the Quebec Action has not yet proceeded to an authorization motion;

D. WHEREAS the Saskatchewan Action has been conditionally stayed by an order of the Saskatchewan Court and an appeal from that order is pending;

E. WHEREAS the Settling Defendants deny any allegation of unlawful or otherwise actionable conduct alleged in the Proceedings or otherwise, and have good and valid defences to the allegations made;

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

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

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

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

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

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

L. WHEREAS the Parties therefore wish to and hereby do finally resolve on a nation-wide basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

M. WHEREAS while the BC Action was previously certified as a class proceeding under the BC *Class Proceedings Act* on a contested basis, the Parties now consent to certification and authorization of the BC Action, the Ontario Action and the Quebec Action as class proceedings and now consent to the Settlement Classes and a Common Issue solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement

Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

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

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed or permanently stayed with prejudice, without costs as to the Plaintiffs, the classes they represent and seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

Section 1 - Definitions

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts reasonably incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the reasonable costs of notices and claims administration but excluding Class Counsel Fees.
- (2) **BC Action** means *Michelle Fairhurst and Marc Kazimirski v. De Beers Canada Inc., et al.*, Supreme Court of British Columbia, Court File No. S-071269.
- (3) **BC Class Proceedings Act** means the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (4) **BC Certification Order** means the order issued by the Supreme Court of British Columbia and entered on July 17, 2015 in respect of the certification of the BC Action under the *BC Class Proceedings Act*.

- (5) **BC Counsel** means Camp Fiorante Matthews Mogerma.
- (6) **BC Court** means the Supreme Court of British Columbia.
- (7) **BC Settlement Class** means all persons resident in British Columbia who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons.
- (8) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement as approved by the Courts, and any employees of such firm.
- (9) **Class Counsel** means Ontario Counsel, BC Counsel and Quebec Counsel.
- (10) **Class Counsel Fees** include the fees, disbursements, costs, interest, and/or charges of Class Counsel, and any GST, HST and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or person, including the Fonds d'aide aux recours collectifs in Quebec.
- (11) **Class Period** means January 1, 1994 to the date of this Settlement Agreement.
- (12) **Common Issue** in each Proceeding means: Did the Settling Defendants, or any of them, conspire to harm the Settlement Class Members during the Class Period?
- (13) **Confidential Opt Out Threshold** means the threshold agreed to by the Parties, as set out in Schedule C to this Settlement Agreement, which Schedule shall be kept confidential and filed and maintained under seal in any filings in the Courts.
- (14) **Counsel for the Settling Defendants** means Stikeman Elliott LLP.
- (15) **Courts** means the BC Court, the Ontario Court, and the Quebec 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 De Beers Canada, Inc., DB Investments, Société Anonyme, De Beers S.A., De Beers Consolidated Mines Proprietary, Ltd., De Beers UK Limited (f/k/a The Diamond Trading Company Limited), CSO Valuations A.G., De Beers Centenary A.G., De Beers Canada Holdings Inc., Anglo American PLC, and Central Holdings Limited SA.

(18) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel, agreed to by the Defendants, and approved by the Courts.

(19) **Effective Date** means the date when Final Orders have been received from all Courts and the Settlement Amount has been fully paid to BC Counsel as provided for in Section 3.1 of this Settlement Agreement.

(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 opt out of the BC Action or the Ontario Action, as applicable.

(21) **Final Orders** means (i) the final orders made by the BC Court, the Ontario Court and the Quebec Court approving this Settlement Agreement and dismissing the BC Action, the Ontario Action and the Quebec Action; and (ii) the final order made by the Saskatchewan Court permanently staying or dismissing the Saskatchewan Action, once the time to appeal all such orders has expired without any appeal being taken, if an appeal lies, or upon the final disposition of all appeals affirming the approval of this Settlement Agreement and dismissing the BC Action, the Ontario Action and the Quebec Action and permanently staying or dismissing the Saskatchewan Action.

(22) **First Publication of Notice Date** means the first date on which the notice referred to in Section 10.1 will be published.

- (23) **Gem Grade Diamonds** means diamonds that have been or could have been used in diamond jewellery or for investment purposes (as distinguished from diamonds used for industrial purposes).
- (24) **National Settlement Class** means all persons resident in Canada who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons and persons who are included in the BC Settlement Class or the Quebec Settlement Class.
- (25) **Ontario Action** means *Kirk Brant v De Beers Canada Inc., et al.*, London Superior Court of Justice, Court File No. 1399/10 CP.
- (26) **Ontario Class Proceedings Act** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, S.O. 2006, c. 19.
- (27) **Ontario Counsel** means Camp Fiorante Matthews Mogerma and Siskinds LLP.
- (28) **Ontario Court** means the Ontario Superior Court of Justice.
- (29) **Opt Out Period** means a period of sixty (60) days after the date on which the notice in Section 10.1 is published or such other date as may be agreed upon by the Parties and ordered by the Courts.
- (30) **Other Actions** means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (31) **Parties** means the Settling Defendants and the Plaintiffs, and, where necessary, the Settlement Class Members.
- (32) **Plaintiffs** means Kirk Brant, Michelle Fairhurst, Marc Kazimirski and Andrea Sanderson.
- (33) **Proceedings** means the BC Action, the Ontario Action, and the Quebec Action.

- (34) **Quebec Action** means *Andrea Sanderson v. De Beers Canada Inc, et al.*, Superior Court of Quebec, File No. 500-06-000571-113 (Montreal Registry).
- (35) **Quebec Code of Civil Procedure** means the *Code of Civil Procedure of Quebec*, CQLR, c. C-25.01.
- (36) **Quebec Counsel** means the Consumer Law Group Inc.
- (37) **Quebec Court** means the Superior Court of Quebec.
- (38) **Quebec Settlement Class** means all persons resident in Quebec who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons.
- (39) **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 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), known or unknown, suspected or unsuspected, asserted or unasserted, regardless of legal theory, in law, under statute or in equity, relating in any way to any conduct anywhere, from the beginning of time, in respect of the purchase, sale, pricing, discounting, marketing or distributing of Gem Grade Diamonds, relating to any conduct alleged (or which was previously or could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, including future claims relating to continuing acts or practices that occurred during the pendency of the Proceedings, whether in Canada or elsewhere.
- (40) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, 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, shareholders,

attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(41) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(42) **Saskatchewan Action** means *Daniel Ammazzini and Olson Goldsmiths Inc. v. Anglo American PLC et al.*, Saskatchewan Court, File No. 877 (Saskatoon Registry).

(43) **Saskatchewan Court** means the Court of Queen's Bench for Saskatchewan.

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

(45) **Settlement Amount** means CDN\$9,400,000.

(46) **Settlement Class** means the BC Settlement Class, the Quebec Settlement Class and the National Settlement Class.

(47) **Settlement Class Member** means a member of a Settlement Class who does not validly opt out of the Settlement Class.

(48) **Settling Defendants** means De Beers Canada, Inc., DB Investments, Société Anonyme, De Beers S.A., De Beers Consolidated Mines Proprietary, Ltd., De Beers UK Limited (f/k/a The Diamond Trading Company Limited), CSO Valuations A.G., De Beers Centenary A.G., De Beers Canada Holdings Inc., Anglo American PLC, and Central Holdings Limited SA.

(49) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of BC Counsel for the benefit of the Settlement Class Members.

Section 2 - Settlement Approval

2.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this Settlement Agreement and to promptly obtain the Final Orders.

2.2 Motions Approving Notice and Seeking Certification or Authorization

(1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the notices described in Sections 10.1 and certifying or authorizing each of the BC Action, the Ontario Action and the Quebec Action for settlement purposes.

(2) The orders approving the notices described in Section 10.1 and certifying or authorizing the BC Action, the Ontario Action and the Quebec Action, respectively, shall be substantially in the forms attached hereto as O.

2.3 Motions Seeking Approval of the Settlement

(1) The Plaintiffs shall bring motions before the BC Court, the Ontario Court and the Quebec Court for orders approving this Settlement Agreement, as soon as practicable after:

- (a) the orders referred to in Section 2.2(2) have been granted,
- (b) the notices described in Section 10.1 have been published; and
- (c) the deadline for opting out and objecting to the Settlement Agreement has expired.

(2) The orders approving this Settlement Agreement shall be substantially in the forms attached hereto as Schedule "B".

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

2.4 Motion Seeking Permanent Stay or Dismissal of Saskatchewan Action

(1) The Parties in the Ontario Action shall bring a motion before the Saskatchewan Court for an order permanently staying or dismissing the Saskatchewan Action, as soon as practicable after the order of the Ontario Court referred to in Section 2.2(2) has been granted.

2.5 Pre-Motion Confidentiality

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

Section 3 - Settlement Benefits

3.1 Payment of Settlement Amount

(1) The Settling Defendants shall pay the Settlement Amount to BC Counsel within ten business days of the date on which the last Final Order is received from the Courts, to be held in the Trust Account in accordance with the terms of this Settlement Agreement unless otherwise ordered by the Courts.

(2) The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.

(3) The Settlement Amount shall be all-inclusive.

(4) The Settling Defendants 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 or the Proceedings.

(5) The cost of disseminating the notices, and of preparing the translations, contemplated in Sections 10.1(1) and 13.12(1) respectively of this Settlement Agreement, shall be paid out of the Settlement Amount.

(6) BC Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) BC Counsel 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 Courts obtained after notice to the Parties.

3.2 Taxes and Interest

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

(2) 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.

(3) BC Counsel 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.

(4) 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 by the Settlement Amount or pay any taxes on the monies in the Trust Account.

(5) Notwithstanding Sections 3.2(1), (3) and (4), if this Settlement Agreement is terminated, the interest earned on the Settlement Amount shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

Section 4 - Distribution of the Settlement Amount and Accrued Interest

4.1 Distribution Protocol

(1) At a time agreed to by Class Counsel and the Settling Defendants and on notice to the Settling Defendants, Class Counsel shall bring motions before the Courts for orders approving the Distribution Protocol.

(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.

4.2 No Responsibility for Administration or Fees

(1) The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

Section 5 - Opting Out

5.1 Opt Out Report

(1) Within thirty (30) days of the Opt Out Period, Class Counsel shall provide the Settling Defendants with a report that sets out the names of any persons who have opted out of the Proceedings, including those who are consumers, retailers, distributors or wholesalers, along with any other information received from such persons.

Section 6 - Termination of Settlement Agreement

6.1 Right of Termination

(1) In the event that:

- (a) any Court declines to approve this Settlement Agreement, including the Schedules hereto;

- (b) any Court declines to dismiss the BC Action, the Ontario Action or the Quebec Action;
- (c) the Saskatchewan Court declines to permanently stay or dismiss the Saskatchewan Action;
- (d) the Saskatchewan Court certifies the Saskatchewan Action as a national class proceeding;
- (e) the form and content of any of the Final Orders approved by the Courts departs in a material respect from the form and content of the orders agreed upon by the Parties;
- (f) any orders approving this Settlement Agreement made by the Courts do not become Final Orders; or
- (g) the order made by the Saskatchewan Court permanently staying or dismissing the Saskatchewan Action does not become a Final Order;

each of the Settling Defendants and the Plaintiffs shall have a separate right to terminate this Settlement Agreement and, except as provided for in Section 6.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the 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.

(2) In the event that the Settlement Amount is not paid to BC Counsel in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement and, except as provided for in Section 6.4, if the Plaintiffs exercise their right to terminate, the 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.

(3) In the event that opt outs exceed the Confidential Opt Out Threshold, the Defendants shall have the right to terminate this Settlement Agreement and, except as provided for in

Section 6.4, if the Defendants exercise their right to terminate, the 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.

- (4) Any order, ruling or determination made (or rejected) by any Court with respect to:
 - (a) Class Counsel Fees; or
 - (b) the Distribution Protocol;

shall not provide a basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

- (1) If this Settlement Agreement is terminated:
 - (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, to amend a certification order in the Proceedings or to approve this Settlement Agreement, which has not been heard, shall proceed;
 - (b) the parties will cooperate in seeking to have any prior order certifying a Proceeding as a class proceeding on the basis of the Settlement Agreement, amending a certification order in the Proceeding, or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and the parties shall be estopped as against each other from relying on any such order;
 - (c) any prior certification of a Proceeding 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 may later take on any issue in the Proceedings or any other litigation; and

- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other person, shall recover and destroy such documents or information.

6.3 Allocation of Monies in the Trust Account Following Termination

- (1) If the Settlement Agreement is terminated, BC Counsel shall return to the Settling Defendants all monies in the Trust Account including interest but less the costs of notice expended in accordance with Sections 10.1 and 10.2 and less the cost of translations expended under Section 13.12, provided that the total of such costs shall not exceed CDN \$50,000.

6.4 Survival of Provisions after Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 6.2, 6.4, 8.1, 8.2, 13.6 and 13.17, 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 6.2, 6.4, 8.1, 8.2, 13.6 and 13.17, 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 7 - Releases and Dismissals

7.1 Release of Releasees

- (1) Upon the Effective Date and in consideration of payment of the Settlement Amount, the Releasers forever and absolutely release 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.

7.2 No Further Claims

(1) Upon the Effective Date the Releasors shall not now or hereafter institute, continue, maintain 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 action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

7.3 Dismissal of the Proceedings

(1) The Proceedings shall be dismissed and, in respect of the Saskatchewan Action, dismissed or permanently stayed, with prejudice and without costs as against the Settling Defendants.

7.4 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 Settlement Class Members against any person other than the Releasees.

Section 8 - Effect of Settlement

8.1 No Admission of Liability

(1) Whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member, including but not limited to those pleadings filed in the Saskatchewan Action.

8.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, 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, or as otherwise required by law.

8.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims. Moreover, these persons 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 is otherwise publicly available or unless ordered to do so by a court.

(2) Section 8.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under Section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

Section 9 - Certification or Authorization for Settlement Purposes Only

(1) Ontario Counsel will apply to the Ontario Court to certify the Ontario Action as a class proceeding solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) BC Counsel will apply to the BC Court to certify the BC Action in an amended form pursuant to this Settlement Agreement solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(3) Quebec Counsel will apply to the Quebec Court to authorize the Quebec Action as a class proceeding solely for the purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(4) The Parties agree that the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes in the motions for certification or authorization of the relevant Proceedings and for the approval of this Settlement Agreement.

Section 10 - Notice to Settlement Classes

10.1 Notices Required

(1) The proposed Settlement Classes shall be given notice of (i) the certification or authorization of the BC Action, the Ontario Action and the Quebec Action as class proceedings for settlement purposes; (ii) the hearings at which the Courts will be asked approve the Settlement Agreement; and (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and/or a Distribution Protocol.

10.2 Form and Distribution of Notices

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

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

Section 11 - Administration and Implementation

11.1 Mechanics of Administration

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

Section 12 - Class Counsel Fees and Administration Expenses

12.1 Class Counsel Fees and Administration Expenses

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.

(2) The Settling Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members.

Section 13 - Miscellaneous

13.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the Ontario Court and/or such other Courts, and the Saskatchewan court, as may be advisable for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless a court orders otherwise, motions for directions that do not relate specifically to matters affecting the B.C. Action, B.C. Settlement Class Members, the Quebec Action, or Quebec Settlement Class Members, shall be determined by the Ontario Court.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

13.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

13.3 Headings, etc.

(1) In this Settlement Agreement:

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

13.4 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, the act may be done on the next day that is not a holiday.

13.5 Ongoing Jurisdiction

(1) Each of the Courts shall retain jurisdiction over each Proceeding commenced in its jurisdiction.

(2) Notwithstanding Sections 13.5(1), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a B.C. Settlement Class Member or a Quebec Settlement Class Member shall be determined by the Ontario Court.

13.6 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

13.7 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.

13.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto.

13.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, 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.

13.10 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 signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.11 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.

13.12 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, Class Counsel and/or a translation firm mandated by Class Counsel shall prepare a French translation of the Settlement Agreement, notices, orders or other documents contemplated by this Settlement Agreement, the cost of which shall be paid from the Settlement Amount as an Administration Expense. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

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

13.17 Notice

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

Reidar Mogerman

CAMP FIORANTE MATTHEWS MOGERMAN

4th Floor, 856 Homer St.

Vancouver, BC V6B 2W5

Tel: 604-689-7555

Fax: 604-689-7554

Email: jjcamp@cfmlawyers.ca

rmogerman@cfmlawyers.ca

For the Settling Defendants:

Katherine L. Kay and Danielle Royal

STIKEMAN ELLIOT LLP

199 Bay Street

5300 Commerce Court West

Toronto ON M5L 1B9

Tel: 416.869.5500

Fax: 416.947.0866

Email: kkay@stikeman.com

droyal@stikeman.com

13.18 Date of Execution

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

KIRK BRANT, MICHELLE FAIRHURST, MARC KAZIMIRSKI and ANDREA SANDERSON on their own behalf and on behalf of the Settlement Class by their counsel:

Signature of Authorized Signatory:

Name of Authorized Signatory:

Reidar Mogerman
Camp Fiorante Matthews Mogerman
BC Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Charles Wright
Siskinds LLP
Ontario Class Counsel

Signature of Authorized Signatory:
Name of Authorized Signatory:

Jeff Orenstein
Consumer Law Group Inc.
Quebec Class Counsel

Signature of Authorized Signatory:
Name of Authorized Signatory:
Position:

Katherine L. Kay
Stikeman Elliott LLP
Counsel for the Settling Defendants

Schedule "A"

No. S071269
Vancouver Registry

In the Supreme Court of British Columbia

Between:

MICHELLE FAIRHURST AND MARC KAZIMIRSKI

Plaintiffs

and:

**DE BEERS CANADA INC., DB INVESTMENTS, INC, SOCIÉTÉ ANONYME, DE BEERS
S.A., DE BEERS CONSOLIDATED MINES, LTD., THE DIAMOND TRADING
COMPANY LIMITED, CSO VALUATIONS A.G., and DE BEERS CENTENARY A.G.**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
NOTICE APPROVAL AND CERTIFICATION FOR SETTLEMENT PURPOSES**

BEFORE)
)
) THE HONOURABLE)
) MADAM JUSTICE BROWN) dd/mmm/yyyy
)
)

ON THE APPLICATION of the plaintiffs coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing [counsel appearing]; and on reading the materials filed, including the Settlement Agreement;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this order, the definitions set out in the Settlement Agreement attached as Schedule "A" apply to and are incorporated into this order.

Certification for Settlement

2. The BC Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.

3. The BC Settlement Class is defined as:

All persons resident in British Columbia who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons.

4. The Plaintiffs Michelle Fairhurst and Marc Kazimirski are appointed as the representative plaintiffs for the BC Settlement Class.

5. The BC Action is certified on the basis of the following issue common to the BC Settlement Class:

Did the Settling Defendants, or any of them, conspire to harm the Settlement Class Members during the Class Period?

6. The deadline to opt out of the BC Action will be 60 days after publication of the notices provided for in this Order and no BC Settlement Class Member may opt out after that deadline has passed.

Notices of Settlement Approval Hearings

7. The Publication Form Notice of Certification and Settlement Approval Hearing in the form attached hereto as Schedule "B" is approved.

8. The Short-Form Notice of Certification and Settlement Approval Hearings in the form attached hereto as Schedule "C" is approved.

9. The Long-Form Notice of Certification and Settlement Approval Hearings in the form attached hereto as Schedule "D" is approved.

10. The Plan of Dissemination of the Notices of Certification and Settlement Approval Hearings in the form attached as Schedule "E" is approved and the Notices of Settlement Approval Hearings shall be disseminated in accordance with the Plan of Dissemination.

11. This order is contingent upon parallel orders being made by the Ontario Court and the Quebec Court, and the terms of this order shall not be effective unless and until such orders are made by the Ontario Court and the Quebec Court.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiffs

Reidar Mogerman

Signature of lawyer for the defendants

Katherine Kay

By the Court

Registrar

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM) -----day
)
JUSTICE RADY) of -----, 2016

B E T W E E N:

KIRK BRANT

Plaintiffs

- and -

DE BEERS CANADA INC., DB INVESTMENTS, INC., DE BEERS S.A., DE BEERS CONSOLIDATED
MINES LTD., DE BEERS UK LIMITED (f/k/a THE DIAMOND TRADING COMPANY LIMITED), CSO
VALUATIONS A.G., and DE BEERS CENTENARY A.G.

Defendants

Proceeding Under the *Class Proceedings Act*, 1992

**ORDER
(Notice Approval and Certification for Settlement Purposes)**

THIS MOTION, made by the Plaintiff (the "Ontario Plaintiff") for an Order (i) certifying the action bearing Court File Number 1399/10CP (the "Ontario Action") as against the Defendants for settlement purposes; and, (ii) approving the Notice of Certification and Approval Hearings was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the Settlement Agreement attached to this Order as **Schedule "A"** and on hearing the submissions of counsel for the Ontario Plaintiff and counsel for the Settling Defendants in the Ontario Action;

AND ON BEING ADVISED that the Parties consent to this Order:

1. **THIS COURT ORDERS** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreements apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the Ontario Action is certified as a national class proceeding as against the Settling Defendants for settlement purposes only.

3. **THIS COURT ORDERS** that the National Settlement Class is defined as:

All persons resident in Canada who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons and persons who are included in the BC Settlement Class.

4. **THIS COURT ORDERS** that the Ontario Plaintiff Kirk Brant is appointed as the representative plaintiff for the National Settlement Class.

5. **THIS COURT ORDERS** that the Ontario Action is certified on the basis that the following issue is common to the National Settlement Class:

Did the Settling Defendant(s), or any of them, conspire to harm the Settlement Class Members during the Class Period?

6. **THIS COURT DECLARES** that the opt-out period for the Ontario Action will be 60 days after publication of the notices provided for in this Order and no National Settlement Class Member may opt out of the Ontario Action after the opt-out period has passed.

7. **THIS COURT ORDERS** that this Order is binding upon each National Settlement Class Member 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.

8. **THIS COURT ORDERS** that the Publication Form Notice of Certification and Approval Hearings in the form attached hereto as **Schedule "B"** is approved.

9. **THIS COURT ORDERS** that the Short-Form Notice of Certification and Approval Hearings in the form attached hereto as **Schedule "C"** is approved.

10. **THIS COURT ORDERS** that the Short-Form Notice of Certification and Approval Hearings in the form attached hereto as **Schedule "D"** is approved.

11. **THIS COURT ORDERS** that the Plan of Dissemination of the Notice of Certification and Approval Hearings in the form attached as **Schedule "E"** is approved.

12. **THIS COURT ORDERS** that this order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this order shall not be effective unless and until such orders are made by the BC Court, and the Quebec Court.

THE HONOURABLE MADAM JUSTICE RADY

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000571-113

DATE: [DATE]

BY: THE HONOURABLE CHANTAL CORRIVEAU, J.S.C.

ANDREA SANDERSON
Petitioner

v.

DE BEERS CANADA INC.
and
DE BEERS S.A.
and
DE BEERS CONSOLIDATED MINES, LTD.
and
DE BEERS CENTENARY A.G.
and
DB INVESTMENTS, INC.
and
DIAMOND TRADING COMPANY LIMITED.
and
CSO VALUATIONS A.G.
and
CENTRAL HOLDINGS LTD.
Respondents

JUDGMENT

[1] **CONSIDERING** the Petitioner's Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative;

[2] **CONSIDERING** that the Petitioner is asking that the Court set a hearing date for settlement approval in Quebec of the Canadian Diamonds Class Action National Settlement Agreement entered into by the parties as at [DATE], 2016, contingent on approval by the Courts (the "Settlement Agreement");

[3] **CONSIDERING** that the Petitioner is asking that the Court approve a Publication Form of the Notice of Certification and Settlement Hearings, Short-Form of the Notice of Certification and Settlement Hearings and a Long-Form of the Notice of Certification and Settlement Hearings (the "Pre-Approval Notices") and to approve the proposed method of dissemination of the Pre-Approval Notices to members of the class (the "Plan of Dissemination") and to authorize the proceeding for settlement purposes;

[4] **CONSIDERING** the material filed in the Court record;

[5] **CONSIDERING** the submissions of counsel for the Petitioner and counsel for the Respondents;

[6] **CONSIDERING** articles 575, 576, 579, 580, 581, and 590 of the *Code of Civil Procedure*;

[7] **CONSIDERING** that the parties consent to this Judgment;

[8] **FOR THESE REASONS, THE COURT:**

[9] **GRANTS** the present motion;

[10] **ORDERS** that, except to the extent they are modified by this Judgment, the definitions set out in the Settlement Agreement apply to and are incorporated into this Judgment;

[11] **AUTHORIZES** the bringing of a class action against the Respondents for the purposes of settlement only;

[12] **APPOINTS** the Petitioner as representative of the class herein described as:

"All persons resident in Quebec who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons."

[13] **IDENTIFIES** for the purposes of settlement authorization, the common issue as follows:

"Did the Settling Defendant(s), or any of them, conspire to harm the Settlement Class Members during the Class Period?"

[14] **ORDERS** that the Hearing for Settlement Approval in Quebec is to be held on [DATE] at [TIME] in room [TBD] at the Montreal Courthouse, 1, Notre-Dame Street East (the "Settlement Approval Hearing"), at which time this Court will be asked to decide:

- a) whether to approve the Settlement Agreement as fair, reasonable and in the best interest of Quebec Class Members;
- b) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted; and
- c) any other matters as the Court may deem appropriate;

[15] **DECLARES** that the Settlement Agreement, Exhibit R-1, in its entirety (including its Preamble and its Schedules) is an integral part of this Judgment;

[16] **APPROVES** the form and content of the Pre-Approval Notices substantially as produced in Exhibits R-2, R-3 and R-4;

[17] **ORDERS** that the Pre-Approval Notices shall be published and disseminated substantially in accordance with the Plan of Dissemination as produced in Exhibit R-5;

[18] **ORDERS** that each Quebec Class Member who wishes to opt-out of the Quebec Action and thus: (a) will not be bound by the Settlement Agreement, (b) will not be entitled to receive any share of benefits payable in connection with same, must opt-out in conformity with the procedure set out in the Pre-Approval Notices provided to the Quebec Settlement Class Members;

[19] **DETERMINES** that the deadline for opting out of the Settlement Agreement will be 60 days after publication of the notices provided for in this Order [DATE] and no Quebec Class Member may opt out of the Quebec Action after the opt-out period has passed;

[20] **ORDERS** that this order is contingent upon parallel orders being made by the Ontario Court and the BC Court, and the terms of this order shall not be effective unless and until such orders are made by the Ontario Court and the BC Court.

[21] **THE WHOLE**, without legal costs.

CHANTAL CORRIVEAU, J.S.C.

Schedule "B"

No. S071269
Vancouver Registry

In the Supreme Court of British Columbia

Between:

MICHELLE FAIRHURST AND MARC KAZIMIRSKI

Plaintiffs

and:

**DE BEERS CANADA INC., DB INVESTMENTS, INC, SOCIÉTÉ ANONYME, DE BEERS
S.A., DE BEERS CONSOLIDATED MINES, LTD., THE DIAMOND TRADING
COMPANY LIMITED, CSO VALUATIONS A.G., and DE BEERS CENTENARY A.G.**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
FOR APPROVAL OF SETTLEMENT AGREEMENT**

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing [counsel appearing]; and on reading the materials filed, including the Settlement Agreement;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this order, the definitions set out in the Settlement Agreement attached as Schedule "A" apply to and are incorporated into this order.
2. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
3. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.

4. The Settlement Agreement is incorporated by reference to and forms part of this order and is binding upon the representative plaintiffs and all BC Settlement Class Members.
5. Any putative member of the BC Settlement Class who has validly opted out of the BC Action is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the BC Action.
6. Upon the Effective Date, each BC Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. Upon the Effective Date, any Other Action commenced in British Columbia by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. This order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those persons who are minors or mentally incapable.
9. Upon the Effective Date, in accordance with s. 7.2(1) of the Settlement Agreement, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The use of the terms "Releasors", "Releasees" and "Released Claims" in this order is a matter of form only for consistency with the Settlement Agreement.
10. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain 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 action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto.

11. For purposes of administration of this order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement as to BC Settlement Class Members, and subject to the terms and conditions set out in the Settlement Agreement.

12. The Settling Defendants shall pay the Settlement Amount to BC Counsel as provided in section 3.1 of the Settlement Agreement.

13. BC Counsel shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class and on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Settlement Agreement.

14. Approval of the Settlement Agreement is contingent upon approval by the Ontario Court and Quebec Court and the terms of this order shall not be effective unless and until the Settlement Agreement is approved and the Ontario Action and the Quebec Action have been dismissed with prejudice and without costs by the Ontario Court and the Quebec Court and the Saskatchewan Action has been permanently stayed or dismissed by the Saskatchewan Court . If such Final Orders are not obtained in Ontario, Saskatchewan and Quebec, at the option of the Settling Defendants and in their sole discretion, this order shall be null and void and without prejudice to the rights of the parties to proceed with this action and any agreement between the Parties incorporated in this order shall be deemed in any subsequent proceedings to have been made without prejudice.

15. This order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

16. This action is hereby dismissed without costs and with prejudice, in accordance with the Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiffs

Reidar Mogerman

Signature of lawyer for the defendants

Katherine Kay

By the Court

Registrar

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) -----day
)
JUSTICE) of -----, 2016

B E T W E E N:

KIRK BRANT

Plaintiffs

- and -

DE BEERS CANADA INC., DB INVESTMENTS, INC., DE BEERS S.A., DE BEERS CONSOLIDATED
MINES LTD., DE BEERS UK LIMITED (f/k/a THE DIAMOND TRADING COMPANY LIMITED), CSO
VALUATIONS A.G., and DE BEERS CENTENARY A.G.

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER (Settlement
Approval)**

THIS MOTION, made by the Plaintiffs in the Ontario action bearing Court File Number 1399/10CP (the "Ontario Action") for an Order approving the settlement agreement entered into with the Settling Defendants was heard this day at the Court House, 80 Dundas Street, London, , Ontario.

ON READING the materials filed, including the settlement agreement dated _____, 2016 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;

AND ON BEING ADVISED that the Parties consent to this Order:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the National Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon all National Settlement Class Members.
5. **THIS COURT ORDERS** that any putative member of the National Settlement Class who has validly opted out is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Ontario Action.

6. **THIS COURT ORDERS** that all National Settlement Class Members are bound by the Settlement Agreement.

7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each National Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.

8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced by any National Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each National Settlement Class Member in the Ontario 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.

10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

11. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain 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 action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto.

12. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.

13. **THIS COURT ORDERS** that no Releasees shall have any responsibility or liability whatsoever relating to:

- (b) the administration of the Settlement Agreement;
- (c) the administration, investment, or distribution of the Trust Account; or
- (d) the Distribution Protocol.

14. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the British Columbia Court and Quebec Court and the terms of this order shall not be effective unless and until the Settlement Agreement is approved and the BC Action and the Quebec Action have been dismissed with prejudice and without costs by the British Columbia Court and the Quebec Court and the Saskatchewan Action is permanently stayed or dismissed by the Saskatchewan Court. If such orders are not

obtained in British Columbia, Saskatchewan and Quebec, at the option of the Settling Defendants and in their sole discretion, this order shall be null and void and without prejudice to the rights of the Parties to proceed with this action and any agreement between the Parties incorporated in this order shall be deemed in any subsequent proceedings to have been made without prejudice.

15. **THIS COURT ORDERS** that the Ontario Action is hereby dismissed without costs and with prejudice, in accordance with the Settlement Agreement.

THE HONOURABLE MADAM JUSTICE RADY

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000571-113

DATE: [DATE]

BY: THE HONOURABLE CHANTAL CORRIVEAU, J.S.C.

ANDREA SANDERSON
Petitioner

v.

DE BEERS CANADA INC.
and
DE BEERS S.A.
and
DE BEERS CONSOLIDATED MINES, LTD.
and
DE BEERS CENTENARY A.G.
and
DB INVESTMENTS, INC.
and
DIAMOND TRADING COMPANY LIMITED.
and
CSO VALUATIONS A.G.
and
CENTRAL HOLDINGS LTD.
Respondents

JUDGMENT

[1] **CONSIDERING** that the Petitioner is asking that the Court approve the Canadian Diamonds Class Action National Settlement Agreement entered into by the parties as at [DATE], 2016, contingent on approval by the Courts (the "Settlement Agreement");

[2] **CONSIDERING** that the appropriate notice was published in French and in English and that no opposition was filed;

[3] **CONSIDERING** the material filed in the Court record;

[4] **CONSIDERING** the submissions of counsel for the Petitioner and counsel for the Respondents;

[5] **CONSIDERING** article 590 of the *Code of Civil Procedure*;

[6] **CONSIDERING** that the parties consent to this Judgment;

[7] **FOR THESE REASONS, THE COURT:**

[8] **GRANTS** the present motion;

[9] **ORDERS** that, except to the extent they are modified by this Judgment, the definitions set out in the Settlement Agreement apply to and are incorporated into this Judgment;

[10] **DECLARES** that the Settlement Agreement is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members;

[11] **APPROVES** the Settlement Agreement pursuant to article 590 of the *Code of Civil Procedure* and shall be implemented in accordance with its terms;

[12] **DECLARES** that the Settlement Agreement constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Quebec Settlement Class Members who have not excluded themselves in a timely manner;

[13] **DECLARES** that the Settlement Agreement, in its entirety, is an integral part of this Judgment;

[14] **ORDERS** the parties and the Quebec Settlement Class Members, with the exception of those who are excluded in accordance with the terms and conditions of the Settlement Agreement and with this Judgment, are to abide by the terms and conditions of the Settlement Agreement;

[15] **DECLARES** that the Settlement Agreement, Exhibit R-1, in its entirety (including its Preamble and its Schedules) is an integral part of this Judgment;

[16] **ORDERS** that any putative member of the Quebec Settlement Class who has validly opted out is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Quebec Action;

[17] **ORDERS** and **DECLARES** that, upon the Effective Date, each Quebec Settlement Class Member that did not opt-out of the group will be deemed to have given discharge and to have given a complete, comprehensive and final release to the Releasees with respect to the Released Claims on the terms set out in the Settlement Agreement;

[18] **ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain 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 action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto;

[19] **ORDERS** that for purposes of administration of this Judgment, this Court will retain an ongoing supervisory role with respect to Quebec Settlement Class Members and the Settling Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.

[20] **ORDERS** that no Releasees shall have any responsibility or liability whatsoever relating to:

- (a) the administration of the Settlement Agreement;
- (b) the administration, investment, or distribution of the Trust Account; or
- (c) the Distribution Protocol.

[21] **ORDERS** that at such a time when the amount in the Trust Account is distributed pursuant to the Distribution Protocol, the levies by the *Fonds d'aide aux actions collectives* will be collected only on each claim made by Quebec residents and be remitted according to the *Loi sur le Fonds d'aide aux actions collectives* and the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*;

[22] **ORDERS** and **ADJUDGES** that the Quebec Action is hereby settled without costs and with prejudice, in accordance with the Settlement Agreement;

[23] **ORDERS** that approval of the Settlement Agreement is contingent upon approval by the British Columbia Court and Ontario Court and the terms of this order shall not be effective unless and until the Settlement Agreement is approved and the BC Action and

the Ontario Action have been dismissed with prejudice and without costs by the British Columbia Court and the Ontario Court, and the Saskatchewan Action is permanently stayed or dismissed by the Saskatchewan Court. If such orders are not obtained in British Columbia, Quebec and Saskatchewan, at the option of the Settling Defendants and in their sole discretion, this order shall be null and void and without prejudice to the rights of the Parties to proceed with this action and any agreement between the Parties incorporated in this order shall be deemed in any subsequent proceedings to have been made without prejudice.

[24] **THE WHOLE**, without legal costs.

CHANTAL CORRIVEAU, J.S.C.

Schedule C
[Confidential Opt Out Threshold]

In the Supreme Court of British Columbia

Between:

MICHELLE FAIRHURST AND MARC KAZIMIRSKI

Plaintiffs

and:

DE BEERS CANADA INC., DB INVESTMENTS SOCIÉTÉ ANONYME, DE BEERS S.A., DE BEERS CONSOLIDATED MINES PROPRIETARY, LTD., THE DIAMOND TRADING COMPANY LIMITED, CSO VALUATIONS A.G., and DE BEERS CENTENARY A.G.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
SETTLEMENT APPROVAL**

CAMP FIORANTE MATTHEWS MOGERMAN

Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC
V6B 2W5
Via Mike Bike