

**CANADIAN POLYURETHANE FOAM CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of January 10, 2012

Between

**“HI! NEIGHBOR” FLOOR COVERING CO. LIMITED, MAJESTIC MATTRESS MFG.
LTD, TRILLIUM PROJECT MANAGEMENT LTD., OPTION CONSOMMATEURS
and KARINE ROBILLARD**

(the “Plaintiffs”)

and

**DOMFOAM INTERNATIONAL, INC., VALLE FOAM INDUSTRIES (1995) INC.,
A-Z SPONGE & FOAM PRODUCTS LTD.**

(the “Domfoam Defendants”)

and

DEAN BRAYIANNIS

(the “Brayiannis Defendant”)

and

**BRUCE BRADLEY, MICHAEL CAPPUCCINO, PIETRO (PETER) FOTI,
DUKE GREENSTEIN, JOHN HOWARD, DALE MCNEILL,
JAMES WILLIAM SPROULE, ROBERT VALLE,
TONY VALLECOCCIA and FRED ZICKMANTEL**

(the “Individual Settling Parties”)

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**CANADIAN POLYURETHANE FOAM CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

A. WHEREAS the Ontario Plaintiffs and the B.C. Plaintiffs have respectively commenced the Ontario Proceedings and the B.C. Proceedings which allege that the Defendants, including the Domfoam Defendants, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and common law;

B. AND WHEREAS the Ontario Plaintiffs have named the Brayianis Defendant, an employee of the Domfoam Defendants, as an individual defendant in the Ontario Proceedings;

C. AND WHEREAS the Quebec Plaintiffs have commenced the Quebec Proceeding which alleges that one Defendant and other unnamed co-conspirators participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and the civil law, but whereas the Quebec Plaintiffs have not pleaded the Domfoam Defendants or the Brayianis Defendant as named parties to the Quebec Proceeding;

D. AND WHEREAS the Domfoam Defendants believe that they are not liable in respect of the claims as alleged in the Proceedings, and whereas the Domfoam Defendants believe that they have good and reasonable grounds to oppose certification/authorization of the Proceedings as class proceedings and have good and reasonable defences in respect of the merits of the Proceedings;

E. AND WHEREAS the Domfoam Defendants assert that they would actively pursue and vindicate their defences in respect of certification/authorization and the merits during the course of the certification/authorization process, during the course of

discovery and during the course of trial if the Plaintiffs continued the Proceedings against them in the respective Courts;

F. AND WHEREAS the Domfoam Defendants are currently facing very difficult financial circumstances and are currently operating in a precarious and unprofitable financial position, and whereas the Domfoam Defendants intend to file for creditor protection and/or insolvency relief in Canada and/or the U.S. in the near future, including but not limited to a filing under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or under related legislation in Canada and/or the U.S.;

G. AND WHEREAS in light of the anticipated filing by the Domfoam Defendants for creditor protection and/or insolvency relief in Canada and/or the U.S., the Plaintiffs and Class Counsel have determined that it is in the best interests of the Settlement Class to reach a resolution with the Domfoam Defendants whereby the Proceedings will be discontinued without prejudice as against the Domfoam Defendants, whereby the Plaintiffs and the Settlement Class Members will preserve their rights to assert claims in respect of the Domfoam Defendants in the Restructuring Process, whereby the Plaintiffs and the Settlement Class Members will secure access to cooperation and discovery from the Domfoam Defendants and whereby the Plaintiffs and the Settlement Class Members will otherwise preserve their rights to pursue full joint and several liability as against the Non-Settling Defendants in the ongoing Proceedings;

H. AND WHEREAS in addition, the Plaintiffs and Class Counsel have determined that there would be substantial benefits for the Settlement Class in securing access to cooperation from the Brayianis Defendant and the Individual Settling Parties who are current and/or former officers, employees and agents of the Domfoam Defendants, and whereas the Plaintiffs and Class Counsel have determined that it is in the best interests of the Plaintiffs and the Settlement Class to reach a resolution with the Brayianis Defendant and the Individual Settling Parties as part of a settlement with the Domfoam Defendants;

I. AND WHEREAS, despite their belief that they have good and reasonable grounds to oppose certification/authorization of the Proceedings as class proceedings, and have good and reasonable defences in respect of the merits, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and to achieve a resolution of all claims asserted or which could have been asserted against them by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy involving the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties, subject to the preservation of certain ongoing rights of the Plaintiffs and the Settlement Class Members in respect of the discontinuance as against the Domfoam Defendants and in respect of the Restructuring Process as specifically set out in this Settlement Agreement;

J. AND WHEREAS as part of this resolution, the Domfoam Defendants have agreed to cooperate with the Plaintiffs and Class Counsel by providing truthful information (to the extent that such information is in the possession, custody or control of the Domfoam Defendants and/or is accessible to the Domfoam Defendants following a filing for creditor protection and/or insolvency protection in Canada or in the U.S.) related to the sale and distribution of Foam Products in Canada and/or the claims that have been asserted by the Plaintiffs and Class Counsel against the Non-Settling Defendants and other named or unnamed co-conspirators in the Proceedings;

K. AND WHEREAS, as part of this resolution, certain of the Individual Settling Parties, namely the Contributing Individual Settling Parties, have agreed to make a settlement payment for the benefit of the Settlement Class in exchange for a full and final release, in light of their potential risks of personal liability as residents of Canada that are subject to the jurisdiction of the Courts, the risks inherent in uncertain, complex and protracted litigation, and to avoid the further expense, inconvenience, and burden of this litigation, on the condition that the Individual Settling Parties receive a full and final release of all claims asserted or which could have been asserted against them by the

Plaintiffs on their own behalf and on behalf of the classes they seek to represent in the Proceedings;

L. AND WHEREAS, as part of this resolution, the Brayiannis Defendant and the Individual Settling Parties have agreed to cooperate with the Plaintiffs and Class Counsel by providing truthful information related to the sale and distribution of Foam Products in Canada and/or the claims that have been asserted by the Plaintiffs and Class Counsel against the Non-Settling Defendants and other named or unnamed co-conspirators in the Proceedings;

M. AND WHEREAS, as part of this resolution, in recognition of the existence of certain notice costs related to the implementation of this Settlement Agreement, the Domfoam Defendants have agreed to assign their potential interest in respect of certain limited and future distribution proceeds arising from a claim of the Domfoam Defendants in connection with the U.S. Urethane Proceedings up to a fixed maximum amount, on the understanding that any and all risk related to the validity or enforceability of such assignment or the collectability of such proceeds shall be borne entirely by the Plaintiffs and/or the Settlement Class and any failure of the assignment or any inability to recover such proceeds shall not give rise to any right of termination under this Settlement Agreement;

N. AND WHEREAS counsel for the Domfoam Defendants, counsel for the Brayiannis Defendant, counsel for the Individual Settling Parties and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

O. AND WHEREAS as a result of these settlement discussions and negotiations, the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of the Courts;

P. AND 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, and having regard to the proposed discontinuance of proceedings against the Domfoam Defendants, the implications of a filing by the Domfoam Defendants for creditor protection and/or insolvency relief, the value of the Settlement Amount to be paid by the Individual Settling Parties, the potential value of the Assignment, the value of cooperation to be provided by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals and the risks associated with recovery and collectability of any potential judgment, 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 seek to represent in the Proceedings;

Q. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the significant value of the cooperation of the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree to render or make available to the Plaintiffs and/or Class Counsel as "first-in" settling defendants at an early stage of these Proceedings pursuant to this Settlement Agreement, as well as the attendant litigation and other risks in light of the potential defences that may be asserted by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties and the anticipated filing by the Domfoam Defendants for creditor protection and/or insolvency relief in Canada and/or the U.S.;

R. AND WHEREAS the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties are entering into this Settlement Agreement in order to achieve a nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs and the classes that they seek to represent in the Proceedings in the Courts in respect of this matter, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

S. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without any admission of liability, all of the Proceedings as against the Domfoam Defendants and the Brayianis Defendant and any potential claims against the Individual Settling Parties relating to these Proceedings;

T. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings;

U. AND WHEREAS the Quebec Plaintiffs shall amend the Quebec Proceeding to name the Domfoam Defendants as Defendants in the Quebec Proceeding;

V. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the B.C. and Ontario Plaintiffs have agreed to consent to a discontinuance of the B.C. and Ontario Proceedings as against the Domfoam Defendants, and the Quebec Plaintiffs have agreed to the settlement out of court of the Quebec Proceeding with the Domfoam Defendants subject to the terms of this Settlement Agreement and subject to the Final Orders;

W. AND WHEREAS for the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Ontario Plaintiffs have agreed to consent to a dismissal of the Ontario Proceedings as against the Brayianis Defendant in the Ontario Courts;

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

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 B.C. and Ontario Proceedings shall be discontinued without prejudice as to the Domfoam Defendants, shall be settled with prejudice as to the Brayianis Defendant and the Individual Settling Parties, without

costs as to the Plaintiffs, the classes they seek to represent, the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties, and that the Quebec Proceeding shall be settled out of court and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

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

- (1) ***Administration Expenses*** mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices, the Escrow Agent, the Opt Out Administrator, the opt out process and claims administration but excluding Class Counsel Fees.
- (2) ***Approval Hearings*** mean the hearings to approve the motions brought by Class Counsel before each of the Courts for orders:
 - (a) certifying or authorizing the Proceedings as class proceedings in accordance with the *Ontario Class Proceedings Act*, the *B.C. Class Proceedings Act* and the *Quebec Code of Civil Procedure*; and
 - (b) approving the settlement provided for in this Settlement Agreement in accordance with the *Ontario Class Proceedings Act*, the *B.C. Class Proceedings Act* and the *Quebec Code of Civil Procedure*.
- (3) ***Assignment*** means an assignment, in the form executed and attached hereto as Schedule “C”, whereby the Domfoam Defendants shall absolutely and unconditionally assign and transfer to the Plaintiffs, in trust for the Settlement Class, any potential right, title and interest that the Domfoam Defendants, or any one or more of them, may have in respect of the potential distribution proceeds arising from the U.S. Urethane Settlement as a result of a claim or claims that any

Domfoam Defendants have filed or may file as part of the U.S. Urethane Settlement that has been approved by the U.S. Courts as of the Execution Date, provided that any such assignment shall be strictly limited to a maximum amount or sum of the first two hundred thousand Canadian dollars (CAD \$200,000) that any Domfoam Defendants may receive as distribution proceeds as part of the U.S. Urethane Settlement.

- (4) ***Bankruptcy and Insolvency Act*** means the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.
- (5) ***Brayiannis Defendant*** means Dean Brayianis.
- (6) ***B.C. Class Counsel*** means Branch MacMaster LLP and Camp Fiorante Matthews Mogerma.
- (7) ***B.C. Class Proceedings Act*** means the *Class Proceedings Act*, RSBC 1996, c. 50.
- (8) ***B.C. Court*** means the British Columbia Supreme Court.
- (9) ***B.C. Plaintiffs*** mean Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd.
- (10) ***B.C. Proceedings*** mean the proceedings commenced by Majestic Mattress Mfg. Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. VLC-S-S-106362, filed on September 24, 2010, and by Trillium Project Management Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. S-106213, filed on September 15, 2010.
- (11) ***B.C. Settlement Class*** means: all Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons.
- (12) ***B.C. Settlement Class Members*** mean: all Persons included in the B.C. Settlement Class who do not validly opt out of the B.C. Proceedings.

- (13) ***Canadian Polyurethane Foam Class Actions National Settlement*** means the national settlement contemplated by this Settlement Agreement.
- (14) ***Claims Administrator*** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims process, in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (15) ***Class Counsel*** means B.C. Class Counsel, Quebec Class Counsel and Ontario Class Counsel who act as class counsel in the Proceedings.
- (16) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, HST and/or GST, and other applicable taxes or charges of Class Counsel.
- (17) ***Common Issue*** in each Proceeding means: Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?
- (18) ***Companies' Creditors Arrangement Act*** means the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended.
- (19) ***Competition Act*** means the *Competition Act*, RSC 1985, c. C-34, as amended.
- (20) ***Confidential Opt Out Agreement*** means the confidential agreement which sets out the Confidential Opt-Out Threshold.
- (21) ***Confidential Opt Out Threshold*** means a threshold in respect of Opt Outs as agreed upon by the Plaintiffs and the Domfoam Defendants in a separate document delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (22) ***Confidentiality Order*** means any order with respect to confidentiality or the sealing of information that is issued by the Ontario Court, the Quebec Court

and/or the B.C. Court, and any amendments thereto, and any other confidentiality order and undertaking relating to the Proceedings.

- (23) ***Contributing Individual Settling Parties*** mean John Howard, Robert Valle, Tony Vallecoccia and Fred Zickmantel.
- (24) ***Courts*** mean the Ontario Court, the Quebec Court and the B.C. Court.
- (25) ***Defendants*** mean the individuals and entities named as defendants in the Proceedings as set out in Schedule “A”, as well as any named or unnamed co-conspirator who may be added as a defendant in the Proceedings in the future.
- (26) ***Distribution Protocol*** means the plan developed by Class Counsel for holding or distributing the Settlement Proceeds and accrued interest, in whole or part, for or to Settlement Class Members, as approved by the Courts which may, if directed by the Courts, permit the Plaintiffs and Class Counsel to use the Settlement Proceeds for the continued prosecution of the Proceedings or to protect against adverse costs awards, or require the Settlement Proceeds to be held in trust until the resolution of the Proceedings, in whole or in part.
- (27) ***Documents*** mean all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (28) ***Domfoam Defendants*** means Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd.
- (29) ***Effective Date*** means the date when (i) the Final Orders have been received from all the Courts approving this Settlement Agreement, and (ii) the Opt Out Deadline has expired and any rights to terminate this Settlement Agreement under section 6.3 of this Settlement Agreement have expired.
- (30) ***Escrow Agent*** means the Person reasonably agreed to by the Domfoam Defendants and Class Counsel to hold and administer the Trust Account.

- (31) ***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, the Domfoam Defendants and the Individual Settling Parties, and the legal representatives, heirs, successors and assigns of each of the foregoing, any judge of a Court who has heard or will hear any motion or application in respect of the Proceedings and his or her immediate family.
- (32) ***Execution Date*** means the date that this Settlement Agreement is executed by all parties as indicated on the cover page of this Settlement Agreement.
- (33) ***Final Order*** means a final order, judgment or equivalent decree entered by a Court in respect of the certification or authorization of a Proceeding as a class proceeding for the purposes of this settlement and/or the approval of this Settlement Agreement and implementing it in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the order, judgment or equivalent decree upon a final disposition of all appeals.
- (34) ***Foam Products*** mean polyurethane foam and any and all products that contain polyurethane foam.
- (35) ***Individual Settling Parties*** mean the Contributing Individual Settling Parties and Bruce Bradley, Michael Cappuccino, Pietro (Peter) Foti, Duke Greenstein, Dale McNeill and James William Sproule.
- (36) ***ISP Release Payment*** means the amount of 20% of the Plaintiffs' purchases of polyurethane foam from the Domfoam Defendants in Canada during the Settlement Class Period, to a maximum of six hundred thousand Canadian dollars (CAD \$600,000).
- (37) ***Non-Settling Defendant*** means a Defendant in the Proceedings that is not a Domfoam Defendant or a Brayianis Defendant.

- (38) ***Notice of Approval Hearings*** mean the form or forms of notice, reasonably agreed to by the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this Settlement Agreement; and (ii) the dates and locations of the Approval Hearings.
- (39) ***Notice of Certification and Settlement Approval*** means the form or forms of notice, reasonably agreed to by the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or authorization of the Proceedings as class proceedings; (ii) the approval of this Settlement Agreement by the Courts; (iii) the process for opting out of the Proceedings; (iv) the Opt Out Deadline; and (v) if applicable, the process by which Settlement Class Members may apply to obtain compensation from the Settlement Proceeds.
- (40) ***Notices*** mean the Notice of Approval Hearings, the Notice of Certification and Settlement Approval, and notice of termination.
- (41) ***Ontario Class Counsel*** means Sutts, Strosberg LLP.
- (42) ***Ontario Class Proceedings Act*** means the *Class Proceedings Act*, S.O. 1992, c. 6.
- (43) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (44) ***Ontario Plaintiff*** means “Hi! Neighbor” Floor Covering Co. Limited.
- (45) ***Ontario Proceedings*** mean the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Statement of Claim filed in the Ontario Superior Court (Windsor Registry), Court File No. CV-10-15164, filed on September 15, 2010 and the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Statement of Claim filed in the Ontario Superior Court (Windsor Registry), Court File No. CV-11-17279, filed on December 30, 2011.

- (46) **Ontario Settlement Class** means: all Persons resident in Canada who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the B.C. Settlement Class and the Quebec Settlement Class.
- (47) **Ontario Settlement Class Members** mean: all Persons included in the Ontario Settlement Class who do not validly opt out of the Ontario Proceedings.
- (48) **Opt Out** means a member of a Settlement Class who has submitted a timely and valid written election to opt out of the Proceedings in accordance with orders of the Courts.
- (49) **Opt Out Administrator** means the Person proposed by Class Counsel and appointed by the Courts to receive the Opt Out Forms and report on the opt out process.
- (50) **Opt Out Deadline** means the date which is sixty (60) days after the date on which the Notice of Certification and Settlement Approval is first published, or such other date that has been agreed by the Parties and ordered by the Courts.
- (51) **Opt Out Form** means the form, to be reasonably agreed to by the Parties after the Settlement Agreement is executed, that shall be used for the purpose of implementing the opt out procedure set out in section 6 of this Settlement Agreement.
- (52) **Other Actions** mean actions or proceedings, other than the Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (53) **Party and Parties** mean the Plaintiffs, the Settlement Class Members, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties.
- (54) **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.

- (55) ***Plaintiff or Plaintiffs*** mean “Hi! Neighbor” Floor Covering Co. Limited, Majestic Mattress Mfg. Ltd, Trillium Project Management Ltd., Option Consommateurs and Karine Robillard, individually and collectively.
- (56) ***Proceedings*** mean the B.C. Proceedings, the Ontario Proceedings and the Quebec Proceeding.
- (57) ***Proportionate Liability*** means the proportion of any judgment that, had they not settled, a Court would have apportioned to the Releasees.
- (58) ***Purchase Price*** means the purchase price actually paid by Settlement Class Members for Foam Products purchased during the Settlement Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.
- (59) ***Quebec Class Counsel*** means Belleau Lapointe.
- (60) ***Quebec Code of Civil Procedure*** means the *Code of Civil Procedure*, RSQ, c. C-25.
- (61) ***Quebec Court*** means the Superior Court of Quebec.
- (62) ***Quebec Plaintiffs*** mean Option Consommateurs and Karine Robillard.
- (63) ***Quebec Proceeding*** means the proceeding commenced by Karine Robillard in the form of a motion for authorization to institute a class proceeding (Requête pour autorisation d’exercer un recours collectif) in the Quebec Court, Court File No. 500-06-000524-104, filed on October 1, 2010.
- (64) ***Quebec Settlement Class*** means: all Persons resident in Quebec who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and any legal person established for a private interest, partnership or

association which at any time between October 1, 2009 and October 1, 2010 had under its direction or control more than 50 persons bound to it by contract of employment or that is not dealing at arm's length with Option Consommateurs or Karine Robillard.

- (65) ***Quebec Settlement Class Members*** mean: all Persons included in the Quebec Settlement Class who do not validly opt out of the Quebec Proceeding.
- (66) ***Released Claims*** mean 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, damages of any kind including compensatory, punitive or other damages, 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, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from January 1, 1999 to the date hereof in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Foam Products, or relating to any conduct alleged (or which could have been alleged) in the Proceedings or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada and including, without limitation, any claim for harm, damage or other relief in connection with oppressive or wrongful conduct under federal or provincial corporate statutes or at common or civil law arising from or in connection with

any unlawful horizontal or vertical anti-competitive conduct alleged (or which could have been alleged) in the Proceedings or the Other Actions. For greater certainty, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, breach of warranty or similar claims between the Parties relating to Foam Products.

- (67) **Releasees** mean, jointly and severally, individually and collectively, the Individual Settling Parties and the Brayiannis Defendant together with the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders, whether as direct or indirect shareholders), attorneys, trustees, servants and legal representatives of the Domfoam Defendants, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding the Domfoam Defendants and excluding the Non-Settling Defendants. For greater certainty, the term Releasees as defined for purposes of this Settlement Agreement shall include Global Upholstery Co. Limited and Valdomco Ltd., both of which are shareholders of Domfoam International Inc.
- (68) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members on behalf of themselves and any Person claiming by or through them as a present or former, direct or indirect parent, subsidiary, division, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or legal representative of any kind.
- (69) **Restructuring Court** means the Ontario Court that is appointed to oversee the Restructuring Process in Canada.
- (70) **Restructuring Process** means the process associated with the filing and implementation for creditor protection and/or insolvency relief in Canada and/or in the U.S., including but not limited to the process of filing a claim as a creditor under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S..

- (71) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (72) **Settlement Amount** means the sum of one million two hundred and twenty-six thousand Canadian dollars (CAD \$1,226,000).
- (73) **Settlement Class** means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the B.C. Settlement Class.
- (74) **Settlement Class Members** mean the Ontario Settlement Class Members, Quebec Settlement Class Members and B.C. Settlement Class Members.
- (75) **Settlement Class Period** means the period from January 1, 1999 to the Execution Date.
- (76) **Settlement Proceeds** mean the Settlement Amount and any proceeds from the Assignment.
- (77) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of the Escrow Agent for the benefit of Settlement Class Members.
- (78) **U.S. Plaintiff** means the plaintiffs in the U.S. Proceedings.
- (79) **U.S. Proceedings** mean the class action proceedings pending before the United States District Court for the Northern District of Ohio under the caption *In re Polyurethane Foam Antitrust Litigation*, Master File No.: 10-MLS-2196 (JZ), MDL No. 2196, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to Foam Products that are pending or that may be commenced before the federal or state courts of the U.S.
- (80) **U.S. Settlement** means the settlement of any direct purchaser class actions in the U.S. Proceedings, the settlement of any indirect purchaser class actions in the

U.S. Proceedings, the settlement of any direct purchaser actions or opt out actions and any other settlement of the U.S. Proceedings.

- (81) ***U.S. Urethane Proceedings*** mean the class action proceedings pending before the United States District Court for the District of Kansas under the caption *In re Urethane Antitrust Litigation*, Master File No.: 04-MD-01616-JWL, MDL No. 1616, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to urethane products that are pending or that may be commenced before the federal or state courts of the U.S.
- (82) ***U.S. Urethane Settlement*** means the settlement of any direct purchaser class actions in the U.S. Urethane Proceedings and/or the settlement of any indirect purchaser class actions in the U.S. Urethane Proceedings that exists as of the Execution Date.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall respectively take all reasonable steps to expeditiously effectuate this settlement and to secure the prompt discontinuance of the Proceedings as against the Domfoam Defendants, including cooperating in the Domfoam Defendants' efforts to obtain any approvals required by the Restructuring Court regarding the approval and implementation of this Settlement Agreement, and cooperating in the Plaintiffs' efforts to obtain any approval or orders required from the Courts regarding the approval or implementation of the Settlement Agreement, including orders certifying the Settlement Class for settlement purposes and approving the form and distribution of the Notices contemplated by section 11 of this Settlement Agreement.

(2) Following the Execution Date and prior to, or in conjunction with, the motions contemplated by section 2.3 of this Settlement Agreement, the Quebec Plaintiffs shall

amend the Quebec Proceeding to name the Domfoam Defendants as defendants to the Quebec Proceeding.

2.2 Motions for Approval from Restructuring Court

At a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs and/or the Domfoam Defendants shall bring any motions before the Restructuring Court which are reasonably necessary to obtain an order permitting the obtaining of approval and implementation of this Settlement Agreement. The Domfoam Defendants shall cooperate with the Plaintiffs in respect of any such motions and in respect of obtaining any such relief from the Restructuring Court.

2.3 Motions to Approve the Notice of Approval Hearings

(1) Following receipt of any orders referred to in section 2.2 or in the event such relief is not required from the Restructuring Court, at a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs shall bring motions before each of the Courts for orders approving the Notice of Approval Hearings described in section 11.1.

(2) The British Columbia, Quebec and Ontario orders approving the Notice of Approval Hearings shall be in the form reasonably agreeable to the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties.

2.4 Motions for Certification/Authorization and for Approval of the Settlement

(1) As soon as practicable after the orders referred to in section 2.3 are granted, after the Notice of Approval Hearings has been published, the Plaintiffs shall bring motions before each of the Courts for orders certifying or authorizing the Proceedings commenced in their respective jurisdictions as a class proceeding for settlement purposes and for orders approving this Settlement Agreement.

(2) The Ontario order approving this Settlement Agreement referred to in section 2.4(1) shall be in the form attached hereto as Schedule "B1" except that paragraphs 2, 4,

5, 6, 7, 12, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 31, 32, 33 and 34 of the Ontario order need only be substantially in the form set out in Schedule “B1”.

(3) The Quebec and British Columbia orders approving the Settlement Agreement referred to in section 2.4(1) shall be in the form attached hereto respectively in Schedules “B2” and “B3”, except that paragraphs 1, 2, 3, 4, 5, 6, 9, 10, 11, 15, 24, 25, 26, 28 and 29 of the Quebec order and paragraphs 2, 4, 5, 6, 7, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32 and 35 of the British Columbia order need only be substantially in the form set out in Schedules “B2” and “B3”. The Quebec and British Columbia orders shall mirror the substance and, where possible, the form of the Ontario order.

(4) The failure of any Court to approve the content of the orders as contemplated herein shall give rise to a right of termination by the Domfoam Defendants and/or any or all of the Individual Settling Parties pursuant to section 14 of this Settlement Agreement.

2.5 Pre-Motion Confidentiality

Until the Plaintiffs serve and file the materials for the first of the motions required by sections 2.2 and/or 2.3, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Domfoam Defendants, the Individual Settling Parties and Class Counsel, as the case may be, 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. Once the first of the motions required by section 2.2 has been brought, the Parties shall otherwise remain subject to the other provisions of this Settlement Agreement governing confidentiality, including without limitation the provisions of the Confidential Schedule “C” and the Confidential Opt Out Agreement.

2.6 Sequence of Motions

(1) The Plaintiffs in Quebec and British Columbia shall not proceed with the respective hearings of the motions to approve the Notice of Approval Hearings unless and until the Ontario Court approves the Notice of Approval Hearings. The motions to

approve the Notice of Approval Hearings may be filed in Quebec and British Columbia, but, if necessary, Quebec Class Counsel and B.C. Class Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision in respect of the approval of the Notice of Approval Hearings. The Domfoam Defendants may agree to waive this provision.

(2) The Plaintiffs in Quebec and British Columbia shall not proceed with the respective hearings of motions to certify and/or authorize the Quebec and B.C. Settlement Class and approve this Settlement Agreement unless and until the Ontario Court certifies the Ontario Settlement Class and approves the Settlement Agreement. The approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec Class Counsel and B.C. Class Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision in respect of certification of the Ontario Settlement Class and approval of the Settlement Agreement. The Domfoam Defendants may agree to waive this provision.

(3) Notwithstanding section 2.6 of this Settlement Agreement, in the event that the Plaintiffs and Domfoam Defendants reasonably agree and the Courts determine that it is appropriate to conduct coordinated or simultaneous Approval Hearings in respect of the Proceedings before each of the Courts, the motions to approve the Notice of Approval Hearings and/or the motions to certify and/or authorize the Settlement Class and approve this Settlement Agreement may be heard in a coordinated or simultaneous manner by the Courts.

SECTION 3 - SETTLEMENT EFFECT

3.1 Settlement Has Continuing Effect in Event of Creditor Protection

(1) In the event that the Domfoam Defendants file for and/or obtain any form of creditor protection and/or insolvency relief in Canada and/or the U.S., including but not limited to a filing or granting of protection under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation, the Parties agree that this Settlement Agreement shall remain in full effect. For greater certainty, the existence of such a filing or the granting of creditor protection

in favour of the Domfoam Defendants shall not give rise to any right of termination by any Party under section 14 of this Settlement Agreement provided the Domfoam Defendants are not otherwise in breach of this Settlement Agreement.

(2) Notwithstanding the existence of any automatic or other stay of proceedings entered or otherwise triggered by the filing for any form of creditor protection and/or insolvency relief in Canada and/or the U.S., and subject to any Order issued by the Courts or the Restructuring Court, the Parties shall fully and completely perform the terms of this Settlement Agreement, except that all motion practice, discovery rights, trial proceedings and other proceedings in the Proceedings shall be indefinitely stayed as against the Domfoam Defendants and the Brayianis Defendant. The Domfoam Defendants and the Brayianis Defendant shall engage their reasonable efforts to ensure that any Restructuring Process shall not impede the hearings or implementation of this Settlement Agreement, and will make any applications that are reasonably required within the Restructuring Process in order to implement this Settlement Agreement. Notwithstanding anything in this Settlement Agreement to the contrary, including but not limited to this Settlement Agreement's provisions relating to the release of the Released Claims granted by the Releasers in favour of the Releasees and the discontinuance of proceedings as against the Domfoam Defendants, nothing in this Settlement Agreement shall preclude the Plaintiffs, or any member of the Settlement Class, individually or collectively, from filing against the Domfoam Defendants a claim in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada and/or the U.S. to the extent that such claim is based upon, arising out of or relating to facts, occurrences, transactions or other matters alleged in the Proceedings. To the extent permitted by law, the Domfoam Defendants shall not object to the filing by the Plaintiffs, or any member of the Settlement Class, of any such claim against the Domfoam Defendants in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada or the U.S., and further agree that nothing in this Settlement Agreement shall in any way impair or limit such claim against the Domfoam Defendants or the ability of such claimant(s) to seek recovery in any such creditor protection, restructuring or other bankruptcy proceeding in Canada or the U.S. for any such claim(s) against the Domfoam Defendants.

(3) Notwithstanding the provisions of sections 3.1(1) and (2), the Plaintiffs, Class Counsel and the Settlement Class Members, individually or collectively, shall not be permitted to file a claim or otherwise challenge the validity, legality, or continuing effect of the release of the Released Claims granted by the Releasors in favour of the Releasees pursuant to this Settlement Agreement or the discontinuances of the Proceedings as against the Domfoam Defendants provided, however, that the Domfoam Defendants shall not rely on such release of the Released Claims and/or discontinuances as a defence to or limitation on any claim filed on behalf of Plaintiffs, Class Counsel or any Settlement Class Member in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada or in the U.S. as against the Domfoam Defendants, and the Domfoam Defendants covenant and agree that no such defence or limitation will be asserted against such a claim against the Domfoam Defendants. For purposes of clarity, the release of the Released Claims granted by the Releasors pursuant to this Settlement Agreement shall remain in effect in favour of the Releasees in any creditor protection, restructuring, insolvency and/or other bankruptcy proceeding in Canada and/or the U.S. or in any other proceeding in Canada, the U.S. or elsewhere, and the Releasees shall be fully entitled to assert and rely upon the release of the Released Claims as a defence to or limitation on any claim in any proceeding in Canada, the U.S. or elsewhere.

SECTION 4- SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) Within thirty (30) business days of the Execution Date, the Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent for deposit into the Trust Account, in full satisfaction of the Released Claims against the Releasees.

(2) The Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent in accordance with the applicable contribution shares set out in Confidential Schedule "C" to this Settlement Agreement.

4.2 **Assignment of Certain Claims relating to the U.S. Urethane Settlement**

(1) On the Execution Date, and subject to any order of the Restructuring Court or the Courts, the Domfoam Defendants shall deliver the Assignment to the Escrow Agent or shall otherwise make arrangements to place the Assignment in escrow until such time as the Final Orders have been granted and the Effective Date has occurred.

(2) The Domfoam Defendants shall notify the administrator of the U.S. Urethane Settlement of the existence of the Assignment. The Parties agree that to the extent that there is a distribution of funds payable to the Domfoam Defendants prior to the Effective Date, and subject to any order of the Restructuring Court or the Courts, the Parties shall jointly request that the administrator of the U.S. Urethane Settlement forward any such funds up to the maximum amount of the Assignment to the Escrow Agent for deposit into the Trust Account. To the extent necessary or to the extent required by law, the Domfoam Defendants may seek advance directions or an order from the Restructuring Court or the Courts in respect of any such communications or requests of the administrator of the U.S. Urethane Settlement, and the Parties agree to be bound by any such directions or order from the Restructuring Court or the Courts.

(3) The Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties do not make any representation, covenant or promises in respect of the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment, and the Plaintiffs and the Settlement Class shall bear any and all risk relating to the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment. In the event that the Assignment is terminated, is not approved or otherwise fails to come into effect, the Parties agree that such event shall not give rise to any right of termination under this Settlement Agreement. However, nothing in this section shall be treated as a waiver, forbearance, or abandonment of the Plaintiffs' rights and/or interests accruing under the Assignment. The Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree to make reasonable efforts and provide cooperation to assist in the implementation of the Assignment.

4.3 No Further Settlement Payments, Transfers or Assignments

(1) Subject to sections 4.1 and 4.2, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall have no obligation to pay any amount in addition to the Settlement Amount or to pay, assign or transfer any amount beyond the proceeds contemplated by the Assignment, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall have no responsibility or liability as a result of any decrease or depreciation of the value of the funds in the Trust Account or any inability or failure of the Plaintiffs to receive the proceeds contemplated by the Assignment, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased by the Escrow Agent or the Claims Administrator, or the payment of any Class Counsel Fees or any Administration Expenses.

(2) The Escrow Agent shall maintain the Trust Account as provided for in this Settlement Agreement. The Escrow Agent shall not pay out all or part of the monies in the Trust Account, nor deliver the Assignment, except in accordance with the Settlement Agreement or in accordance with an order of the Courts, and if necessary an order of the Restructuring Court, obtained on notice to the Domfoam Defendants and the Individual Settling Parties, and in any event, after all appeals related thereto have been disposed of.

4.4 Taxes and Interest

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

(2) Subject to section 4.4(3), all taxes payable on any interest which accrues on the Settlement Proceeds in the Trust Account or otherwise in relation to the Settlement Proceeds shall be the responsibility of the Settlement Class. The Escrow Agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Proceeds 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 on the Settlement Proceeds shall be paid from the Trust Account.

(3) The Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties 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, unless this Settlement Agreement is terminated, in which case: (i) the applicable interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Contributing Individual Settling Parties who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Escrow Agent, and (ii) the applicable interest earned on the proceeds from the Assignment in the Trust Account or otherwise shall be paid to the Domfoam Defendants, or such other party that the Restructuring Court may direct, who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Escrow Agent or such other applicable third party that is supervising the escrow.

4.5 Cooperation – Scope of Cooperation

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Settlement Agreement, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree to provide cooperation to Class Counsel in accordance with the requirements of this section of the Settlement Agreement.

(2) The Parties respectively acknowledge and agree that all information and Documents provided by the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or their respective counsel to Class Counsel, the Plaintiffs and the Plaintiffs' experts under this Settlement Agreement may be used by Class Counsel, the Plaintiffs and the Plaintiffs' experts in connection with the investigation, prosecution and settlements of the claims in the Proceedings including, without limitation, the prosecution of the claims in the Proceedings against the Non-Settling Defendants and

named or unnamed co-conspirators, provided that such information and Documents shall not be used directly or indirectly for any other purpose, including the prosecution of any claim against the Releasees. The Parties further acknowledge and agree that all information and Documents provided by the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or their respective counsel to Class Counsel, the Plaintiffs, and the Plaintiffs' experts under this Settlement Agreement shall be held and treated in strict confidence in accordance with this Settlement Agreement and any applicable Confidentiality Order, and shall not be otherwise disclosed to any person in any manner, directly or indirectly, by Class Counsel, the Plaintiffs or the Plaintiffs' experts in any way for any reason except in accordance with this Settlement Agreement and any applicable Confidentiality Order or with the express prior written consent of the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or their respective counsel. Class Counsel, the Plaintiffs and the Plaintiffs' experts shall take all reasonable steps and precautions to ensure and maintain the confidentiality of information and Documents and any related work product of Class Counsel and the Plaintiffs' experts.

(3) The cooperation that is to be provided by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties under this Settlement Agreement shall be limited to the allegations contained in the Proceedings, including an alleged unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act*, civil and/or common law.

(4) On the Execution Date or at a later time mutually agreed upon by Class Counsel and the Domfoam Defendants, the Domfoam Defendants shall instruct counsel for the Domfoam Defendants to preserve the following Documents and to maintain a copy of such Documents that will remain in the possession of counsel for the Domfoam Defendants for the purpose of compliance by the Domfoam Defendants with section 4.3 of this Settlement Agreement: (i) all pre-existing business Documents that have been produced as of the Execution Date to any governmental authority in Canada in connection with that governmental authority's investigation of potential price-fixing

relating to the sale of Foam Products in Canada or elsewhere, and (ii) all pre-existing business Documents that have been produced as of the Execution Date to the U.S. Plaintiffs in the U.S. Proceedings as part of their discovery obligations in the U.S. Class Proceedings or as part of a U.S. Settlement and that relate to the allegations in the Proceedings.

(5) Within ten (10) days of the Execution Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

- (a) through a meeting or meetings between or among counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to be scheduled at a reasonable time and place and for a total duration that does not exceed five (5) hours in the aggregate, provide a preliminary verbal evidentiary proffer, which will include information relating to a general description of the polyurethane foam industry and information relating to participation of the Domfoam Defendants and the Individual Settling Parties in the events that are the subject matter of the Proceedings (the “Initial Proffer”). The Domfoam Defendants, the Individual Settling Parties, Class Counsel and the Plaintiffs shall reach agreement in advance with respect to the participants at the Initial Proffer, and Class Counsel and the Plaintiffs acknowledge in advance that the information that will be provided by the Domfoam Defendants and the Individual Settling Parties during the Initial Proffer shall be limited in light of the fact that the Courts have not considered nor approved Final Orders. During the course of the Initial Proffer, counsel for the Domfoam Defendants and the Individual Settling Parties may use or refer to certain Documents. Class Counsel shall be entitled to view these Documents during the Initial Proffer, but Class Counsel agree that they shall not be permitted to make or retain a copy of such Documents at such time. The Parties further agree that there shall be no audio or video recording and no written transcription or record of any statements made or information

provided by counsel for the Domfoam Defendants and the Individual Settling Parties at the Initial Proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the Initial Proffer are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings.

(6) At a reasonable time after the Execution Date, and upon reasonable advance notice, and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

- (a) subject to the receipt of any necessary consent by governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, produce to Class Counsel all pre-existing business Documents produced to any governmental authority in Canada in connection with that governmental authority's investigation of potential price-fixing relating to the sale of Foam Products in Canada or elsewhere, and all pre-existing business Documents produced to the U.S. Plaintiffs in the U.S. Proceedings as part of their discovery obligations in the U.S. Proceedings or as part of a U.S. Settlement and that relate to the allegations in the Proceedings.

(7) Within thirty (30) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

- (a) through a meeting or meetings between counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to

be scheduled at a reasonable time and place and for a total duration that does not exceed fifteen (15) hours in the aggregate, provide a verbal evidentiary proffer, which will include information relating to the allegations in the Proceedings including, without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada (the "Second Proffer"). The Domfoam Defendants, the Individual Settling Parties, Class Counsel and the Plaintiffs shall reach agreement in advance with respect to the participants at the Second Proffer. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information provided by counsel for the Domfoam Defendants or counsel of the Individual Settling Parties at the Second Proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the Second Proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the Second Proffer are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings;

- (b) make reasonable efforts to provide existing electronic transactional data relating to sales of Foam Products during the Settlement Class Period by the Domfoam Defendants to direct purchasers that involved a billing address or a shipping address in Canada. The Domfoam Defendants represent that they are in the possession of some electronic transactional data relating to various sales of Foam Products by the Domfoam Defendants relating to Canada for part of the Settlement Class Period, which data includes Purchase Price information in respect of purchases by putative members of the Settlement Class who purchased Foam Products directly from the Domfoam Defendants during part of the Settlement Class Period. Counsel for the Domfoam

Defendants agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the set(s) of electronic transactional data produced by the Domfoam Defendants. If counsel for the Domfoam Defendants is unable to provide an adequate response to Class Counsel's questions, the Domfoam Defendants shall direct that a current employee of the Domfoam Defendants be reasonably available to Class Counsel to respond to Class Counsel's questions. The inability of the employee to respond to Class Counsel's questions or the failure of the current employee to agree to make him or herself available to or otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the Domfoam Defendants' obligations under this Settlement Agreement; and

- (c) subject to the receipt of any necessary consent by governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, produce any further Documents that fall within the description of section 4.5(6) of this Settlement Agreement and that have been identified as of the Effective Date, and make reasonable efforts to produce further pre-existing business Documents that have been identified, collected and organized by the Domfoam Defendants as of the Effective Date relating to the allegations in the Proceedings. The Domfoam Defendants represent that they have identified, collected and organized certain Documents relating to the Proceedings, but the Domfoam Defendants have not conducted or completed a comprehensive Document collection or review in light of the fact that the Proceedings remain at an early stage and discovery has not commenced in the Proceedings. The inability or failure of the Domfoam Defendants to conduct or complete a comprehensive Document collection or review as of the Effective Date shall not constitute a breach or violation of the Domfoam Defendants' obligations under this Settlement Agreement.
- (8) Within sixty (60) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual

Settling Parties, and subject to the other provisions of this section, the Brayianis Defendant and the Individual Settling Parties shall:

- (a) at the request of Class Counsel and upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, make themselves available for interviews to provide information, including Documents that are in the personal possession, power or control of the Brayianis Defendant or the Individual Settling Parties, relating to the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the Proceedings, at a location chosen by the Individual Settling Parties in their sole discretion. Each such interview shall take place on a single day and shall last no more than eight (8) hours, including reasonable breaks, except for good cause, and counsel for the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall be entitled to attend such interviews. The reasonable costs incurred by, and the reasonable expenses of, the Brayianis Defendant and the Individual Settling Parties in relation to such interviews shall be the responsibility of the Brayianis Defendant and the Individual Settling Parties. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information during such interview, and that Class Counsel may only make written notes of their own thoughts and impressions at such interviews for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the interview are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings.

(9) Within sixty (60) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants shall:

- (a) at the request of Class Counsel and upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, and subject to any order of the Restructuring Court, engage reasonable efforts to make available up to three (3) current directors, officers or employees of the Domfoam Defendants (other than the Brayiannis Defendant and the Individual Settling Parties) who have knowledge of the allegations in the Proceedings to provide information relating to the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the Proceedings, at a location chosen by the Domfoam Defendants in their sole discretion or, in the alternative, if no such choice is made, at a location to be reasonably agreed between Class Counsel and the director, officer or employee being interviewed. Each such interview shall take place on a single day and shall last no more than eight (8) hours, including reasonable breaks, except for good cause, and counsel for the Domfoam Defendants and the Individual Settling Parties shall be entitled to attend such interviews. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information during such interview, and that Class Counsel may only make written notes of their own thoughts and impressions at such interviews for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such interviews shall be the responsibility of the Domfoam Defendants. The Parties agree that any such written notes and any other communications, information and Documents relating to the interview are privileged, shall be kept strictly

confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings. If any such current directors, officers or employees of the Domfoam Defendants (other than the Brayianis Defendant or the Individual Settling Parties) refuses to provide information, or otherwise cooperate, the Domfoam Defendants shall engage their reasonable efforts to make such person available for an interview but the failure or refusal of any such current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such a failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(10) At a time following the Effective Date and to be mutually agreed upon by Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties, and subject to the other provisions of this section, the Brayianis Defendant and the Individual Settling Parties shall, at the request of Class Counsel and upon reasonable notice in circumstances where there is a reasonable necessity for the evidence of the Brayianis Defendant and/or Individual Settling Parties in the prosecution of the Proceedings, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, make themselves reasonably available to provide evidence at trial of the Proceedings in Canada, or to be reasonably available to provide an affidavit or declaration and attend at a cross-examination in support of the certification or authorization motion in the Proceedings or in the event of a summary judgment motion brought against the Plaintiffs in the Proceedings.

(11) At a time following the Effective Date and to be mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants shall, at the request of Class Counsel and upon reasonable notice in circumstances where there is a reasonable necessity for the evidence of the current directors, officers or employees of the Domfoam Defendants in the prosecution of the Proceedings, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, and subject to any order of the Restructuring Court, engage reasonable efforts to make three (3) current directors, officers or employees of the Domfoam Defendants (other than the Brayianis Defendant and the Individual Settling Parties) who have knowledge of the allegations in the Proceedings reasonably available to provide evidence at trial of the Proceedings in Canada, or to be reasonably available to provide an affidavit or declaration and attend at a cross-examination in support of the certification or authorization motion in the Proceedings or in the event of a summary judgment motion brought against the Plaintiffs in the Proceedings. If any current director, officer or employee of the Domfoam Defendants (other than the Brayianis Defendant or the Individual Settling Parties) refuses to cooperate under this section, the Domfoam Defendants shall engage their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Plaintiffs. The failure or refusal of any such current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(12) Subject to the rules of evidence, the other provisions of this Settlement Agreement and any Confidentiality Order, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties further agree to engage in reasonable efforts to produce acceptable affidavits or other testimony in the Proceedings from the Individual Settling Parties, the Brayianis Defendant and/or up to three (3) current directors, officers or employees of the Domfoam Defendants who are qualified to establish for admission into evidence any information or Documents produced by the Individual Settling Parties, the Brayianis Defendant and/or the Domfoam Defendants in accordance with this section of this Settlement Agreement, provided that Class Counsel, counsel for the Domfoam Defendants, counsel for the Brayianis Defendant, and counsel for the Individual Settling Parties, acting reasonably, agree that such evidence from such Individual Settling Parties, the Brayianis Defendant and/or such current directors, officers or employees of the Domfoam Defendants is reasonably necessary for the prosecution of the Proceedings and may be presented to the Courts. The reasonable costs incurred by, and the reasonable expenses of, such Individual Settling Parties, the Brayianis Defendant and/or such current directors, officers or employees of the Domfoam Defendants in relation to such cooperation shall be the responsibility of the Individual Settling Parties, the Brayianis Defendant, the Domfoam Defendants and/or the current directors, officers or employees. If any such current director, officer or employee of the Domfoam Defendants (other than the Brayianis Defendant or the Individual Settling Parties) refuses to cooperate under this section, the Domfoam Defendants shall engage their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Plaintiffs. The failure or refusal of any such current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or

employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(13) If, in the course of the Proceedings, the Plaintiffs, the Settlement Class Members and/or Class Counsel conclude that it is reasonably necessary to disclose or provide information or Documents obtained from the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties which are not otherwise publicly available to the Non-Settling Defendants or any affiliates of the Non-Settling Defendants, or to file such information or Documents in the Proceedings, and such disclosure is not otherwise prohibited by this Settlement Agreement or a Confidentiality Order, then the Plaintiffs, the Settlement Class Members and/or Class Counsel shall provide the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties with an advance written description of the information or Documents that is to be provided to the Non-Settling Defendants or their affiliates or filed with the Courts within a reasonable amount of time in advance of the proposed disclosure, in order that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may take steps to protect their interests in respect of such information or Documents in accordance with this Settlement Agreement and/or any Confidentiality Order. For greater certainty, the rights of the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties under this section are in addition to and shall not derogate from any rights that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may have under any Confidentiality Order relating to the Proceedings.

(14) The provisions set forth in section 4.5 of this Settlement Agreement shall constitute the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery and/or evidentiary disclosure from the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and the Releasees for the purposes of any certification and/or authorization motion and/or any other motion, for discovery and/or for trial in connection with the Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery and/or evidentiary disclosure as against the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and/or the Releasees in connection with the

Proceedings, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(15) The obligations of the Domfoam Defendants under section 4.5 of this Settlement Agreement, including but not limited to any subsequent requests by the Plaintiffs and/or Class Counsel for the production or access to information and Documents relating to the Domfoam Defendants shall be contingent upon the ability of the Domfoam Defendants to lawfully and/or practically meet such obligations or requests subject to the filing or granting of creditor protection and/or insolvency relief under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S. In particular but without limitation, none of the obligations in this section shall obligate the Domfoam Defendants to provide access to, produce or otherwise make available information or Documents that the Domfoam Defendants are no longer able or permitted to access as a result of the filing or granting of creditor protection and/or insolvency relief in Canada and/or the U.S. The Domfoam Defendants agree that they shall not seek any limitations or restriction from the Restructuring Court on their ability to cooperate in accordance with this Settlement Agreement, provided that the Parties agree that the Domfoam Defendants remain subject to any order from the Restructuring Court. The Plaintiffs and the Domfoam Defendants may, if necessary, respectively seek advance directions or an order from the Restructuring Court or the Courts in respect of compliance with these cooperation provisions during or after the Restructuring Process, and the Parties agree to be bound by any such directions or order from the Restructuring Court or the Courts.

(16) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties to disclose or produce (i) any communications, discussions or agreements between the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties and government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain, (ii) any information or Documents created for or by government authorities in Canada or elsewhere in connection with any regulatory or

criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain and (iii) any notes, transcripts, testimony or other information or Documents relating to meetings or interviews with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain, however, for greater certainty, this section shall not detract or derogate from any obligation of the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties under section 4.5 of this Settlement Agreement to produce pre-existing business Documents that belong to the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties and that were created prior to and independently from any regulatory or criminal investigation relating to Foam Products.

(17) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties or any Releasees to perform any act which would violate any provincial, federal or foreign law, to disclose or produce any information or Documents prepared by or for counsel for the Domfoam Defendants or the Brayianis Defendant or the Individual Settling Parties or the Releasees, or to disclose or produce any information or Documents in breach of any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Domfoam Defendant or a Brayianis Defendant. If any information or Documents protected by any privilege and/or by any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction are accidentally or inadvertently produced by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties, the Plaintiffs and Class Counsel shall promptly return such information and/or Documents to the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties and such information and/or Documents shall not be disclosed or used, directly or

indirectly, except with the express prior written consent of the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties, and the production of such information and/or Documents shall in no way be construed to constitute a waiver of privilege or protection by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties in connection with such information and/or Documents.

(18) Notwithstanding their obligations to cooperate as set forth in section 4.5 of this Settlement Agreement, if the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties reasonably believe that any of their applications or agreements with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products (without admitting that any such applications or agreements exist) would be endangered by the production or disclosure of information or Documents which would otherwise be required to be produced to Class Counsel or the Plaintiffs pursuant to the terms of this Settlement Agreement, the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties may withhold such information or Documents. To the extent that the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties withhold such information or Documents, pursuant to this section of this Settlement Agreement, the Domfoam Defendants and/or the Individual Settling Parties shall, within thirty (30) days from the date that such information or Documents would otherwise be produced to Class Counsel pursuant to this Settlement Agreement, provide to Class Counsel a description of the type of information or Document to be withheld, and the basis for withholding such information or Documents. The Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties shall work in good faith with such government authorities to obtain permission to disclose the information or Documents being withheld. If, on the date which is twelve (12) months from the execution of this Settlement Agreement and sixty (60) days from the date that such information or Documents would otherwise be produced to Class Counsel pursuant to this Settlement Agreement, information or Documents continue to be withheld by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties pursuant to this section, the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties shall forthwith provide such information or Documents to Class Counsel

and/or the Plaintiffs, unless any of the Courts, pursuant to motions filed by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties or otherwise, orders to the contrary.

(19) Subject to the other provisions of section 4.5 of this Settlement Agreement, the obligations of the Brayiannis Defendant and the Individual Settling Parties to produce Documents pursuant to section 4.5 shall be a continuing obligation to make reasonable additional productions to the extent that the Brayiannis Defendant and the Individual Settling Parties collect and identify further Documents following the initial production milestones set out above and that fall within the categories of documentary cooperation that are set out in section 4.5 of this Settlement Agreement.

(20) A material factor influencing the Domfoam Defendants', the Brayiannis Defendant's and the Individual Settling Parties' decision to execute this Settlement Agreement is their desire to limit the burden and expense of the Proceedings. Accordingly, Class Counsel and the Plaintiffs agree to exercise good faith in seeking cooperation from the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties, and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties.

(21) The Plaintiffs may seek directions and/or orders from the Ontario Court relating to their rights under section 4.5 should the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Defendants not act reasonably in terms of its/their obligations under section 4.5 or act in a manner that is inconsistent with the spirit and intent of section 4.5.

(22) The Domfoam Defendants', the Brayiannis Defendant's and the Individual Settling Parties' obligation to cooperate as particularized in section 4.5 of this Settlement Agreement shall not be affected by the release provisions contained in section 7 of this Settlement Agreement.

(23) The Domfoam Defendants', the Brayianis Defendant's and the Individual Settling Parties' obligation to cooperate under this Settlement Agreement shall cease at the date of final judgment in the Proceedings as against all Defendants. Following the Effective Date, in the event the Plaintiffs allege a material breach by the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties of their obligations under section 4.5 of this Settlement Agreement, the non-breaching Party shall have the right to apply to the Ontario Court for specific performance in respect of such obligation. If the Ontario Court finds that a Party, including the Brayianis Defendant or any Individual Settling Parties, has materially breached section 4.5 of this Settlement Agreement and orders specific performance as to that Party, and that Party nonetheless fails to comply with such order, this Settlement Agreement shall be terminated as to that, and only that, Party. In the event that the Ontario Court finds the Brayianis Defendant or any Individual Settling Parties not to have materially breached section 4.5 of this Settlement Agreement, then this Settlement Agreement shall remain in effect as to that Brayianis Defendant or as to that Individual Settling Party. Following the Effective Date, in no event shall any Party be permitted to unilaterally terminate this Settlement Agreement on the basis of actual or alleged breach of section 4.5 of this Settlement Agreement. Furthermore, in no event shall the Brayianis Defendant's or any Individual Settling Party' actual or alleged breach of any of the obligations of section 4.5 of this Settlement Agreement in any way apply, alter, negate or have any effect whatsoever on (i) the discontinuance of the Proceedings with respect to the Domfoam Defendants, or (ii) the full and final release of Released Claims contemplated by this Agreement as to any other Releasees.

**SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT,
ASSIGNMENT PROCEEDS, AND ACCRUED INTEREST**

5.1 Distribution Protocol

(1) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties acknowledge that the Settlement Class includes Persons who purchased Foam Products directly from the Defendants as well as Persons who purchased Foam Products indirectly from third parties, and that this Settlement Agreement makes no determination as to

which Settlement Class Members are entitled to distribution from the Trust Account or as to the formula for determining the allocation of the monies in the Trust Account.

(2) After the Effective Date, at a time wholly within the discretion of Class Counsel, Class Counsel shall seek orders from the Courts approving the Distribution Protocol. Class Counsel shall engage in reasonable consultation with counsel for the Domfoam Defendants and the Individual Settling Parties regarding the terms of the Distribution Protocol. Subject to any amendments by the Courts, the Settlement Class Members shall be compensated pursuant to the Distribution Protocol. After the Effective Date and after the Courts have approved the Distribution Protocol, the remaining monies in the Trust Account shall be transferred by the Escrow Agent to the Claims Administrator for payment in accordance with the Distribution Protocol.

5.2 No Responsibility for Administration or Fees

The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties 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 6 – OPTING OUT

6.1 Procedure for Opting Out

(1) A Person may opt out of the Proceedings by completing and signing the Opt Out Form, and by sending the Opt Out Form, by pre-paid mail, courier or fax to the Opt Out Administrator at an address and coordinates to be identified in the Notice of Certification and Settlement Approval contemplated by section 11.1 of this Settlement Agreement.

(2) A Person who wishes to opt out of the Proceedings must provide the following to the Opt Out Administrator as part of the Opt Out Form:

- (a) an executed statement requesting that the Person opting out be excluded from the Settlement Class in the Canadian Polyurethane Foam Class Actions National Settlement;

- (b) the full name, current address and telephone number of the Person who is opting out and any former names which are relevant to its purchase of Foam Products in Canada during the Settlement Class Period;
 - (c) the name(s), if known, of each entity from whom the Person purchased Foam Products in Canada during the Settlement Class Period; and
 - (d) particulars of the Purchase Price, if known, and volume, if known, of Foam Products purchased from each such entity during the Settlement Class Period.
- (3) An election to opt out will only be effective if the Opt Out Form is postmarked on or before the Opt Out Deadline.

6.2 Opt Out Report

The Opt Out Administrator shall use the information provided by the Domfoam Defendants pursuant to section 12.2(2) to supplement and confirm the information received pursuant to section 6.1(2) of this Settlement Agreement. Within thirty (30) days of the Opt Out Deadline, the Opt Out Administrator shall provide to counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to the extent that such information is known by the Opt Out Administrator, the following information in respect of each Person, if any, who has opted out of the Proceedings:

- (a) the Person's full name, current address and telephone number;
- (b) the reasons for opting out, if given;
- (c) the name(s), if known, of each entity from whom the Person purchased Foam Products during the Settlement Class Period;
- (d) for each such entity, the Purchase Price, if known, and volume, if known, of Foam Products purchased during the Settlement Class Period; and
- (e) a copy of all information provided in the opt out process by the Person electing to opt out.

6.3 Right to Terminate Based on Opt Outs

(1) The Domfoam Defendants and/or the Individual Settling Parties may terminate this Settlement Agreement in the event that the volume of Foam Products purchased by members of the Settlement Class who opt out of the Proceedings or the number and identity of members of the Settlement Class who opt out of the Proceedings exceeds the Confidential Opt Out Threshold.

(2) To terminate this Settlement Agreement based on Opt Outs, the Domfoam Defendants and/or the Individual Settling Parties shall give a written notice of termination to Class Counsel no later than twenty-one (21) days after the receipt of the report contemplated by section 6.2 of this Settlement Agreement.

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

Upon the Effective Date, 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 the Releasees from the Released Claims.

7.2 Covenant Not To Sue

Notwithstanding section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant not to sue 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.

7.3 No Further Claims

The Releasers 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 Releasees or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasees in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

7.4 Discontinuance of Proceedings against the Domfoam Defendants

The B.C. Proceedings and the Ontario Proceedings shall be discontinued without costs as against the Domfoam Defendants. The Quebec Proceeding shall be settled, without costs and without reservation as against the Domfoam Defendants, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court. The Parties agree that any such discontinuance and/or declaration of settlement out of court shall not alter, negate or otherwise have any effect on the releases in favour of the Releasees that are set out in section 7 of this Settlement Agreement. For greater certainty, the Parties agree that such discontinuances and/or declarations of settlement out of court shall not impair the Settlement Class' ability to file claims in any creditor protection or insolvency proceedings in Canada and/or the U.S. relating to the Domfoam Defendants, or to seek to enforce the Assignment as against the Domfoam Defendants or any legal representative of the Domfoam Defendants.

7.5 Discontinuance of Other Actions against the Domfoam Defendants

(1) Upon the Effective Date, all Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any Settlement Class Member who does not opt out shall be deemed discontinued against the Domfoam Defendants.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the B.C. Settlement Class who does not opt out shall be deemed to irrevocably consent to the discontinuance of his, her or its Other Actions against the Domfoam Defendants.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without

cost and without reservation, of his, her or its Other Actions against the Domfoam Defendants.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Domfoam Defendants without costs and without reservation.

7.6 Tolling of Limitation Periods as against the Domfoam Defendants

Following the discontinuance and settlement of the Proceedings set out in section 7.4, all applicable limitation periods for the filing of claims, defences, counterclaims and/or third party claims by the Plaintiffs or the Settlement Class Members shall be suspended or tolled as to the Domfoam Defendants. For greater certainty, the Parties do not agree to the tolling or suspension of any applicable limitation periods that may govern potential claims by the Non-Settling Defendants or named or unnamed co-conspirators as against the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or any other party.

7.7 Dismissal of the Ontario Proceedings against the Brayiannis Defendant

The Ontario Proceedings shall be dismissed, without costs and with prejudice as against the Brayiannis Defendant.

7.8 Dismissal of Other Actions against the Releasees

(1) Upon the Effective Date, all Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any member of the Settlement Class who does not opt out shall be deemed dismissed against the Brayiannis Defendant, the Individual Settling Parties or the Releasees without costs and with prejudice.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the B.C. Settlement Class who does not opt out shall be deemed to irrevocably consent to the dismissal of his, her or its Other Actions against the Brayiannis Defendant, the Individual Settling Parties or the Releasees.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without cost and without reservation, of his, her or its Other Actions against the Brayianis Defendant, the Individual Settling Parties or the Releasees.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Brayianis Defendant, the Individual Settling Parties or the Releasees, without costs and without reservation.

7.9 Impact of Discontinuance and Dismissals

The Parties agree that the discontinuances, declarations of settlement, dismissals, and consents set out in section 7.4, 7.5, 7.6, 7.7 and 7.8 of this Settlement Agreement shall not alter, negate or otherwise have any impact or effect on the releases of the Released Claims by the Releasers in favour of the Releasees that are set out in sections 7.1, 7.2 and 7.3 of this Settlement Agreement.

7.10 Releases and Covenants Not to Sue

The form and content of the releases and covenants not to sue contemplated in sections 7.1, 7.2 and 7.3 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties and the failure of any Court to approve the releases or covenants not to sue contemplated herein shall give rise to a right of termination by the Domfoam Defendants and the Individual Settling Parties pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the releases and/or covenants not to sue contemplated herein, or if any Court approves the releases and/or covenants not to sue contemplated herein in a materially modified form.

SECTION 8 - BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS

8.1 British Columbia and Ontario Bar Orders

The Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree that the British Columbia and Ontario orders approving this Settlement Agreement must include a bar order in respect of the B.C. Proceedings and the Ontario Proceedings. The bar order shall be in a form reasonably agreed to by the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties, and shall include:

- (a) a provision that all claims for contribution, indemnity or other claims over, whether asserted or 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 otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by an Opt Out);
- (b) a provision governing the rights of the Plaintiffs and the Settlement Class Members to assert claims against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees in respect of the Proceedings or otherwise, provided that under such a provision, if a Court determines there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise between co-conspirators, the 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 that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the Proceedings or

otherwise, and the Court shall have full authority to determine the Proportionate Liability of the Releasees at trial or other disposition of the Proceedings, whether or not the Releasees appear at trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceedings and shall not be binding on the Releasees in any other proceedings; and

- (c) a provision governing the ability of the Non-Settling Defendants to bring a motion to seek discovery of the Brayianis Defendant for the purposes of the continuation of the Proceedings, provided that under such a provision, the Brayianis Defendant shall retain and reserve all of his rights to oppose such a motion.

8.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties agree that the Quebec order approving this Settlement Agreement must include an order that provides for a waiver or renunciation of solidarity. The waiver or renunciation of solidarity order shall be in a form reasonably agreed to by the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties, provided that the Quebec Court must take notice of the following undertaking and the order must include the following terms:

- (a) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity with respect to any share of liability, including without limitation liability arising from *in solidum* obligations, that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interest and/or costs;
- (b) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce, to the Releasees' exclusive benefit, to claim or receive payment from the Non-Settling Defendants or any other

person of any amount representing any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and/or costs;

- (c) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members release the Non-Settling Defendants and any other person in respect of any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and costs; and
- (d) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members will bear the Releasees' share in the contribution in respect of the Quebec Proceeding (if any) that would result from the insolvency of a Non-Settling Defendants or any other Person.

(2) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties further agree that the Quebec order approving this Settlement Agreement must also include a provision that in the event that any person brings an action in warranty or any other claim to obtain from the Releasees an amount representing the share of liability attributed to the Releasees in the Quebec Proceeding (if any) and the Plaintiffs, the Domfoam Defendants, the Individual Settling Parties and the other Releasees are not able to obtain the dismissal of such an action or claim through a preliminary motion at first instance before the Quebec Court, then the Plaintiffs in Quebec and the Quebec Settlement Class Members shall undertake to indemnify the Releasees and to save the Releasees harmless in respect of any damage, harm, loss or cost reasonably incurred in respect of such action or claim, provided that any such indemnity will only be paid out of any present or future undistributed settlement or judgment amount collected from the Non-Settling Defendants or named or unnamed co-conspirators or any other person for the benefit of the Plaintiffs and the Quebec Settlement Class Members in respect of the Quebec Proceeding. This indemnity shall not affect the ability of the Plaintiffs to seek interim distributions of settlement funds subject to court approval.

8.3 Material Term

The form and content of the bar orders and the waiver or renunciation of solidarity order contemplated in sections 8.1 and 8.2 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Domfoam Defendants and the Individual Settling Parties and the failure of any Court to approve the bar orders or the waiver or renunciation of solidarity order contemplated herein shall give rise to a right of termination by the Domfoam Defendants and the Individual Settling Parties pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the bar order and/or waiver or renunciation of solidarity order contemplated herein, or if any Court approves the bar order and/or waiver or renunciation of solidarity order contemplated herein in a materially modified form.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree that, 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, 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 any of the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties or by any Releasee, or of the truth of any of the claims or allegations contained in the Proceedings, the Other Actions or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

9.2 Agreement Not Evidence

The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling 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 present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

9.3 No Further Litigation

(1) No Plaintiff and no 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 which relates to or arises from the Released Claims, except in relation to the continued investigation and prosecution of the Proceedings, or any new proceedings, as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees. However, this subsection shall not be operative to the extent that it is inconsistent with B.C. Class Counsel's obligations under Rule 4.7 of the British Columbia Professional Conduct Handbook.

(2) For greater certainty, section 9.3(1) does not apply to the involvement of any Person in the continued investigation and prosecution of the Proceedings as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees. In addition, section 9.3(1) does not apply in respect of any claim in respect of the Domfoam Defendants that may be filed in any creditor protection, restructuring or other bankruptcy proceeding in Canada or the U.S. relating to the Domfoam Defendants pursuant to section 3 of this Settlement Agreement.

SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

10.1 Settlement Class and Common Issue

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Domfoam Defendants and the Brayianis Defendant solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that the Plaintiffs will seek to define is the Common Issue and the only classes that they will assert are the Settlement Class. The Plaintiffs acknowledge that the Domfoam Defendants and the Brayianis Defendant agree to the definition of the Common Issue for purposes of settlement only.

10.2 Certification or Authorization Without Prejudice in the Event of Termination

In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that any prior certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, or any amended certification of a Proceeding as a class proceeding pursuant to this Settlement Agreement, including the definition of the Settlement Class and the statement of the Common Issue, 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.

SECTION 11 – NOTICE TO SETTLEMENT CLASS

11.1 Notice Required

The proposed Settlement Class shall be given the following Notices: (i) Notice of Approval Hearings; (ii) Notice of Certification and Settlement Approval; and (iii)

termination of this Settlement Agreement if it is terminated after notice provided in accordance with (i) above or as otherwise ordered by the Courts.

11.2 Form, Publication and Distribution of Notice

(1) The form of the Notices referred to in section 11.1 and the manner of publication and distribution shall be as reasonably agreed to by the Plaintiffs and the Domfoam Defendants or in such form or manner as approved by the Courts.

(2) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties shall engage in reasonable efforts to work with the parties to the U.S. Settlement and with the Non-Settling Defendants to the Proceedings to coordinate the form, publication and distribution of the Notices pursuant to this Settlement Agreement with the provision of notice for any other settlements that have or may be reached in the Proceedings or the U.S. Proceedings so that, to the extent possible, the Settlement Class receives effective notice on a timely basis and at a reasonable cost.

11.3 Notice of Distribution

Except to the extent provided for in this Settlement Agreement, the form of notice in respect to the administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

SECTION 12 – ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

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

12.2 Information and Assistance

(1) The Domfoam Defendants will make reasonable efforts to compile a list of the names and addresses of Persons in Canada who purchased Foam Products from the Domfoam Defendants in Canada during the Settlement Class Period.

(2) The information required by section 12.2(1) shall be delivered to Class Counsel within thirty (30) business days of the Execution Date.

(3) Class Counsel may use the information provided under section 12.2(2) to advise Persons in Canada who purchased Foam Products from the Domfoam Defendants in Canada during the Settlement Class Period of this Settlement Agreement and the date of the Approval Hearings before the Courts.

(4) If this Settlement Agreement is not approved, terminated, or otherwise fails to come into effect, all information provided by the Domfoam Defendants pursuant to section 12.2(2) shall be returned or destroyed forthwith in accordance with section 14.2(1)(f), no record of the information so provided shall be retained by Class Counsel in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

SECTION 13– CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) The Escrow Agent shall pay the reasonable costs of the notices referred to in section 11 of this Settlement Agreement, any reasonable costs associated with receiving the written elections to opt out and the costs of the Escrow Agent from the Trust Account.

(2) 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 shall determine in their sole discretion, provided that Class Counsel agree that they shall not be paid Class Counsel Fees from the Settlement Amount in the event this Settlement Agreement is not approved, is terminated

or otherwise fails to take effect, provided that they may seek payment of professional fees in respect of their representation of the Plaintiffs from the ISP Release Payment contemplated by sections 14.2(1)(g)(A) and 14.4 of this Settlement Agreement. The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall take no position with respect to Class Counsel's motion for payment of Class Counsel Fees.

(3) Except as provided in sections 13(1) and 13(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall not be liable for any fees, disbursements or taxes, including but not limited to Class Counsel Fees and any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or the Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

SECTION 14 - TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

(1) The Plaintiffs and Class Counsel shall have the right to terminate this Settlement Agreement, in the event that:

- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Class, and the Court's order or judgment has become a Final Order;
- (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;
- (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order;

- (d) the Domfoam Defendants do not make an application for creditor protection and/or insolvency relief in Canada and/or in the U.S., including but not limited to an application under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S., within thirty (30) days of the Execution Date; or
 - (e) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders.
- (2) The Domfoam Defendants and/or the Individual Settling Parties shall further have the right to terminate this Settlement Agreement in the event:
- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Class, and the Court's order or judgment has become a Final Order;
 - (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;
 - (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order;
 - (d) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders;
 - (e) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 2.4(2) and 2.4(3) of this Settlement Agreement;
 - (f) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 7.1, 7.2, 7.3, 8.1 and 8.2 of this Settlement Agreement; or

(g) the Confidential Opt Out Threshold is exceeded and the Domfoam Defendants and/or the Individual Settling Parties provide written notice of termination in accordance with section 6.3(2) of this Settlement Agreement.

(3) To exercise a right of termination under section 14.1(1) or 14.1(2), a terminating party shall deliver a written notice of termination pursuant to section 15.18 of this Settlement Agreement. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 14.4, it 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 the Proceedings or any litigation.

(4) Subject to section 14.1(5), any order, ruling or determination made by any Court that is not substantially in the form of its respective order annexed as Schedule “B1”, “B2” or “B3” shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the Domfoam Defendants’ termination and/or the Individual Settling Parties’ termination of this Settlement Agreement, provided however that the Domfoam Defendants and/or the Individual Settling Parties may agree to waive this provision.

(5) Any order, ruling or determination made by any Court with respect to Class Counsel Fees and/or 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.

(6) For greater certainty, the Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties acknowledge and agree that they shall not rely on any future ruling or proceedings arising from or in connection with the pending appeals before the Supreme Court of Canada in respect of *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* (Supreme Court of Canada File #34283) and *Pro-Sys Consultants Ltd. v. Microsoft Corporation* (Supreme Court of Canada File #34282) as a ground or basis for terminating this Settlement Agreement pursuant to sections 14.1(1) and 14.1(2) or otherwise at law.

14.2 **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, the Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree:

- (a) no motion to certify or authorize any of the Proceedings 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) any order certifying or authorizing any of the Proceedings as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of any Proceedings as a class proceeding that has occurred after the date of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue, and any prior procedural or substantive ruling in respect of the ongoing Proceedings that has occurred after the date of this Settlement Agreement, shall be without prejudice to any position that the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties may later take on any procedural or substantive issue in the ongoing Proceedings or any other litigation;
- (d) any appearance, attendance, filing or any other action or step taken by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties may later take in respect of the jurisdiction of the Courts or any other court (with the exception of the jurisdiction of the B.C. Court), including a motion by one or more of

the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties seeking to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over such defendant in the Proceedings or any other litigation;

(e) the Parties shall negotiate in good faith to determine a new timetable, if the Proceedings are to continue against the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties;

(f) within ten (10) days of such termination or failure having occurred, Class Counsel shall destroy all Documents or other information provided by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties as cooperation under this Settlement Agreement, or containing or reflecting information derived from such Documents or other information, and to the extent that Class Counsel has disclosed any Documents or other information provided by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties to any other person (including Plaintiffs' experts), shall recover and destroy such Documents and other information. Class Counsel shall provide the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties with a written certification by Class Counsel of such destruction. Nothing contained in this subsection shall be construed to require Class Counsel to destroy any of their work product; and

(g) each Class Counsel shall forthwith deliver consents in writing to counsel for the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties authorizing the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties to bring motions before each of the Courts for orders:

(A) directing that the balance of the Settlement Amount in the Trust Account less the ISP Release Payment shall be paid to the Contributing Individual Settling Parties, in accordance with section

14.3 of this Settlement Agreement, and that, subject to any contrary order of the Courts, the ISP Release Payment be paid to or held for the benefit of the Plaintiffs (individually in their capacity as named Plaintiffs only);

- (B) directing that the balance of the proceeds from the Assignment in the Trust Account shall be paid to the Domfoam Defendants, in accordance with section 14.3 of this Settlement Agreement;
- (C) declaring that this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 14.4 of this Settlement Agreement); and
- (D) setting aside any order certifying or authorizing the Proceedings as a class proceedings on the basis of this Settlement Agreement.

14.3 Allocation of Monies in the Trust Account Following Termination

(1) For greater certainty, if this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that the Assignment shall be terminated and shall have no legal effect.

(2) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Escrow Agent shall return to the Contributing Individual Settling Parties all monies from the Settlement Amount in the Trust Account including all accrued interest less the ISP Release Payment, and shall return to the Domfoam Defendants all monies from the proceeds of the Assignment received in the Trust Account as of the applicable date including all accrued interest but less the costs of the Escrow Agent and the Opt Out Administrator and the Notices that have been incurred but not paid to date, provided however, if the proceeds of the Assignment received as of the applicable date including all accrued interest are not sufficient to cover such costs, then the Escrow Agent may apply or deduct any such remaining costs (up to a maximum amount of three-hundred and seventy-five thousand Canadian dollars (CAD \$375,000)) against the Settlement Amount including all accrued

interest less the ISP Release Payment. The Escrow Agent shall remit such monies to the Contributing Individual Settling Parties and/or the Domfoam Defendants within thirty (30) business days of such termination or event having occurred. The ISP Release Payment shall be held or distributed pursuant to the Court's discretion under section 14.2(1)(g)(A).

14.4 Survival of Certain Releases Following Termination

Notwithstanding sections 14.2 and 14.3 of this Settlement Agreement, in the event that the Contributing Individual Settling Parties comply with their obligations of payment under section 4.1 of this Settlement Agreement and the Individual Settling Parties and the Brayianis Defendant comply with their obligations of cooperation set out in section 4.5 of this Agreement prior to the Approval Hearings, but this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason that does not arise as a result from a breach of the Individual Settling Parties or the Brayianis Defendant, and the Courts approve an order under section 14.2(1)(g)(A) directing that the ISP Release Payment can be paid to, or held for the benefit of, the Plaintiffs (individually in their capacity as named Plaintiffs only), the provisions of sections 14.2, 14.3, 14.4 and 14.5 shall apply and bind the Parties, but the Plaintiffs excluding Option Consommateurs (individually in their capacity as named Plaintiffs only) shall still be deemed to have fully, finally and forever released, relinquished and discharged all Released Claims against the Releasees, shall covenant not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting any such Released Claims against the Releasees so long as the Individual Settling Parties and the Brayianis Defendant continue to provide cooperation pursuant to section 4.5 of this Agreement. Section 7.2 applies to any release under this section. For greater certainty, nothing in this section purports to affect the rights of any other Settlement Class Members as against the Individual Settling Parties and the Brayianis Defendant, and the Individual Settling Parties and the Brayianis Defendant will not object to the addition or substitution of plaintiffs to allow for the continuation of the Proceedings as proposed class proceedings, will not raise limitations or estoppel arguments as against any other putative member of

the Settlement Class arising from this section, nor will they raise conflict of interest arguments as against the Plaintiffs or Class Counsel arising from this section, provided the Plaintiffs (including Option Consummateurs) and Class Counsel shall not in any circumstance use any information or Documents obtained or derived in respect of the Individual Settling Parties and the Brayiannis Defendant pursuant to section 4.5 of this Settlement Agreement for the purpose of asserting any claims relating to the Released Claims against any Releasees in any proceeding or other forum, unless such information or Documents are lawfully obtained through other means.

14.5 Survival of Provisions after Termination

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the provisions of sections 4.5(2), 4.5(11), 9, 10.2, 11, 12.2(4), 13(1), 14 and 15(18) (and any additional provisions governing confidentiality and any addition provisions governing cooperation to the extent that there is continuing cooperation) 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 4.5(2), 4.5(11), 9, 10.2, 11, 12.2(4), 13(1), 14 and 15(18) (and any additional provisions governing confidentiality and any additional provisions governing cooperation to the extent that there is continuing cooperation) 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 15 - MISCELLANEOUS

15.1 Releasees Have No Liability for Administration

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

15.2 **Motions for Directions**

- (1) Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties may apply to the Courts for directions in respect of this Settlement Agreement.
- (2) Class Counsel may apply to the Courts for directions in respect of the Distribution Protocol.
- (3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

15.3 **Headings, etc.**

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.

15.4 **Computation of Time**

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.

15.5 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Proceeding.

(2) No Party shall ask a Court to make any order or give a 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 relevant Court(s) with which it shares jurisdiction over that matter.

(3) Notwithstanding sections 15.5(1) and 15.5(2), 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 Quebec Settlement Class Member or a B.C. Settlement Class Member shall be determined by the Ontario Court.

(4) For the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree to submit to the jurisdiction of the Courts solely for the purpose of implementing, administering and enforcing this Settlement Agreement. The Parties acknowledge and confirm that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties do not attorn to the Courts for any other purpose or proceeding and that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties otherwise reserve all of their other existing jurisdictional rights.

(5) The Plaintiffs, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

15.6 Governing Law

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

15.7 Entire Agreement

This Settlement Agreement, including the Confidential Opt Out 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.

15.8 Amendments

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 Courts with jurisdiction over the matter to which the amendment relates.

15.9 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties, the Settlement Class Members, the Releasers, 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 Releasers and each and every covenant and agreement made herein by the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall be binding upon all of the Releasees.

15.10 Counterparts

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.

15.11 Negotiated Agreement

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.

15.12 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, if required by law or by the Courts, the Domfoam Defendants and the Individual Settling Parties shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

(2) The cost of translating the Notices, claims forms, Opt Out Forms or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required by law or by the Courts, be paid by the Domfoam Defendants and the Individual Settling Parties.

15.13 **Transaction**

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

15.14 **Recitals**

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

15.15 **Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

15.16 **Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

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

15.17 Authorized Signatures

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.

15.18 Notice

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Proceedings:

Harvey T. Strosberg, Q.C. and
Heather Rumble Peterson

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Vancouver, BC V7G 3E2

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Fax: 604-684-3429
Email: wbranch@branmac.com
lbrasil@branmac.com

J.J. Camp, Q.C. and
Reidar Mogergerman

CAMP FIORANTE MATTHEWS
MOGERMAN
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Vancouver, B.C. V6B 2W1

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For the Domfoam Defendants:

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Email: cnaudie@osler.com

For Tony Vallecoccia and John Howard:

Robert Tanner

TANNER & GUINEY
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P.O.Box 34
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M5H 3P5
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Fax: 416-862-7874
Email: rgtanner@tannerguiney.com

**For Bruce Bradley, Dean Brayiannis,
Michael Cappuccino, Pietro (Peter) Foti,
Duke Greenstein, Dale McNeill, James
William Sproule, Robert Valle and Fred
Zickmantel:**

Jack Berkow

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141 Adelaide Street West
Suite 400
Toronto, Ontario
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Tel: 416-364-4900
Fax: 416-364-3865
Email: jberkow@berkowcohen.com

15.19 **Date of Execution**

The Parties have executed this Settlement Agreement as of the date on the cover page.

**“HI! NEIGHBOR” FLOOR COVERING CO.
LIMITED, MAJESTIC MATTRESS MFG. LTD,
TRILLIUM PROJECT MANAGEMENT LTD.,
OPTION CONSOMMATEURS and KARINE
ROBILLARD, by their counsel**

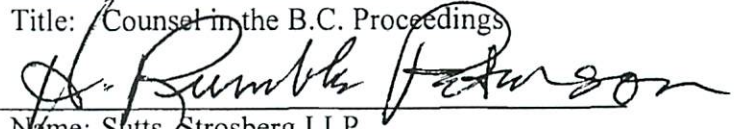
By:



Name: Branch MacMaster LLP

Title: Counsel in the B.C. Proceedings

By:



Name: Sutts, Strosberg LLP

Title: Counsel in the Ontario Proceedings

By:

Name: Camp Fiorante Matthews Mogerman

Title: Counsel in the B.C. Proceedings

By:

Name: Belleau Lapointe

Title: Counsel in the Quebec Proceeding

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ROBILLARD, by their counsel**

By: _____
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Title: Counsel in the Ontario Proceedings

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By:

Belleau Lapointe

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

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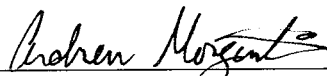
“HI! NEIGHBOR” FLOOR COVERING CO. LIMITED, MAJESTIC MATTRESS MFG. LTD, TRILLIUM PROJECT MANAGEMENT LTD., OPTION CONSOMMATEURS and KARINE ROBILLARD, by their counsel

By: _____
Name: Branch MacMaster LLP
Title: Counsel in the B.C. Proceedings


By: _____
Name: Sutts, Strosberg LLP
Title: Counsel in the Ontario Proceedings

By: _____
Name: Camp Fiorante Matthews Mogerman
Title: Counsel in the B.C. Proceedings


By: _____
Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

By:  _____
Name: Andrew Morganti
Title: Counsel in the Ontario Proceedings


DOMFOAM INTERNATIONAL, INC., by its counsel

By: 
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

VALLE FOAM INDUSTRIES (1995) INC., by its
counsel

By: 
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

A-Z SPONGE & FOAM PRODUCTS LTD., by its
counsel

By: 
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

BRUCE BRADLEY

By: _____

DEAN BRAYIANNIS

By: _____

DOMFOAM INTERNATIONAL, INC., by its counsel

By:

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

VALLE FOAM INDUSTRIES (1995) INC., by its
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By:

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A-Z SPONGE & FOAM PRODUCTS LTD., by its
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Title: Canadian Counsel

BRUCE BRADLEY

By:

Bruce Bradley

DEAN BRAYIANNIS

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Name: Osler, Hoskin & Harcourt LLP
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VALLE FOAM INDUSTRIES (1995) INC., by its
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Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

BRUCE BRADLEY

By:


DEAN BRAYIANNIS

By:



MICHAEL CAPPUCCINO

By:



PIETRO (PETER) FOTI

By:

DUKE GREENSTEIN

By:

JOHN HOWARD

By:

DALE MCNEIL

By:

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: Pietro (Peter) Foti.

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: _____

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: _____

DUKE GREENSTEIN

By:  _____

JOHN HOWARD

By: _____

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: _____

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: _____ *John C Howard*

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: _____

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: _____

DALE MCNEILL

By: _____

DM

Dale McNeill

JAMES WILLIAM SPROULE

By:



ROBERT VALLE

By:

TONY VALLECOCCIA

By:

FRED ZICKMANTEL

By:

JAMES WILLIAM SPROULE

By: _____

ROBERT VALLE

By: *R Valle*

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By: _____

JAMES WILLIAM SPROULE

By: _____

ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: *T. Vallecoccia*

FRED ZICKMANTEL

By: _____

JAMES WILLIAM SPROULE

By: _____

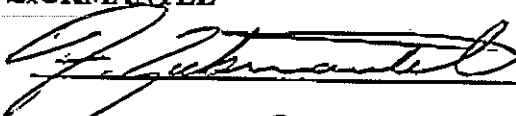
ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By:  _____

Jan 12, 2012

SCHEDULE “A”

Proceedings

#	Court and File No.	Plaintiffs’ Counsel	Style of Cause	
1	Supreme Court of British Columbia (Vancouver Registry) (Court File No. VLC-S-S-106362)	Branch MacMaster LLP	<i>Majestic Mattress Mfg., Ltd. v. Vitafoam Products Canada Limited et al.</i>	Vitafoam Products Canada Limited, Vitafoam Incorporated, Hickory Springs Manufacturing Company, Valle Foam Industries (1995) Inc., Domfoam International, Inc., A-Z Sponge & Foam Products Ltd., The Carpenter Company, Woodbridge Foam Corporation, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc., and Future Foam, Inc.
2	Supreme Court of British Columbia (Vancouver Registry) (Court File No. S-106213)	Camp Fiorante Matthews Mogerman	<i>Trillium Project Management Ltd. v. Hickory Springs Manufacturing Company et al.</i>	Hickory Springs Manufacturing Company, Valle Foam Industries, Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., The Woodbridge Group, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations Canada, Inc., Future Foam, Inc., Vitafoam Products Canada Limited and Vitafoam, Inc.

#	Court and File No.	Plaintiffs' Counsel	Style of Cause	
3	Ontario Superior Court of Justice (Windsor) (Court File No. CV-10-15164)	Sutts, Strosberg	<i>"Hi! Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company</i>	Hickory Springs Manufacturing Company, Valle Foam Industries (1995), Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., Woodbridge Foam Corporation, Flexible Foam Products, Inc., Foamex Innovations, Inc., Future Foam, Inc., Leggett & Platt, Inc., Vitafoam Products Canada Limited, Vitafoam, Inc., Dean Brayannis, Bruce Schneider, Robert Magee and Michael Lajambe
4	Ontario Superior Court of Justice (Windsor) (Court File No. CV-11-17279)	Sutts Strosberg	<i>"Hi! Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company</i>	Hickory Springs Manufacturing Company, Valle Foam Industries (1995), Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., Flexible Foam Products, Inc., Foamex Innovations, Inc., Future Foam, Inc., Leggett & Platt, Inc., Mohawk Industries Inc., Vitafoam Products Canada Limited, Vitafoam, Inc., Woodbridge Foam Corporation, David Carson, Louis Carson, Dean Brayannis, Bruce Schneider, Michael Lajambe and Robert Magee

#	Court and File No.	Plaintiffs' Counsel	Style of Cause	
5	Superior Court of Québec (Montreal) (Court File No. 500-06-000524- 104)	Belleau Lapointe	<i>Karine Robillard c. Produits Vitafoam Canada Limitée et al., et Vitafoam Inc.</i>	Produits Vitafoam Canada Limitée, and Vitafoam Inc.

SCHEDULE “B1”

Court File No. CV-11-15164

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

“HI NEIGHBOR” FLOOR COVERING CO. LIMITED

Plaintiff

- and -

HICKORY SPRINGS MANUFACTURING COMPANY,
VALLE FOAM INDUSTRIES (1995), INC., DOMFOAM INTERNATIONAL, INC.,
THE CARPENTER CO., CARPENTER CANADA CO.,
WOODBIDGE FOAM CORPORATION, FLEXIBLE FOAM PRODUCTS, INC.,
FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC.,
LEGGETT & PLATT, INC., VITAFOAM PRODUCTS CANADA LIMITED,
VITAFOAM, INC., DEAN BRAYIANNIS, BRUCE SCHNEIDER,
ROBERT MACGEE and MICHAEL LAJMABE

Defendants

Proceeding under the *Class Proceedings Act 1992*

Court File No. CV-11-17279

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

“HI NEIGHBOR” FLOOR COVERING CO. LIMITED

Plaintiff

- and -

HICKORY SPRINGS MANUFACTURING COMPANY,
VALLE FOAM INDUSTRIES (1995), INC., DOMFOAM INTERNATIONAL, INC.,
THE CARPENTER CO., CARPENTER CANADA CO.,
FLEXIBLE FOAM PRODUCTS, INC., FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC.,
VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM, INC., WOODBRIDGE FOAM
CORPORATION, DAVID CARSON, LOUIS CARSON,
DEAN BRAYIANNIS, BRUCE SCHNEIDER,
MICHAEL LAJMABE and ROBERT MAGEE

Defendants

Proceeding under the *Class Proceedings Act 1992*

THE HONOURABLE) , the day
)
JUSTICE LEITCH) of , 2011

ORDER

THIS MOTION made by the Plaintiff in the Ontario Proceedings for an Order approving the settlement agreement entered into with the Defendants Domfoam International, Inc., Valle Foam Industries (1995) Inc. (the “Domfoam Defendants”) and Dean Brayianis (the “Brayianis Defendant”), 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” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff, counsel for the Domfoam Defendants, counsel for the Brayianis Defendant and counsel for the Non-Settling Defendants in the Ontario Proceedings; and

AND ON BEING ADVISED that (a) the Plaintiffs in the Ontario Proceedings consent to this Order; and (b) the Domfoam Defendants and the Brayianis Defendant 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 ORDERS** that the Ontario Proceedings are certified as class proceedings as against the Domfoam Defendants and the Brayianis Defendant for settlement purposes only.
3. **THIS COURT ORDERS** that the Ontario Settlement Class for the purpose of the Ontario Proceedings is defined as:

All Persons resident in Canada who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the B.C. Settlement Class and the Quebec Settlement Class.
4. **THIS COURT ORDERS** that “Hi! Neighbor” Floor Covering Co. Limited is appointed as the representative plaintiff for the Ontario Settlement Class for the Ontario Proceedings.

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

Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?

6. **THIS COURT ORDERS** that any person who wishes to opt out of the Ontario Proceedings must do so by sending a written election to opt-out, together with the information required in the Settlement Agreement, to the Opt Out Administrator, postmarked on or before the date which is sixty (60) days from the date of the first publication of the Notice of Certification and Settlement Approval.
7. **THIS COURT ORDERS** that any member of the Ontario Settlement Class who has validly opted out of the Ontario Proceedings is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Ontario Proceedings.
8. **THIS COURT ORDERS** that any member of the Ontario Settlement Class who has not validly opted out of the Ontario Proceedings is bound by the Settlement Agreement and may not opt out of the Ontario Proceedings in the future.
9. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
10. **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.
11. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and the Ontario Settlement Class.
12. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall

consent and shall be deemed to have consented to the discontinuance as against the Domfoam Defendants of any Other Actions he, she or it has commenced, without costs.

13. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall consent and shall be deemed to have consented to the dismissal as against the Brayianis Defendant and the other Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
14. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall be and is hereby discontinued against the Domfoam Defendants, without costs.
15. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall be and is hereby dismissed against the Brayianis Defendant and the other Releasees, without costs and with prejudice.
16. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings 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 this action.
17. **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.
18. **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 relief, from any Releasee in respect of any Released Claim or

any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

19. **THIS COURT ORDERS AND DECLARES** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
20. **THIS COURT ORDERS AND DECLARES** that each Ontario Settlement Class Member 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, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
21. **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 otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, 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 validly opts out of the Ontario Proceedings).
22. **THIS COURT ORDERS** that if, in the absence of paragraph 21 above, the Ontario Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (a) the Ontario Plaintiff and the Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any) restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the Ontario Proceedings or otherwise;

- (b) for greater certainty, the Ontario Plaintiff and the Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, only those claims for damages, costs and interest attributable to the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees to the Ontario Plaintiff and the Ontario Settlement Class Members, if any; and
 - (c) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceedings, whether or not the Releasees 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 Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceedings and shall not be binding on the Releasees in any other proceedings.
- 23. **THIS COURT ORDERS** that if, in the absence of paragraph 21 hereof, the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then 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, restitutionary award, disgorgement of profits or judgment against them in the Ontario Proceedings.
- 24. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Ontario Court determined as if the Brayiannis Defendant remained a party to the Ontario Proceedings, and on at least ten (10) days notice to counsel for the Brayiannis Defendant, and not to be brought unless and until the 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 an affidavit of documents in accordance with the *Rules of Civil Procedure* O.Reg. 194 from the Brayiannis Defendant;

- (b) oral discovery of the Brayianis Defendant, the transcript of which may be read in at trial;
 - (c) leave to serve a request to admit on the Brayianis Defendant in respect of factual matters; and/or
 - (d) the production of the Brayianis Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
25. **THIS COURT ORDERS** that the Brayianis Defendant retains all rights to oppose such motion(s) brought under paragraph 24. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 24, the Ontario Court may make such orders as to costs and other terms as it considers appropriate.
26. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 24 above on the Brayianis Defendant by service on counsel of record for the Brayianis Defendant in the Ontario Proceedings.
27. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Domfoam Defendants and the Brayianis Defendant acknowledge the jurisdiction of the Ontario 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.
28. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in this action.
29. **THIS COURT ORDERS** that the Domfoam Defendants and the Brayianis Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
30. **THIS COURT ORDERS** that the Settlement Amount, plus any proceeds from the Assignment or any accrued interest, be held in trust by the Escrow Agent for the benefit of

the Settlement Class, pending further order of the Courts, which shall be sought by the Plaintiffs on a motion made without notice.

31. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the British Columbia Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved the Quebec Court and the B.C. Court.
32. **THIS COURT DECLARES** that 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.
33. **THIS COURT ORDERS** that the short-form and long-form of the Notice of Certification and Settlement Approval are hereby approved substantially in the form attached respectively hereto as Schedules “B” and “C”.
34. **THIS COURT ORDERS** that the plan for dissemination for the short-form and long-form of the Notice of Certification and Settlement Approval (the “Plan of Dissemination”) are hereby approved in the form attached hereto as Schedule “D” and that the Notice of Certification and Settlement Approval shall be disseminated in accordance with the Plan of Dissemination.
35. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario Proceedings be and are hereby discontinued against the Domfoam Defendant without costs.
36. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario Proceedings be and are hereby dismissed against the Brayianis Defendant without costs and with prejudice.

Date:

THE HONOURABLE JUSTICE

SCHEDULE "B2"

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000524-104

DATE: 2012

PRESIDED BY: THE HONOURABLE ●, J.S.C.

OPTION CONSOMMATEURS

Petitioner
and

KARINE ROBILLARD
Designated Person

vs.

PRODUITS VITAFOAM CANADA LIMITÉE

and

VITAFOAM INC.

and

●

Respondents

JUDGMENT

[1] **WHEREAS** Option consommateurs has brought before this Court a Motion for the approval of the settlement agreement entered into notably with the Respondents

Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd. (the “Domfoam Defendants”).

- [2] **CONSIDERING** the Motion before the Court;
- [3] **CONSIDERING** the exhibits in the file;
- [4] **CONSIDERING** also the agreement entered into on ●, 2012 between notably the Petitioner and the Domfoam Defendants, filed as Exhibit ● (the “Domfoam Transaction”);
- [5] **CONSIDERING** the submissions of the counsel for the parties and the representations made on all sides;
- [6] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;

FOR THESE REASONS, THE COURT:

- [7] **GRANTS** Option consommateur’s Motion for Approval of the Domfoam Transaction;
- [8] **DECLARES** that the definitions set forth in the Domfoam Transaction apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the parties to the Domfoam Transaction, and that the other Respondents, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of this Judgment;
- [9] **AUTHORIZES** the bringing of the Quebec Proceeding as a class action as against the Domfoam Defendants for settlement purposes only;
- [10] **ASCRIBES** to Option consommateurs the status of class representative for the purpose of exercising the class action on behalf of the Quebec Settlement Class;
- [11] **IDENTIFIES** the Common Issue as the principal question of fact and of law to be treated collectively in the action;
- [12] **DECLARES** that, subject to all of the other provisions of the present Judgment, the Domfoam Transaction is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members, and constitute a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all parties and all members described thereto;
- [13] **APPROVES** the Domfoam Transaction in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of this Judgment,
- [14] **DECLARES** that, subject to the other provisions of this Judgment, the Domfoam Transaction, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to this Judgment as Schedule “A” and shall form an integral part of this Judgment and shall be binding on all Parties;

- [15] **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Domfoam Transaction, the terms of the present Judgment shall prevail;
- [16] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
- [17] **DECLARES** that any Quebec Settlement Class Member who makes a claim under the Domfoam Transaction shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
- [18] **ORDERS AND DECLARES** that this Judgment, including the Domfoam Transaction, shall be binding on every Quebec Settlement Class Member who has not validly opted-out of the action;
- [19] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity with respect to any share of liability, including without limitation liability arising from *in solidum* obligations, that can be attributed in any way to the Releasees in respect of the Quebec Proceedings (if any), in capital, interest and/or costs;
- [20] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce, to the Releasees' exclusive benefit, to claim or receive payment from the Non-Settling Defendants or any other person of any amount representing any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and/or costs;
- [21] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members release the Non-Settling Defendants and any other person in respect of any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and costs;
- [22] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members will bear the Releasees' share in the contribution in respect of the Quebec Proceeding (if any) that would result from the insolvency of a Non-Settling Defendant or any other Person;
- [23] **DECLARES** that in the event that any person brings an action in warranty or any other claim to obtain from the Releasees an amount representing the share of liability attributed to the Releasees in the Quebec Proceeding (if any) and the Plaintiffs, the Domfoam Defendants, the Individual Settling Parties and the other Releasees are not able to obtain the dismissal of such an action or claim through a preliminary motion at first instance before the Quebec Court, then the Plaintiffs in Quebec and the Quebec Settlement Class Members shall undertake to indemnify the Releasees and to save the Releasees harmless in respect of any damage, harm, loss or cost reasonably incurred in respect of such action or claim, provided that any such indemnity will only be paid out of any present or future undistributed settlement or judgment amount collected from the Non-Settling Defendants

or named or unnamed co-conspirator or any other person for the benefit of the Plaintiffs and the Quebec Settlement Class Members in respect of the Quebec Proceeding, provided however that the payment of this indemnity shall not affect the ability of the Plaintiffs to seek interim distributions of settlement funds subject to court approval;

- [24] **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment;
- [25] **APPROVES** the Notices attached to this Judgment as Schedules “B”;
- [26] **ORDERS** that Notices attached to this Judgment as Schedule “B” shall be published according to the notice dissemination plan attached to this Judgment as Schedule “C”;
- [27] **DECLARES** that the present proceedings are hereby settled with respect to the Domfoam Defendants, without costs;
- [28] **DECLARES** that Domfoam Defendants shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;
- [29] **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court and this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
- [30] **THE WHOLE** without costs.

●, J.S.C.

SCHEDULE A

See the «TRANSACTION» at the _____ following pages

SCHEDULE B

See the «NOTICE» at the_____ following pages

SCHEDULE C

See the «NOTICE DISSEMINATION PLAN» at the following page

SCHEDULE “B3”

Court File No. VLC-S-S-106362

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N:

MAJESTIC MATTRESS MFG, LTD.

Plaintiff

AND:

VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM INCORPORATED,
HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES
(1995) INC., DOMFOAM INTERNATIONAL, INC., A-Z SPONGE & FOAM PRODUCTS
LTD., THE CARPENTER COMPANY, WOODBRIDGE FOAM CORPORATION,
FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC., FOAMEX INNOVATIONS,
INC., AND FUTURE FOAM, INC.

Defendants

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

Court File No. S-106213

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N:

TRILLIUM PROJECT MANAGEMENT LTD.

Plaintiff

AND:

HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES, INC.,
DOMFOAM INTERNATIONAL, INC., THE CARPENTER CO., CARPENTER CANADA CO.,
THE WOODBRIDGE GROUP, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC.,
FOAMEX INNOVATIONS CANADA, INC., FUTURE FOAM, INC., VITAFOAM PRODUCTS
CANADA LIMITED AND VITAFOAM, INC.

Defendants

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

Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?

6. **THIS COURT ORDERS** that any person who wishes to opt out of the B.C. Proceedings must do so by sending a written election to opt-out, together with the information required in the Settlement Agreement, to the Opt Out Administrator, postmarked on or before the date which is sixty (60) days from the date of the first publication of the Notice of Certification and Settlement Approval.
7. **THIS COURT ORDERS** that any member of the B.C. Settlement Class who has validly opted out of the B.C. Proceedings is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the B.C. Proceedings.
8. **THIS COURT ORDERS** that any member of the B.C. Settlement Class who has not validly opted out of the B.C. Proceedings is bound by the Settlement Agreement and may not opt out of the B.C. Proceedings in the future.
9. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the B.C. Settlement Class.
10. **THIS COURT ORDERS** that the attached Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms.
11. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and all B.C. Settlement Class Members who have not validly opted out of this action.
12. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the B.C. Settlement Class who does not validly opt out of the B.C. Proceedings shall consent and shall be deemed to have consented to the discontinuance as against the Domfoam Defendants of any Other Actions he, she or it has commenced, without costs.

13. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the B.C. Settlement Class who does not validly opt out of the B.C. Proceedings shall consent and shall be deemed to have consented to the dismissal as against the Brayianis Defendant and the other Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
14. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in B.C. by any member of the B.C. Settlement Class who does not validly opt out of the B.C. Proceedings shall be and is hereby discontinued against the Domfoam Defendants, without costs.
15. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in B.C. by any member of the B.C. Settlement Class Member who does not validly opt out of the B.C. Proceedings shall be and is hereby dismissed against the Brayianis Defendant and the other Releasees, without costs and with prejudice.
16. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each B.C. Settlement Class Member who does not validly opt out of the B.C. Proceedings including those persons who are minors or mentally incapable and the requirements of Rules 20-2(2) and 20-2(17) of the *Supreme Court Civil Rules* are dispensed with in respect of the B.C. Proceedings.
17. **THIS COURT ORDERS AND DECLARES** that instead of releasing the claims against the Releasees, upon the Effective Date, 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.
18. **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 relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees or the continuation of the Ontario Additional Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

19. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings, the Ontario Additional Proceeding or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, 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 validly opts out of the B.C. Proceedings).

20. **THIS COURT ORDERS** that if, in the absence of paragraph 19 above, the B.C. Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (a) the B.C. Plaintiffs and the B.C. Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any) restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the B.C. Proceedings or otherwise;
 - (b) for greater certainty, the B.C. Plaintiffs and the B.C. Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators, only those claims for damages, costs and interest attributable to the several liability of the Non-Settling

Defendants and/or named or unnamed co-conspirators that are not Releasees to the B.C. Plaintiffs and the B.C. Settlement Class Members, if any; and

- (c) the B.C. Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the B.C. Proceedings, whether or not the Releasees 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 B.C. Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the B.C. Proceedings and shall not be binding on the Releasees in any other proceedings.

21. **THIS COURT ORDERS** that if, in the absence of paragraph 19 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then 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, restitutionary award, disgorgement of profits or judgment against them in the B.C. Proceedings.

22. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the B.C. Court determined as if the Brayianis Defendant remained parties to the B.C. Proceedings and on at least ten (10) days notice to counsel for the Brayianis Defendant, and not to be brought unless and until the 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 a list of documents in accordance with the *Supreme Court Civil Rules* from the Brayianis Defendant;
- (b) oral discovery of the Brayianis Defendant, the transcript of which may be read in at trial;
- (c) leave to serve a notice to admit on the Brayianis Defendant in respect of factual matters; and/or

- (d) the production of the Brayianis Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
23. **THIS COURT ORDERS** that the Brayianis Defendant retains all rights to oppose such motion(s) brought under paragraph 22. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 22, the B.C. Court may make such orders as to costs and other terms as it considers appropriate.
24. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 22 above on the Brayianis Defendant by service on counsel of record for the Brayianis Defendants in the B.C. Proceedings.
25. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Domfoam Defendants and the Brayianis Defendant acknowledge the jurisdiction of the B.C. 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.
26. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any B.C. Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in this action.
27. **THIS COURT ORDERS** that the Domfoam Defendants and the Brayianis Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
28. **THIS COURT ORDERS** that the Settlement Amount, plus any proceeds from the Assignment and any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Courts, which shall be sought by the Plaintiffs on a motion made without notice.
29. **THIS COURT DECLARES** that approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court, and the terms of this Order shall not be

effective unless and until the Settlement Agreement is approved the Ontario Court and the Quebec Court.

30. **THIS COURT DECLARES** that 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.
31. **THIS COURT ORDERS** that the short-form and long-form of the Notice of Certification and Settlement Approval are hereby approved substantially in the form attached respectively hereto as Schedules “B” and “C”.
32. **THIS COURT ORDERS** that the plan for dissemination for the short-form and long-form of the Notice of Certification and Settlement Approval (the “Plan of Dissemination”) are hereby approved in the form attached hereto as Schedule “D” and that the Notice of Certification and Settlement Approval shall be disseminated in accordance with the Plan of Dissemination.
33. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the B.C. Proceedings be and are hereby dismissed against the Domfoam Defendants without costs and with prejudice.
34. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the B.C. Proceedings be and are hereby dismissed against the Brayianis Defendant without costs and with prejudice.
35. **THIS COURT ORDERS** that the endorsement of this Order by counsel for the Non-Settling Defendants shall be dispensed with.

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 Plaintiff,
Majestic Mattress Mfg, Ltd.

Ward Branch and Luciana Brasil

Signature of lawyer for the Plaintiff,
Trillium Project Management Ltd.

J.J. Camp and Reidar Mogerman

Signature of lawyer for the Domfoam Defendants

Christopher Naudie

By the Court

Registrar

SCHEDULE “C”

**CONFIDENTIAL SCHEDULE REGARDING AMOUNTS CONTRIBUTED BY
CONTRIBUTING INDIVIDUAL SETTling PARTIES**

1. The Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent in accordance with the following respective individual contribution shares:
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
2. The Parties to the Settlement Agreement respectively agree to keep the contents of this Schedule “C” strictly confidential, except where the Parties consent to such disclosure or where such disclosure is required by law.
3. In addition, the Parties to the Settlement Agreement agree to be bound by the confidentiality provisions of the Settlement Agreement in respect of the information contained in this Confidential Schedule “C”.