

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

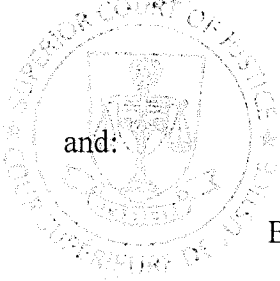
THE HONOURABLE MADAM )  
 )  
JUSTICE RADY )

MONDAY, THE 18<sup>th</sup> DAY  
OF OCTOBER, 2017  
*December*

BETWEEN:

KIRK BRANT

Plaintiff



and:

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

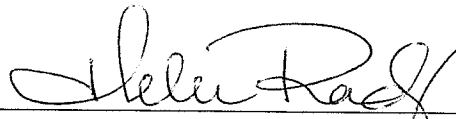
**ORDER  
(Approval of Distribution Protocol)**

**THIS MOTION**, made by the Plaintiff in the Ontario action bearing Court File Number 1399/10CP (the "Ontario Action") for an Order approving the Distribution Protocol was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the Distribution Protocol attached hereto as Schedule "A", and on hearing the submissions of counsel for the Ontario Plaintiff and counsel for the Settling Defendants;

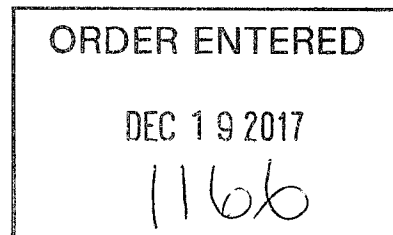
**AND ON BEING ADVISED** that the Parties consent to this Order:

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions set out in the Distribution Protocol apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Distribution Protocol, attached hereto as Schedule "A", is approved.
3. **THIS COURT ORDERS** that the Distribution Protocol shall govern the administration of the Settlement Agreement entered into with the Defendants, dated October 14, 2016.
4. **THIS COURT ORDERS** that the approval of the Distribution Protocol is contingent on a parallel or equivalent order being made by the British Columbia Supreme Court in *Fairhurst v. De Beers Canada Inc., et al.*, Court File No. S071269 and the Quebec Superior Court in *Sanderson v. De Beers Canada Inc., et al.*, Court File No. 500-06-000571-113.
5. **THIS COURT ORDERS** that the time for the filing and serving of the motion record and is hereby abridged.



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THE HONOURABLE MADAM JUSTICE RADY



# SCHEDULE "A"

## **DISTRIBUTION PROTOCOL**

### **IN THE MATTER OF THE CANADIAN DIAMONDS CLASS ACTIONS SETTLEMENT**

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## GENERAL PRINCIPLES

1. The procedures set out in this Distribution Protocol are intended to govern the administration of the settlement agreement entered into with De Beers Canada, Inc., DB Investments, Société Anonyme, De Beers S.A., De Beers Consolidated Mines Proprietary, Ltd., De Beers UK Limited (f/k/a The Diamond Trading Company Limited), CSO Valuations A.G., De Beers Centenary A.G., De Beers Canada Holdings Inc., Anglo American PLC, and Central Holdings Limited SA, dated October 14, 2016 (the "Settlement Agreement").
2. The administration shall:
  - (a) implement and conform to the Settlement Agreement, orders of the Courts and this Distribution Protocol;
  - (b) include the establishment and maintenance of the Settlement Website;
  - (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible; and
  - (d) be bilingual in all respects.
3. Excluded Persons as defined in the Settlement Agreement are not entitled to the payment of settlement benefits under this Distribution Protocol.
4. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlement in relation to their Gem Grade Diamond or Gem Grade Diamond Product purchases, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

## DEFINITIONS

5. The definitions set out in the Settlement Agreement apply to and are incorporated in this Distribution Protocol. Where a term is defined in both the Settlement Agreement and the Distribution Protocol, the definition in this Distribution Protocol shall govern.
6. For the purposes of this Distribution Protocol:
  - (a) **Claim** means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.

- (b) **Consumer** means any Settlement Class member who purchased a Gem Grade Diamond and/or Gem Grade Diamond Product for personal use or as a gift, and not for resale.
- (c) **Claims Filing Deadline** means the date by which Claims (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising of the claims process.
- (d) **Decision Notice** shall have the meaning attributed to it in paragraph 34.
- (e) **Diamond Jewellery** means any decorative or functional adornment typically made of metals and containing one or more Gem Grade Diamonds. This includes, among other jewellery, diamond rings, earrings, necklaces, bracelets, watches and cufflinks.
- (f) **Fond Levy** means the amounts payable to the Fonds d'aide aux actions collectives pursuant to section 42 of *An Act respecting the Fonds d'aide aux actions collectives*, R.S.Q., c. F-3.2.0.1.1 and calculated in accordance with the governing regulations.
- (g) **Gem Grade Diamond** means diamonds that have been or could have been used in diamond jewellery or for investment purposes (as distinguished from diamonds used for industrial purposes).
- (h) **Gem Grade Diamond Product** means any Rough Diamond, Polished Diamond, Diamond Jewellery, or any other product consisting of or containing one or more Gem Grade Diamonds. It excludes products containing man-made or industrial diamonds.
- (i) **Gem Grade Diamond Purchases** means the aggregate amount actually paid by Settlement Class Member for Gem Grade Diamonds and/or Gem Grade Diamond Products between January 1, 1994, and October 14, 2016, less any rebates or other form of discounts (such as off-invoice, bill-back or scan-back trade promotion payments), delivery or shipping charges, and taxes.
- (j) **Minimum Claim Amount** means \$25.<sup>1</sup>
- (k) **Net Settlement Amount** mean the Settlement Amount recovered pursuant to the Settlement Agreement and accrued interest after payment of Class Counsel Fees as approved by the Courts and after deduction of the Administration

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<sup>1</sup> The \$25 valuation is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.

Expenses and all taxes (including interest and penalties) accruable with respect to the income earned by the Settlement Agreement.

- (l) **Online Claim Portal** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs 23 to 26 of this Distribution Protocol.
- (m) **Polished Diamond** means a Gem Grade Diamond that has been cut and polished.
- (n) **Reseller** means any Settlement Class Member who purchased a Gem Grade Diamond Product for resale. Resellers may include all of the following: Rough Diamond wholesalers, cutters and polishers, Polished Diamond wholesalers, Diamond Jewellery manufacturers, diamond jewellery wholesalers, and retailers.
- (o) **Rough Diamond** means a Gem Grade Diamond that is uncut and unpolished.
- (p) **Settlement Website** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreement, the Distribution Protocol, and the claims process, and access to the Online Claim Portal.

#### **DISTRIBUTION TO SETTLEMENT CLASS MEMBERS**

##### **Amount Available for Distribution**

- 7. The Net Settlement Amount will be available to provide settlement benefits to eligible Settlement Class Members pursuant to this Distribution Protocol.

##### **Creation of Payment Funds**

- 8. The Net Settlement Amount will be allocated between the different types of claimants as follows:

<b>Claimant Type</b>	<b>Percentage</b>	<b>Amount<sup>2</sup></b>
Consumers	49.7%	\$2,850,000
Resellers	50.3%	\$2,900,000

##### **Valuation of Claims**

- 9. The Net Settlement Amount allocated to Resellers will be subject to claims-weighting to reflect estimated pass-through rates for Resellers of Rough Diamonds, Polished Diamonds, and Wholesale Jewellery as follows:

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<sup>2</sup> This is an estimate only. The final amount will not be known until the administration is complete and the exact interest earned, taxes payable, and Administration Expenses is known.

<b>Claimant Type</b>	<b>Weighted Percentage</b>
Rough Diamond Resellers	33.8%
Polished Diamond Resellers	28.7%
Wholesale Jewellery Resellers	37.5%

10. For example, a claim made by a Reseller of Rough Diamonds will be calculated as follows: total purchase price of rough diamonds x 0.338 = weighted Gem Grade Diamond Purchase amount.
11. The Net Settlement Amount allocated to Consumers will be distributed to Consumers on a pro rata basis. A Consumer's Gem Grade Diamond Purchase amount will be equal to the retail purchase price of the Diamond Jewellery purchased by the Settlement Class Member during the Class Period, with the exception that pave and non-pave diamond watches will be subject to claims-weighting to reflect the value of their Gem Grade Diamond content.
12. Non-pave watches will be subject to claims-weighting as follows:
  - (a) For watches priced at \$2,600 or above, the Claims Administrator will first either multiply the total carat weight of the diamonds on the watch by \$544.52 and subtract \$24.19, or multiply the number of diamonds on the watch by \$6.57.
  - (b) For watches priced less than \$2,600, the Claims Administrator will multiply the total carats by \$417.73 and subtract \$4.38, or multiply the number of diamonds by \$2.01.
13. Pave watches will be subject to claims-weighting as follows:
  - (a) The Claims Administrator will either multiply the total carats by \$548.99 and subtract \$129.45, or multiply the total number of diamonds by \$3.62.

**Pro Rata Distribution**

14. Subject to paragraphs 15 to 16, each of the payment funds created pursuant to paragraphs 7 to 13 will be distributed to qualifying Settlement Class Members *pro rata* (or proportionally) based on the value of the qualifying Settlement Class Member's weighted Gem Grade Diamond Purchases as against the value of all qualifying Settlement Class Members' weighted Gem Grade Diamond Purchases who are claiming against the applicable fund.



15. If a claimant's *pro rata* distribution would be less than the Minimum Claim Amount, the claimant's distribution will be increased to the Minimum Claim Amount, and the *pro rata* distribution will be adjusted accordingly.
16. Consumers who make a Claim without documentary proof of purchase of their Gem Grade Diamond Purchases will receive the Minimum Claim Amount.

**Class Counsel Discretion**

17. Class Counsel reserve the right to seek the approval of the Ontario Court of an amendment of the allocation of the Net Settlement Amount pursuant to paragraph 8 and/or any other provision of this Distribution Protocol in order to ensure a fair and cost effective distribution of the Net Settlement Amount.

**THE CLAIMS PROCESS**

18. The Claim will require the following information from each type of claimant as specified below:
  - (a) Consumer Claimants
    - (i) A declaration attesting to his/her/its Gem Grade Diamond Purchases.
    - (ii) Documentary proof of purchase of his/her/its Gem Grade Diamond Purchases, such as a credit card statement, a bank statement, cancelled cheque, wire transfer confirmations, proof of insurance, or comparable verification that is acceptable to the Claims Administrator.
    - (iii) If the Consumer claimant is unable to provide documentary proof of purchase in accordance with (ii) above, the Consumer claimant can make a Claim without proof of purchase, but such Claims will be limited to the Minimum Claim Amount.
  - (b) Reseller Claimants
    - (i) A declaration of his/her/its Gem Grade Diamond Purchases, broken out by Rough Diamonds, Polished Diamonds, and Diamond Jewellery.
    - (ii) Summary documentation to support the Claim, such as bookkeeping records, a worksheet summary of purchases listing purchases by vendor, or a computer printout of purchases.
    - (iii) Reseller Claimants who do not have summary documentation or other records of their Gem Grade Diamond Purchases in all years of the Class Period:

- A. may average the dollar volumes of Gem Grade Diamond Purchases in the years for which they do have records or data, and then claim the average annual dollar volume for each year for which no records or data are available;
  - B. where the Reseller Claimant has insufficient documentation to satisfy paragraph 18(b)(iii)(A) the Reseller Claimant will receive the Minimum Claim Amount. The Claims Administrator has the discretion to determine the sufficiency of the documentation or records for averaging.
- (iv) Vertically-integrated Resellers which made purchases of Gem Grade Diamond Products in more than one category must file a separate claim for each category (i.e. Rough Diamonds, Polished Diamonds and Wholesale Jewellery).
19. The Claim will require the following information for all claimants:
- (a) Disclosure as to whether the Settlement Class Member or any entity related to the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements and/or provided a release in respect of any of the Settlement Class Member's purchases, and details of the compensation received and the claims released.
  - (b) Authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate for more information and/or to audit the Claim.
  - (c) A declaration that the information submitted in the Claim is true and correct.
  - (d) If the Claim is submitted by a third-party on behalf of a Settlement Class Member (including a parent company claiming on behalf of a subsidiary or affiliate), the third-party must provide a signed statement from that Settlement Class Member at the time the Claim is filed authorizing the third-party to file the Claim on its behalf.
20. Members of a family residing at the same address can pool their Gem Grade Diamond Purchases together and file a single "household" Claim. Persons under the age of 18 are not permitted to file a Claim, but their purchases can be included as part of the household Claim. Settlement benefits payable in respect of a household Claim will be issued to the person filing the Claim on behalf of the household.

**Assistance in Filing a Claim**

21. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.

22. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Members will be responsible for any and all expenses incurred in doing so.

#### **The Online Claim Portal**

23. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administration support to enable Settlement Class Members to do so.
24. The Online Claim Portal shall be accessible from the Settlement Website.
25. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim.
26. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is entered into the Online Claim Portal or provided by Settlement Class Members who file hardcopy Claims in accordance with paragraph below:
  - (a) names and addresses, purchase data and supporting documents provided by Settlement Class Members as part of the claims process; and
  - (b) any other information that might be useful in the claims administration process.

#### **The Claims Filing Process**

27. Settlement Class Members will be encouraged to complete and submit a Claim (together with any required supporting documents) electronically using the Online Claim Portal. Subject to paragraph 29, Claims must be submitted on the Online Claim Portal on or before the Claim Filing Deadline.
28. Where a Settlement Class Member has been identified by the Defendants, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the Online Claim Portal.
29. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to paragraph 32, the completed and executed hardcopy Claim (together with any required supporting proof of purchase) must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.

30. At its sole discretion, the Claims Administrator can elect to audit any Claim, require a Reseller to provide original documentation supporting the Claim, such as invoices, purchase orders or cancelled cheques, and reject a Claim, in whole or in part, where, in the Claims Administrator's view, the Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

#### **Deficiencies**

31. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other required information, the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the Claim, or as applicable, limit the Claim to the Minimum Claim Amount. The Online Claim Portal shall be designed so as to minimize the possibility of deficient claims.

#### **Adjustments to Claims Process and Extension of the Claims Filing Deadline**

32. By agreement between the Claims Administrator and Class Counsel, the Claims Filing Deadline may be extended and the Claims Administrator may adjust aspects of the Claims process unrelated to the allocation of the Net Settlement Amount to address any deficiencies that may arise. Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the Claims process if, in their opinions, doing so will not adversely affect the allocation method or fair and efficient administration of the Net Settlement Amount and it is in the best interests of the Settlement Class Members to do so.

#### **Claims Administrator's Decision**

33. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:
- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the Settlement Agreement, orders of the Courts and this Distribution Protocol;
  - (b) verify the Settlement Class Member's Gem Grade Diamond and Gem Grade Diamond Product Purchases; and
  - (c) make a determination of the value of the Settlement Class Member's weighted Gem Grade Diamond Purchases.
34. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Gem Grade Diamond Purchases (the "Decision Notice"). Where

the Claims Administrator has rejected all or part of the Claim, the Claims Administrator shall include in the Decision Notice its grounds for rejecting all or part of the Claim.

35. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 37 to 41.

**Appeal of the Claims Administrator's Decision**

36. Subject to paragraph 38, Settlement Class Members, other than Consumers who filed without proof of purchase, shall be granted thirty (30) days from the date of the Decision Notice to appeal the rejection (in whole or in part) of their Claims.
37. Settlement Class Members will not be permitted to submit any new proof of purchase or other documentation with their appeal.
38. The following grounds shall not be grounds for appeal:
- (a) the refusal of the Claims Administrator to accept a Claim postmarked or electronically submitted after the Claims Filing Deadline;
  - (b) the refusal of the Claims Administrator to accept a Claim where no proof of purchase was provided;
  - (c) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member has not cooperated with the Claims Administrator in respect of any audit conducted by the Claims Administrator in respect of that Settlement Class Member's Claim; or
  - (d) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member did not declare that the information submitted in the Claim is true and correct.
39. Appeals will be determined by the Court (in Ontario, British Columbia, or Quebec) that has jurisdiction with respect to the Settlement Class Member. For example, appeals filed by Settlement Class Members in British Columbia will be heard by the BC Court. The Court(s) may, in its sole discretion, appoint a referee to hear the appeals in its place.
40. The Courts may establish rules guiding the appeal process, including the process for making submissions in respect of the appeal and the costs of the appeal.
41. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

## **THE CLAIMS DISTRIBUTION PROCESS**

### **Payment of Approved Claims**

42. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:
  - (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
  - (b) make arrangements to pay approved Claims.
43. Individual claimants will be paid by e-transfer by email where an email address has been provided or cheque where no email address has been provided or the claimant has made arrangements with the Claims Administrator. Commercial claimants will be paid by cheque.

### **Residual Funds**

44. To the extent that the full Net Settlement Amount is not paid out due to uncashed cheques, residual interest or otherwise, such monies shall be held in trust pending further order of the Ontario Court.

### **Undeliverable Mail & Reissuing Payments**

45. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
46. The Claims Administrator shall have the discretion, but is not required, to reissue payment to Settlement Class Members returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate.
47. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests an e-transfer be reissued, \$10 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests a cheque be reissued, \$15 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$25 will not be reissued.

## **THE CLAIMS ADMINISTRATOR'S RESPONSIBILITIES**

48. The Claims Administrator shall administer the Settlement Agreement and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

49. The Settlement Amounts shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution and all payments from the Settlement Amounts shall be made from that account.
50. The Claims Administrator's duties and responsibilities shall include the following:
- (a) providing notices to the Settlement Class Members as required pursuant to this Distribution Protocol;
  - (b) developing, implementing and operating electronic web-based systems and procedures for receiving and adjudicating Claims. The Claims Administrator shall encourage Settlement Class Members to claim via the Online Claim Portal where possible and shall facilitate this process;
  - (c) developing and implementing processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address;
  - (d) making timely decisions in respect of Claims and notifying the Settlement Class Members of the decision promptly thereafter;
  - (e) arranging payment to Settlement Class Members in a timely fashion after the administration is complete;
  - (f) dedicating sufficient personnel to respond to Settlement Class Members inquiries in English or French, as the Settlement Class Member elects;
  - (g) submitting required materials for appeals;
  - (h) remitting the Fonds Levy to the Fonds d'aide aux actions collectives;
  - (i) arranging payments of Administration Expenses;
  - (j) maintaining, in an easy to understand format, the information being recorded pursuant to paragraph 27 as well as information about Settlement Class Members' Gem Grade Diamond Purchases and proposed distribution, so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Courts;
  - (k) reporting to Class Counsel respecting Claims received and administered, and Administration Expenses;
  - (l) cash management and audit control;

- (m) preparing and submitting such financial statements, reports and records as directed by Class Counsel and/or the Courts; and
- (n) fulfilling any tax reporting and arranging payments required arising from the Settlement Amount, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Settlement Amount.

#### **CONFIDENTIALITY**

All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreement, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreement. The information provided by the Settlement Class Member is strictly private and confidential and will not be disclosed without the express written consent of the Settlement Class Member, except in accordance with the Settlement Agreement, orders of the Courts and/or this Distribution Protocol.



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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

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**ORDER  
Approval of Distribution Protocol**

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