
**CANADIAN OPTICAL DISC DRIVE (ODD) CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of April 5, 2021

Between

NEIL GODFREY and CARLOS FOGELMAN
(the “**Plaintiffs**”)

and

**PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER
ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD. AND
PIONEER ELECTRONICS OF CANADA INC**
(the “**Settling Defendants**”)

**CANADIAN OPTICAL DISC DRIVE (ODD) CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

TABLE OF CONTENTS

	Page
SECTION 1 – DEFINITIONS.....	3
SECTION 2 – SETTLEMENT APPROVAL.....	9
2.1 Best Efforts.....	9
2.2 Motions Approving Notice and Seeking Certification or Authorization	9
2.3 Motions for Approval of the Settlement	10
2.4 Pre-Motion Confidentiality	10
SECTION 3 – SETTLEMENT BENEFITS	10
3.1 Payment of Settlement Amount	10
3.2 Taxes and Interest.....	11
SECTION 4 – COOPERATION	12
4.1 Extent of Cooperation	12
4.2 Intervention in the U.S. Litigation	16
4.3 Limits on Use of Documents.....	16
SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST.....	18
5.1 Distribution Protocol.....	18
5.2 No Responsibility for Administration or Fees	19
SECTION 6 – NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT..	19
6.1 Right of Termination.....	19
6.2 If Settlement Agreement is Terminated	20
6.3 Allocation of Monies in the Trust Account Following Termination	21
6.4 Survival of Provisions After Termination.....	21
SECTION 7 – RELEASES AND DISMISSALS	22
7.1 Release of Releasees	22
7.2 Covenant Not To Sue.....	22
7.3 No Further Claims.....	22
7.4 Dismissal of the Proceedings	23
7.5 Dismissal of Other Actions	23
7.6 Material Term.....	24

SECTION 8 – BAR ORDER AND WAIVER OF SOLIDARITY ORDER.....	24
8.1 British Columbia Bar Orders	24
8.2 Quebec Waiver or Renunciation of Solidarity Order	26
8.3 Claims Against Other Entities Reserved.....	27
8.4 Material Term.....	27
SECTION 9 – EFFECT OF SETTLEMENT	27
9.1 No Admission of Liability.....	27
9.2 Agreement Not Evidence	28
9.3 No Further Litigation	28
SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY	28
10.1 Settlement Class and Common Issue	28
SECTION 11 – NOTICE TO SETTLEMENT CLASSES.....	29
11.1 Notices Required	29
11.2 Form and Distribution of Notices.....	29
SECTION 12 – ADMINISTRATION AND IMPLEMENTATION.....	30
12.1 Mechanics of Administration	30
12.2 Information and Assistance	30
SECTION 13 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATIVE EXPENSES.....	32
13.1 Court Approval for Class Counsel Fees and Class Counsel Disbursements.....	32
13.2 Administration Expenses.....	32
13.3 Responsibility for Fees, Disbursements and Taxes.....	32
SECTION 14 – MISCELLANEOUS	32
14.1 Motion for Directions.....	32
14.2 Headings, etc.	33
14.3 Computation of Time	33
14.4 Ongoing Jurisdiction	33
14.5 Governing Law.....	34
14.6 Entire Agreement	34
14.7 Amendments.....	34
14.8 Binding Effect	34
14.9 Counterparts	34
14.10 Negotiated Agreement.....	35
14.11 Language	35
14.12 Transaction.....	35

14.13 Recitals	35
14.14 Schedules.....	35
14.15 Acknowledgements	35
14.16 Authorized Signatures	36
14.17 Notice	36
14.18 Date of Execution.....	37
SCHEDULE “A”	1
PROCEEDINGS	1
SCHEDULE “B”	1
FORM OF BC CERTIFICATION FOR SETTLEMENT PURPOSES AND NOTICE APPROVAL ORDER.....	1
SCHEDULE “C”	1
FORM OF BC SETTLEMENT APPROVAL ORDER	1

**CANADIAN OPTICAL DISC DRIVE (ODD) CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

A. WHEREAS the Proceedings were commenced by the BC Plaintiff in British Columbia and the Quebec Plaintiff in Quebec;

B. AND WHEREAS the parallel Ontario Action was commenced in Ontario by Fanshawe College of Applied Arts and Technology;

C. AND WHEREAS the Proceedings allege, among other things, that the Settling Defendants and certain other Releasees participated in an unlawful conspiracy to fix, raise, maintain, and/or stabilize the price of ODD and ODD Products in Canada and/or to allocate markets and customers for the sale of ODD and ODD Products in Canada, contrary to Part VI of the *Competition Act* and the common law and/or the civil law;

D. AND WHEREAS the BC Action was certified as a class proceeding by order of the BC Court dated November 1, 2016, which certification was affirmed by the BC Court of Appeal on August 18, 2017 and by the Supreme Court of Canada on September 20, 2019;

E. AND WHEREAS the BC certification order was amended to certify a Canada-wide class, defined as:

Non-Umbrella Purchaser Subclass

All Persons resident in Canada who purchased optical disc drives (“ODD”) manufactured or supplied by the defendants in this action, or products that contain ODD (“ODD Products”) in which the ODD was manufactured or supplied by the defendants in this action, in the period from January 1, 2004 through January 1, 2010.

ODD means a device that reads and/or writes to CD-ROM, CD-R/RW, DVD-ROM, DVD-R/RW, Blu-Ray, Blu-Ray R/RW, and HD DVD.

ODD Products means computers, video game consoles and ODD that are designed to be attached externally to devices such as computers.

Umbrella Purchaser Subclass

All Persons resident in Canada who purchased optical disc drives (“ODD”) that were not manufactured or supplied by the defendants in this action, or products that contain ODD (“ODD Products”) in which the ODD was not manufactured or

supplied by the defendants in this action, in the period from January 1, 2004 through January 1, 2010.

ODD means a device that reads and/or writes to CD-ROM, CD-R/RW, DVD-ROM, DVD-R/RW, Blu-Ray, Blu-Ray R/RW, and HD DVD.

ODD Products means computers, video game consoles and ODD that are designed to be attached externally to devices such as computers.

F. AND WHEREAS the Ontario Action was discontinued against the Settling Defendants by order dated October 15, 2020;

G. AND WHEREAS the Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful or otherwise actionable conduct alleged in the Proceedings or any Other Actions or otherwise;

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

I. AND WHEREAS despite their belief that they are not liable in respect of the claims as alleged in the Proceedings or any Other Actions and have good and reasonable defences in respect of jurisdiction and the merits, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Classes in the Proceedings and any Other Actions, and to avoid further expense and inconvenience, the distraction of burdensome and protracted litigation, and the risks associated with trials and appeals;

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

K. AND WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arms-length settlement discussions and negotiations, resulting in this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes the Plaintiffs seek to represent;

L. 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 burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of this Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes the Plaintiffs seek to represent;

M. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

N. AND WHEREAS the Parties consent to certification or authorization for settlement purposes of (i) the Proceedings as class proceedings, (ii) the Settlement Classes and (iii) the Common Issue in respect of each of the Proceedings as against the Settling Defendants for the sole purpose of implementing this Settlement Agreement and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

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

P. AND WHEREAS the Settlement Class Members were permitted an opportunity to opt out of the Proceedings, the deadline to opt out of the Proceedings has passed, and no Persons validly and timely exercised the right to opt out;

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 BC Action be settled and dismissed with prejudice against the Settling Defendants, and the Quebec Action be declared settled out of court with prejudice and without reservation against the Settling Defendants, all without costs as to the Plaintiffs, the Settlement Classes the Plaintiffs seek to represent and the Releasees, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1– DEFINITIONS

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

(1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts 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 and claims administration but excluding Class Counsel Fees.

- (2) **BC Action** means the BC Action as defined in Schedule A.
- (3) **BC Counsel** means Camp Fiorante Matthews Mogergerman LLP.
- (4) **BC Court** means the Supreme Court of British Columbia.
- (5) **BC Plaintiff** means Neil Godfrey.
- (6) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol as approved by the Courts, and any employees of such firm.
- (7) **Class Counsel** means BC Counsel, Quebec Counsel, and Siskinds LLP.
- (8) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (9) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person in relation to legal fees, including the Fonds d'aide aux actions collectives in Quebec for repayment of funding, as a result of this Settlement Agreement.
- (10) **Class Period** means January 1, 2004 through January 1, 2010.
- (11) **Common Issue** means: Did the Settling Defendants, or any of them, conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, ODD directly or indirectly in Canada during the Class Period? If so, what damages, if any, are payable by the Settling Defendants, or any of them to the Settlement Class Members?
- (12) **Counsel for the Settling Defendants** means Cassels Brock & Blackwell LLP.
- (13) **Courts** means the BC Court and the Quebec Court.
- (14) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (15) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule A, and any Persons added as defendants in the Proceedings in the future.
- (16) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and as approved by the Courts.

(17) **Documents** means all papers, computer or electronic records, or other materials within the scope of Rule 1-1(1) of the *British Columbia Supreme Court Civil Rules* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.

(18) **Effective Date** means the date when Final Orders have been received from the Courts approving this Settlement Agreement.

(19) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(20) **Final Order** means a final order, judgment or other decree entered by a Court in respect of the approval of this Settlement Agreement, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(21) **Non-Settling Defendant** means any Defendant that is not: (i) a Settling Defendant; (ii) a Releasee; (iii) a Settled Defendant; or (iv) a Defendant against whom the Proceedings have been dismissed or discontinued against, either before or after the Effective Date; and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.

(22) **ODD** means any device which reads and/or writes data from and to an optical disk, including but not limited to, CD-ROMs, CD-recordable/rewritable, DVD-ROM, DVD recordable/rewritable, Blu-Ray, Blu-Ray-recordable/rewritable, and HD DVD, as well as Super Multi-Drives, other combination drives, and optical disk drives designed to be attached externally to computers or other devices.

(23) **ODD Products** means any products incorporating ODD, including but not limited to desktop computers, mobile/laptop computers, videogame consoles, CD players/recorders, DVD players/recorders and Blu-Ray disc players/recorders.

(24) **Ontario Action** means *Fanshawe College of Applied Arts and Technology v Sony Optiarc et al* (Ontario Superior Court of Justice, Court File No. 1501/10CP).

(25) **Other Actions** means actions or proceedings, excluding the Proceedings, commenced by a Settlement Class Member either before or after the Effective Date and arising from or relating in any way to the purchase, sale, pricing, discounting, manufacturing, marketing, offering for sale or distributing of ODD or ODD Products, including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the Class Period in respect of any agreement, combination or conduct that occurred during the Class Period. Other Actions do not

include claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, breach of warranty, breach of contract or similar claims between the Parties that do not relate to alleged anti-competitive conduct. Other Actions include but are not limited to *Donald Woligroski v. Sony Corporation, et al.* (Court of Queen's Bench of Manitoba, Winnipeg Centre, Court File No. CI-11-01-73945) and *Cindy Retallick v. Sony Corporation, et al.* (Court of Queen's Bench of Saskatchewan, Judicial Centre of Regina, Court File No. 1124 of 2014).

(26) **Parties** means the Settling Defendants, the Plaintiffs, and, where relevant, the Settlement Class Members.

(27) **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.

(28) **Plaintiffs** means the BC Plaintiff and the Quebec Plaintiff.

(29) **Proceedings** means the BC Action and the Quebec Action, as defined in Schedule A.

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

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

(32) **Quebec Action** means the Quebec Action as defined in Schedule A.

(33) **Quebec Code of Civil Procedure** means *Code of Civil Procedure*, RLRQ c C-25.01.

(34) **Quebec Counsel** means Consumer Law Group Inc.

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

(36) **Quebec Plaintiff** means Carlos Fogelman.

(37) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, charges, cross-claims, counter-claims, demands, judgments, suits, obligations, debts, setoffs, right of recovery, or liabilities for any obligations of any kind whatsoever, whether class, individual, or otherwise in nature, whether personal or subrogated, for damages of any kind (including compensatory, disgorgement, restitutionary, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, fees, costs, fines, debts,

expenses, class administration expenses (including Administration Expenses), penalties, lawyers' fees (including Class Counsel Fees), and Class Counsel Disbursements, known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, actual or contingent, and liquidated or unliquidated, in law or equity, arising under statute, regulation, contract or otherwise in nature, that any of the Releasers ever had, now have or hereafter can, shall or may have, relating in any way to any conduct alleged or that could have been alleged, related to, arising from, or described in the Proceedings, or arising from the factual predicate of the Proceedings, whether in Canada or elsewhere, which shall be deemed to include but not be limited to the purchase, sale, pricing, discounting, manufacturing, marketing, offering for sale or distributing of ODD or ODD Products, including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the Class Period in respect of any agreement, combination or conduct that occurred during the Class Period. However, the Released Claims do not include claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, breach of warranty, breach of contract or similar claims between the Parties that do not relate to alleged anti-competitive conduct.

(38) **Releasees** means the Settling Defendants and all of their respective present and former, direct and indirect, parents (including holding companies), subsidiaries, joint ventures, divisions, groups, and associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c. C-44); all affiliates, predecessors, successors and assigns of any of the above; and each and all of the present and former officers, directors, employees, agents, attorneys, representatives, trustees, servants and representatives, members, managers, heirs, executors, administrators, insurers, and assigns of each of the foregoing but excluding the Non-Settling Defendants.

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

(40) **Settled Defendants** means:

- (a) TEAC Corporation, TEAC America, Inc., and TEAC Canada, Ltd.;
- (b) NEC Corporation and NEC Canada, Inc.;
- (c) Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., LG Electronics Inc., LG Electronics Canada, Inc., and LG Electronics USA, Inc.;

- (d) Sony Corporation, Sony Optiarc Inc., Sony Optiarc America Inc., Sony Electronics Inc., Sony Corporation of America, Sony NEC Optiarc Inc., and Sony of Canada Ltd.;
 - (e) Philips & Lite-On Digital Solutions Corporation and Philips & Lite-On Digital Solutions USA, Inc.;
 - (f) Toshiba Corporation (in certain proceedings identified as Toshiba Corp.), Toshiba Samsung Storage Technology Corporation (in certain proceedings identified as Toshiba Samsung Storage Technology Corp.), Toshiba Samsung Storage Technology Korea Corporation (in certain proceedings identified as Toshiba Samsung Storage Technology Corp. Korea), Toshiba of Canada Limited (in certain proceedings identified as Toshiba of Canada Ltd.), Toshiba America Consumer Products, LLC, Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., and Samsung Electronics America, Inc. ; and
 - (g) any Defendant that executes its own settlement agreement whether before or after the execution of this Settlement Agreement, which settlement agreement is finally approved by the necessary Courts and becomes effective in accordance with its terms.
- (41) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (42) **Settlement Amount** means CAD \$1,185,000.
- (43) **Settlement Class** or **Settlement Classes** means, in respect of each Proceeding, the BC Settlement Class and the Quebec Settlement Class defined in Schedule A.
- (44) **Settlement Class Member** or **Settlement Class Members** means a member or the members of the BC Settlement Class or the Quebec Settlement Class.
- (45) **Settling Defendants** means Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd., and Pioneer Electronics of Canada Inc.
- (46) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of BC Counsel or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

(47) *U.S. Litigation* means the class action and other proceedings pending in the United States District Court for the Northern District of California, under the caption *In Re: Optical Disk Drive Products Antitrust Litigation 3:10-md-02143-RS*, including but not limited to all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination involving similar allegations relating to ODD and ODD Products.

(48) *U.S. Settlement Agreements* means any settlement reached in the U.S. Litigation with any of the Settling Defendants.

SECTION 2– SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this settlement and to secure:
 - (a) the prompt, complete and final dismissal with prejudice of the BC Action as against the Settling Defendants; and
 - (b) a declaration of settlement out of court of the Quebec Action as against the Settling Defendants.

2.2 Motions Approving Notice and Seeking Certification or Authorization

- (1) As soon as practicable after the Date of Execution, the BC Plaintiff shall bring a motion before the BC Court for an order approving the notices described in Section 11.1(1), and certifying the BC Action as a class proceeding for settlement purposes as against the Settling Defendants.
- (2) As soon as practicable after the BC Plaintiffs bring the motion described in Section 2.2(1), the Quebec Plaintiff shall bring a motion before the Quebec Court for an order approving the notices described in Section 11.1(1), and authorizing the Quebec Action as a class proceeding for settlement purposes as against the Settling Defendants.
- (3) The BC order approving the notices described in Section 11.1(1) and certifying the BC Action for settlement purposes shall be substantially in the form attached hereto as Schedule B. The Quebec order approving the notices described in Section 11.1(1) and authorizing the Quebec Action (for settlement purposes) shall be agreed upon by the Parties and, to the extent possible, shall mirror the substance and the form of the BC order.

2.3 Motions for Approval of the Settlement

(1) The Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2 have been granted; and
- (b) the notices described in Section 11.1(1) have been published.

(2) The BC order approving this Settlement Agreement shall be substantially in the form attached hereto as Schedule C. The Quebec order approving this Settlement Agreement shall be agreed upon by the Parties and, to the extent possible, shall mirror the substance and the form of the BC order.

(3) The Plaintiffs can elect to request that the Courts hold joint hearings seeking approval of this Settlement Agreement pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. The Settling Defendants will not unreasonably oppose any such request.

(4) The orders referred to in Section 2.3(1) will be contingent on the approval of the Settlement Agreement by both Courts, and the terms of the orders will not be effective unless and until the Effective Date.

2.4 Pre-Motion Confidentiality

(1) Until the motion required by Section 2.2(1) is filed or as otherwise agreed by the Parties, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of Counsel for the Settling Defendants or Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), to give effect to the terms of this Settlement Agreement, or as otherwise required by law. The Parties agree that the Settling Defendants are entitled to disclose the terms of the Settlement Agreement to the Releasees and to their respective counsel, auditors and advisors.

SECTION 3– SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within sixty (60) days after the Date of Execution, the Settling Defendants shall cause the Settlement Amount to be paid to BC Counsel for deposit into the Trust Account.

(2) The Settlement Amount shall be deposited into the Trust Account by wire transfer. BC Counsel shall provide the necessary wire transfer information in writing to Counsel for the

Settling Defendants on or before the Date of Execution to facilitate compliance with Section 3.1(1) of this Settlement Agreement.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full and final satisfaction of the Proceedings against the Settling Defendants and any and all Released Claims as against all the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest and all costs in respect of the Proceedings. The Releasees shall have no liability and no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of the Proceedings, this Settlement Agreement or the Released Claims.

(5) The Settlement Amount shall be maintained in the Trust Account by BC Counsel until the Effective Date. Notwithstanding Sections 3.1(6) and 3.1(8), no part of the Settlement Amount shall be transferred or paid out until the Effective Date, except as provided for in section 6, in the event of termination of this Settlement Agreement.

(6) Once a Claims Administrator has been appointed, BC Counsel may transfer the Settlement Amount and interest earned on the Settlement Amount, less taxes paid and any deductions made in accordance with this Settlement Agreement or an order of the Courts on notice to the Settling Defendants, to the Claims Administrator.

(7) BC Counsel and the Claims Administrator, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) While in control of the Trust Account, each of BC Counsel and the Claims Administrator, respectively, shall not pay out all or any part of the monies in the Trust Account related to this Settlement Agreement, except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained after notice to the Settling Defendants.

3.2 Taxes and Interest

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

(2) Subject to Section 3.2(5), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account.

(3) BC Counsel or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account,

including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(4) Subject to Section 3.2(5), the Releasees shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account.

(5) Notwithstanding Subsections 3.2(1)-3.2(4), if this Settlement Agreement is terminated, the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants in accordance with Section 6.3. In such case, the Settling Defendants shall be solely responsible for the payment of all unpaid taxes on such interest.

SECTION 4– COOPERATION

4.1 Extent of Cooperation

(1) Within ninety (90) days of the Effective Date, or at a time mutually agreed upon by the Parties, provided that Class Counsel confirms that the requests are required in good faith as reasonably necessary for the prosecution of the proceeding at trial (or summary judgment), and subject to any confidentiality order in these Proceedings and the other provisions of this Settlement Agreement, the Settling Defendants shall, only insofar as such production has not already occurred in the BC Action and production is not prohibited by law, use reasonable efforts to provide to Class Counsel:

- (a) electronic copies of any Documents (including transactional data) that were produced in the U.S. Litigation by the Settling Defendants including, but not limited to, any such Documents provided to U.S. plaintiffs pursuant to any U.S. Settlement Agreements and any pre-existing translations of such documents;
- (b) the Settling Defendants' Canadian sales and costs data related to ODD and ODD Products sold in Canada from January 1, 2002 to January 1, 2012. The transactional data will be provided in Excel or such other format as agreed upon by the Parties, and shall be delivered as a separate production from the other Documents to be delivered pursuant to this section 4.1(1) or be identified by bates number and/or file name identifying the relevant records;
- (c) electronic copies of transcripts of all depositions or other testimony of current or former employees, officers or directors of the Settling Defendants taken in the U.S. Litigation, including (to the extent they form part of the transcripts or can otherwise be readily located) all exhibits originating from the Settling Defendants, any pre-existing translations, corresponding errata sheets, and

confidentiality designation letters, delivered as a separate production from the documents to be delivered pursuant to Section 4.1(1)(a) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(1)(a);

- (d) electronic copies of any responses to written interrogatories by the Settling Defendants in the U.S. Litigation, including all schedules thereto and any pre-existing translations into English of those responses produced to the plaintiffs in the U.S. Litigation, delivered as a separate production from the documents to be delivered pursuant to Section 4.1(1)(a) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(1)(a);
- (e) electronic copies of any responses to requests to admit by the Settling Defendants in the U.S. Litigation, including all schedules thereto and any pre-existing translations into English of those responses produced to the plaintiffs in the U.S. Litigation, delivered as a separate production from the documents to be delivered pursuant to Section 4.1(1)(a) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(1)(a); and
- (f) reasonable assistance in understanding the transactional sales and cost data produced by the Settling Defendants pursuant to Section 4.1(1) or otherwise in the Proceedings.

(2) The obligation to provide Documents pursuant to Section 4.1(1) shall be a continuing obligation to the extent Documents that are required to be provided under Section 4.1(1) are identified by the Settling Defendants following the initial productions pursuant to this Settlement Agreement, but in no event shall the Settling Defendants be obligated to provide Documents in addition to those listed in Section 4.1(1).

(3) As to additional Documents in the Settling Defendants' possession, custody, or control, the Settling Defendants will consider in good faith, but without obligation, any reasonable request by the Plaintiffs to collect and produce such documents, provided the request would not impose an undue burden on the Settling Defendants.

(4) Documents provided to Class Counsel in accordance with this Section 4.1(1) will be provided in the format in which they were produced in the U.S. Litigation and will include any pre-existing and non-privileged electronic coding. In addition, where the documents previously produced in the U.S. Litigation contain bates stamps on their face, a field will be produced containing the corresponding bates stamps of the first page of each document.

(5) Nothing in this Settlement Agreement shall require or be construed to require the Releasees, or any of their present, former or future officers, directors or employees to perform any act, including the production or disclosure of any Documents or information:

- (a) which would violate or breach any federal, provincial, state, local or foreign law (including without limitation, any privacy or bank secrecy law, and including common law, civil law, statutes, policies, rules and regulations);
- (b) which would violate or breach any Court or regulatory order, directive, instruction (including, without limitation, any protective order granted in the U.S. Litigation, and instructions or directives from the U.S. Department of Justice or any other regulatory authority or governmental body in Canada, the United States, the United Kingdom or any other jurisdiction), in any applicable jurisdiction, including but not limited to Canada, and the United States;
- (c) which is subject to solicitor-client privilege, litigation privilege or any other privilege, doctrine or law; or
- (d) not within the possession, custody or control of the Releasees;

(6) If Counsel for the Settling Defendants have produced a relevant privilege log in the U.S. Litigation and not already produced it in the BC Action, the Settling Defendants will provide Class Counsel with a copy of such log.

(7) If any Documents protected by any privilege and/or any privacy law or other order, regulatory directive, rule or law of this or any applicable jurisdiction including but not limited to Canada and the United States are accidentally or inadvertently produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents.

(8) Subject to the rules of evidence, any Court order with regard to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to provide or obtain affidavits for use at trial or as the Parties may otherwise agree in the Proceedings for the sole purpose of supporting the submission into evidence of any information, transactional data and/or Documents provided by the Settling Defendants in accordance with this Settlement Agreement or as otherwise produced by the Settling Defendants in the Proceedings. If, and only if, a Court should determine that affidavits are inadequate for the purpose of submitting into evidence of the information, transactional data and/or Documents produced by the Settling Defendants, the Settling Defendants agree to use reasonable efforts to make available

for testimony at trial or as the Parties may otherwise agree in the Proceedings one current employee of the Settling Defendants for the purpose of admitting into evidence any information, transactional data and/or Documents provided by the Settling Defendants to Class Counsel pursuant to Section 4 herein. If a witness is required to travel for the purposes of giving the evidence described in this Section 4.1(8), the witness's obligation to travel is conditional on (i) the travel being safe and permitted by applicable national, regional, and local laws, rules, and regulations regarding travel, and (ii) the witness's right to refuse to travel for legitimate, health-related concerns. If the witness refuses to or is unable to travel for reasons described in this Section 4.1(8), the Parties shall agree on another satisfactory means of obtaining the witness's evidence. The Plaintiffs will work to minimize any burden on the Settling Defendants pursuant to this section.

(9) The obligations of the Settling Defendants to cooperate as particularized in this Section 4 shall not be affected by the release provisions contained in Section 7.1 of this Settlement Agreement. If Class Counsel reach a settlement with all of the Non-Settling Defendants and any such settlement becomes effective in accordance with its terms or obtain final judgment against each of them in each of the Proceedings, then all obligations under this Section 4 shall cease and this Section 4 shall be of no further force or effect. For greater certainty, the Plaintiffs' failure to strictly enforce any of the deadlines for the Settling Defendants to provide cooperation pursuant to this Section 4 is not a waiver of the cooperation rights granted by Section 4.

(10) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against knowledgeable employees of the Settling Defendants, if such individual(s) fails to cooperate in accordance with Subsection 4.1(8) and the provisions of this Settlement Agreement.

(11) Subject to Sections 4.1(10) and 4.1(12), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or Documents from the Releasees or their current or former officers, directors, employees, agents or counsel. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(12) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 4.1(11) and allowing the Plaintiffs to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained parties to the Proceeding, or seek such other remedy that is available at law.

(13) A material factor influencing the decision by the Settling Defendants to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on the Releasees.

(14) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to an alleged conspiracy to fix, raise, maintain or stabilize prices, allocate markets or customers or restrict output or capacity, of ODD and ODD Products sold in Canada during the Class Period.

4.2 Intervention in the U.S. Litigation

(1) The Settling Defendants shall not oppose any application by or on behalf of the Plaintiffs to: (1) intervene in the U.S. Litigation in order to gain access to discovery Documents and other Documents and information subject to the stipulated Protective Order granted in the U.S. Litigation that are relevant to the Proceedings, provided such application is not otherwise inconsistent with the terms of this Settlement Agreement, including Section 4.1 and in particular 4.1(11); or (2) compel a U.S. resident to "give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal" pursuant to Title 28 of the United States Code §1782 for the prosecution of the Proceedings, provided such application is not otherwise inconsistent with the terms of this Settlement Agreement, including Section 4.1, and in particular 4.1(11). However, it is agreed that the Settling Defendants have no obligation to bring or otherwise participate in such an application.

4.3 Limits on Use of Documents

(1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement, including under Section 4.1, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are or become publicly available.

(2) The Plaintiffs and Class Counsel agree they will not disclose, produce or file any Documents or information provided by the Settling Defendants, whether pursuant to this Settlement Agreement or pursuant to the Settling Defendants' production obligations in the BC Action, beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, and that any disclosure shall be in compliance with Section 4.3(4). The Plaintiffs and Class Counsel acknowledge that they are bound by the implied and deemed undertaking rule in British Columbia and the equivalent rules in other provinces or territories, except to the extent that the Documents or information are or become publicly available. Class

Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information.

(3) Moreover, neither Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may divulge to anyone for any purpose, or use for any purpose, any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is or becomes otherwise publicly available or unless ordered to do so by a court or as otherwise provided in this Section 4.

(4) If, in the course of the Proceedings, the Plaintiffs or Class Counsel, acting reasonably, conclude that it is reasonably necessary to disclose or produce or file Documents obtained from the Releasees, whether pursuant to this Settlement Agreement or pursuant to the Settling Defendants' production obligations in the BC Action, and:

- (a) such disclosure is not otherwise prohibited by the Settlement Agreement; and
- (b) there is not already a confidentiality order issued in any of the Proceedings that applies to the Documents and information provided (if there is already a confidentiality order issued, that order shall govern),

Class Counsel shall provide Counsel for the Settling Defendants with advance written description of the Documents or information sought to be disclosed, produced or filed, promptly and in any event at least thirty (30) days in advance of the proposed disclosure, production or filing, in order that the Settling Defendants or other Releasees may bring a motion for the purpose of obtaining a sealing or confidentiality order or similar relief, or take such steps as they deem necessary to protect their interests in respect of such Documents or information.

(5) If, in the course of the Proceedings, a Person requests disclosure or production of Documents or information obtained from the Releasees whether pursuant to this Settlement Agreement or pursuant to the Settling Defendants' production obligations in the BC Action (whether or not the Person applies for an order), and:

- (a) such disclosure is not otherwise prohibited by the Settlement Agreement;
- (b) there is not already a confidentiality order issued in any of the Proceedings that applies to the Documents and information provided (if there is already a confidentiality order issued, that order shall govern),

Class Counsel shall promptly provide Counsel for the Settling Defendants with advance written description of the Documents or information that is the subject of the request for disclosure or production, in order that the Settling Defendants or other Releasees may bring a motion for the

purpose of obtaining a sealing or confidentiality order or similar relief, or take such steps as they deem necessary to protect their interests in respect of such Documents or information.

(6) If the Settling Defendants or other Releasees bring a motion under Section 4.3(4) or 4.3(5) of this Settlement Agreement to obtain a sealing or confidentiality order or similar relief, the Plaintiffs and Class Counsel:

- (a) shall not oppose reasonable positions taken by the Settling Defendants or other Releasees;
- (b) shall not consent to disclosure or production or an order granting similar relief;
- (c) shall not disclose, produce or file the Documents or information until such motion has been decided and all applicable appeal periods have expired, unless otherwise ordered by a Court and subject to Section 4.3(6)(d); and
- (d) may provide, on an interim basis, Documents to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances in writing that, until the motion brought by the Settling Defendants or other Releasees has been decided and all applicable appeal periods have expired, the Documents or information will remain with external counsel for the Non-Settling Defendants and will only be disclosed to independent expert(s) retained by a Non-Settling Defendant for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary and who agree in advance in writing to be bound by the same confidentiality and destruction obligations set out in Section 4 and Section 6.2(2)(d). An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings or a competitor of the Settling Defendants.

SECTION 5– DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Distribution Protocol

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in out-of-class settlements, unless by such proceedings or 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.

5.2 No Responsibility for Administration or Fees

- (1) Subject to Section 6.3, the Releasees shall not have any responsibility, financial obligations or liability whatsoever with respect to:
- (a) the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses, Class Counsel Disbursements and Class Counsel Fees; or
 - (b) the administration of the Distribution Protocol.

SECTION 6– NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

- (1) In the event that:
- (a) the BC Court or the Quebec Court declines to certify or authorize the applicable Proceeding for settlement purposes as against the Settling Defendants or does so in a materially modified form;
 - (b) the BC Court declines to dismiss the BC Action against the Settling Defendants;
 - (c) the Quebec Court declines to declare settled out of court the Quebec Action against the Settling Defendants named in the Quebec Action;
 - (d) the BC Court or the Quebec Court declines to approve this Settlement Agreement or any material part hereof;
 - (e) the BC Court or the Quebec Court approves this Settlement Agreement in a materially modified form; or
 - (f) any orders approving this Settlement Agreement made by the BC or Quebec Courts do not become Final Orders or are issued in a materially modified form or are materially inconsistent with the terms of this Settlement Agreement;

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement by delivering a written notice pursuant to Section 14.17 within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 14.17, within thirty (30) days after such non-payment, or move before the Court to enforce the terms of this Settlement Agreement.

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

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

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

6.2 If Settlement Agreement is Terminated

(1) Except as provided for in Section 6.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, this Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

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

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

materials. To the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants or Releasees to any other Person, Class Counsel shall endeavour to recover and destroy such Documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification of such destruction by Class Counsel. Nothing contained in this Section 6.2 shall be construed to require Class Counsel to destroy any of their work product or any Documents previously produced by the Settling Defendants as part of their discovery obligations. However, any Documents or information provided by or received from the Settling Defendants or Releasees in connection with this Settlement Agreement may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel; and

- (e) until such time as a confidentiality order is in place in the Proceedings that applies to the Documents previously provided by the Settling Defendants pursuant to their production obligations in the BC Action, Class Counsel shall continue to maintain such Documents on the terms pursuant to which they were produced by the Settling Defendants or such other terms as may be agreed upon by the Parties.

6.3 Allocation of Monies in the Trust Account Following Termination

(1) If the Settlement Agreement is terminated, BC Counsel or the Claims Administrator, as the case may be, shall within thirty (30) days of the written notice pursuant to Section 6.1(1) return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon and less any taxes paid on interest, less the Settling Defendants' proportional share (to a maximum of \$50,000 for the Settling Defendants collectively) of any costs actually incurred or payable with respect to notices required by Section 11.1 and any costs actually incurred or payable with respect to any translations required under Section 14.11.

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, Sections 3.1(8), 3.2(5), 5.2 (insofar as it relates to the investment, distribution or administration of monies in the Trust Account, including Administration Expenses, or administration of the distribution protocol), 6.2, 6.3, 6.4, 9.1, 9.2, 10.1(4), 11.1(3), 11.2, 12.2(7), 14.1, 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9, 14.10, 14.11, 14.12, 14.13, 14.15, 14.16 and 14.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections) shall survive the termination and continue in full force and

effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7– RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 7.2, and in consideration of payment of the Settlement Amount and other valuable consideration set forth in the Settlement Agreement, the Releasers:

- (a) shall finally, fully, forever and absolutely waive, release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have;
- (b) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and
- (c) agree or covenant not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any of the Releasees related in any way to any Released Claim.

(2) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention; this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

7.2 Covenant Not To Sue

(1) Notwithstanding Section 7.1, upon the Effective Date, 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 and undertake not to make any claim in any way or to threaten, commence, institute, prosecute, participate in, maintain or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims, whether on their own behalf or as part of any putative, purported or certified class of purchasers or consumers.

7.3 No Further Claims

(1) Upon the Effective Date, the Releasers shall not now or hereafter institute, continue, provide assistance for, intervene in, 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, whether pursuant to the *Negligence Act*, RSBC 1996, c. 333, *Civil Code of Quebec* or other legislation or common law or in equity, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants, or named or unnamed alleged co-conspirators that are not Releasees or, if the BC Action is decertified or the Quebec Action is not authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty, and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.4 Dismissal of the Proceedings

- (1) Upon the Effective Date, the BC Action shall be dismissed with prejudice and without costs as against the Settling Defendants.
- (2) Upon the Effective Date, the Quebec Action shall be declared settled out of court with prejudice and without costs and without reservation as against the Settling Defendants named in the Quebec Action.

7.5 Dismissal of Other Actions

- (1) Upon the Effective Date, each BC Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced in British Columbia by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Except as otherwise provided by article 580 of the Quebec Code of Civil Procedure, any Quebec Settlement Class Member who did not timely exercise the right to opt out of the Quebec Action shall be deemed to consent to the settlement of his, her or its Other Actions against the Releasees, without costs and with prejudice.
- (4) If requested by the Settling Defendants, Class Counsel shall cooperate with the Settling Defendants to seek orders recognizing and enforcing the Settlement Agreement and the orders of the Courts in Canadian provinces other than British Columbia or Quebec.

7.6 Material Term

(1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 6.1(3)), the provisions in this Section 7 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve such provisions shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8– BAR ORDER AND WAIVER OF SOLIDARITY ORDER

8.1 British Columbia Bar Orders

- (1) Class Counsel shall obtain a bar order from the BC Court providing for the following:
- (a) to the extent such claims are recognized at law all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined;
 - (b) if the BC Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise, is a legally recognized claim:
 - i) the BC Plaintiff and BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants, named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - ii) the BC Plaintiff and BC Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is

not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitution, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if any, and, for greater certainty, the BC Plaintiff and BC Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

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

(c) a Non-Settling Defendant may, on application to the BC Court, and on at least twenty (20) days' notice to Counsel for the Settling Defendants, seek orders for the following:

- i) documentary discovery and a list of documents from the Settling Defendants in accordance with the BC Court's rules of procedure;
- ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
- iii) leave to serve a notice to admit on the Settling Defendants in respect of factual matters; and/or
- iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;

- (d) the Settling Defendants retain all rights to oppose any application brought pursuant to Section 8.1(1)(c), including any such application brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be provided and/or information obtained from discovery in accordance with Section 8.1(1)(c);
- (e) on any application brought pursuant to Section 8.1(1)(c), the BC Court may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (g) the BC Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the BC Court for these purposes only; and
- (h) a Non-Settling Defendant may effect service of the application(s) referred to in Section 8.1(1)(c), on a Settling Defendant by service on Counsel for the Settling Defendants.

8.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Parties agree that the Quebec order approving this Settlement Agreement pursuant to Section 2.3 must include a waiver or renunciation of solidarity in respect of the Quebec Action, which includes the following:

- (a) the Quebec Plaintiff and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
- (b) the Quebec Plaintiff and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measures of proportionate liability of the Non-Settling Defendants;

- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Quebec Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Quebec Code of Civil Procedure*, including in relation to the jurisdiction of the court.

8.3 Claims Against Other Entities Reserved

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Releasors against any Person other than the Releasees.

8.4 Material Term

- (1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 6.1(3)), the Parties acknowledge that the provisions in this Section 8 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve such provisions shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.
- (2) Notwithstanding the foregoing, Subsections 8.1(1)(c) and 8.2(1)(d) shall not be considered a material term of this Settlement Agreement and the failure of any Court to approve a bar order provision corresponding to Subsections 8.1(1)(c) and 8.2(1)(d) shall not give rise to a right to termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 9– EFFECT OF SETTLEMENT

9.1 No Admission of Liability

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not 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 the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is approved, terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims or claims precluded by the bar orders in Section 8, as otherwise required by law or as provided in this Settlement Agreement.

9.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Releasees that relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the BC Action is decertified or the Quebec Action is not authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

(2) Section 9.3(1) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

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 Settling Defendants solely for purposes of settlement of the Proceedings in respect of the Settling Defendants and the approval of this Settlement Agreement by the Courts, and such certification or authorization shall not be used or relied on as against the Releasees for any other purpose or in any other Proceeding.

(2) The Parties 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 and Class Counsel will seek to define is the Common Issue and the only classes that the Plaintiffs and Class Counsel will assert are the Settlement Classes.

(3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants or any other Persons or parties that are not Releasees, except as expressly set out in this Settlement Agreement.

(4) The Releasees retain all of their available objections, arguments, and defences with respect to class certification or authorization, and reserve all rights if the settlement set forth in this Settlement Agreement does not receive Court approval, if Court approval is reversed or vacated on appeal, or if this Settlement Agreement is terminated or fails to take effect for any reason. The Parties acknowledge that there has been no consent to certification or authorization of any classes for any purpose other than effectuating this Settlement Agreement.

SECTION 11– NOTICE TO SETTLEMENT CLASSES

11.1 Notices Required

- (1) Class Counsel will give the proposed Settlement Classes notice of:
 - (a) the certification or authorization of the Proceedings as class proceedings as against the Settling Defendants for settlement purposes;
 - (b) the dates of hearings at which the Courts will be asked to approve the Settlement Agreement;
 - (c) the principal elements of the Settlement Agreement; and
 - (d) if they are brought with the hearings to approve the Settlement Agreement, the hearings to request the Courts to approve Class Counsel Fees and Class Counsel Disbursements.
- (2) Without limiting the generality of the foregoing, the notice referred to in Section 11.1(1) submitted to the Quebec Court shall be compliant with article 579 and 590 of the *Quebec Code of Civil Procedure*;
- (3) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Classes shall be given notice of such event.

11.2 Form and Distribution of Notices

- (1) The notices referred to in Section 11.1 shall be in a form agreed upon by the Parties and approved by the Courts.

- (2) The notices referred to in Section 11.1 shall be disseminated by a method agreed upon by the Parties and approved by the Courts.
- (3) A copy of the notices shall be sent by direct mail or email to Persons who have commenced an Other Action and/or their counsel of record.

SECTION 12– ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

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

12.2 Information and Assistance

- (1) To the extent it has not already been provided pursuant to the Settling Defendants' production obligations in the BC Action, and has been collected for purposes of the Proceedings or the U.S. Litigation, the Settling Defendants will make reasonable efforts to provide a list of available names and addresses (including any relevant email addresses) of those Persons in Canada who purchased ODD and/or ODD Products from the Settling Defendants during the Class Period, and the Purchase Price (or such price information as is available) paid by each such Person for such purchases. The information shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel, and shall be delivered as a separate production from the Documents delivered pursuant to Section 4.1(1) or identified by bates number within the production of Documents delivered pursuant to Section 4.1(1). The Plaintiffs and Class Counsel accept and agree that the Settling Defendants may provide available address information as a separate data set from the available Purchase Price information.

- (2) The name and address information required by Section 12.2(1) shall be delivered to Class Counsel within thirty (30) days of the Date of Execution. The Purchase Price information required by Section 12.2(1) shall be delivered to Class Counsel within thirty (30) days of the Effective Date.

- (3) Class Counsel may use the information provided under Section 12.2(1):
 - (a) to facilitate the dissemination of the notices required in Section 11.1;
 - (b) to advise Persons in Canada who purchased ODD and/or ODD Products from the Settling Defendants of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;

- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement and/or Court award achieved in the Proceedings; and
 - (d) as otherwise authorized in Section 4.
- (4) All information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to Section 12.2(1) to any Court-appointed notice provider and/or any Court-appointed Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 12.2(3). Any Court-appointed notice provider and/or any Court-appointed Claims Administrator shall be bound by the same confidentiality obligations set out in Section 4.
- (5) Counsel for the Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 12.2 from Class Counsel or any Court-appointed notice provider and/or Court-appointed Claims Administrator. The obligations in this Section 12.2 shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the obligations in this Section 12.2 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or Court awards have been distributed.
- (6) The Releasees cannot and do not warrant the accuracy or completeness of the information to be provided under this Section 12.2, and Plaintiffs and Class Counsel acknowledge being advised by the Settling Defendants that the information is likely to be incomplete. The Releasees shall bear no liability with respect to the completeness or accuracy of the information provided under this Section 12.2.
- (7) If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to this Section 12.2 shall be dealt with in accordance with Subsections 6.2(2)(d) and/or 6.2(2)(e), as applicable, and no record of the information so provided pursuant to this Settlement Agreement shall be retained by Class Counsel, any Court-appointed notice provider and/or any Court-appointed Claims Administrator in any form whatsoever.

SECTION 13– CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATIVE EXPENSES

13.1 Court Approval for Class Counsel Fees and Class Counsel Disbursements

- (1) Class Counsel may seek the Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees from the Trust Account contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.
- (2) Class Counsel Disbursements and Class Counsel Fees may only be paid out of the Trust Account after the Effective Date.

13.2 Administration Expenses

- (1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (2) Notwithstanding Section 13.2(1), Class Counsel shall pay the costs of the notices required by Section 11.1, including any related transaction costs, and, if required, the translation referred to in Section 14.11, from the Trust Account, as they become due.

13.3 Responsibility for Fees, Disbursements and Taxes

- (1) Subject to section 6.3, the Releasees shall not be liable for any Class Counsel Disbursements, Class Counsel Fees, Administrative Expenses, fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts to which the Fonds d'aide aux actions collectives in Quebec may be entitled, and/or or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

SECTION 14– MISCELLANEOUS

14.1 Motion for Directions

- (1) Class Counsel or the Settling Defendants may apply to the BC Court and/or such other Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless a Court orders otherwise, motions for directions that do not relate specifically to the matters affecting the Quebec Action shall be determined by the BC Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

14.2 Headings, etc.

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

14.3 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday, as “holiday” is defined in the *Interpretation Act*, RSBC 1996, c. 238, the act may be done on the next day that is not a holiday.

14.4 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees and the Class Counsel Disbursements in that Proceeding.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding Sections 14.1(1) and 14.4(2), the BC Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members, Settling Defendants attorn to the jurisdiction of the BC Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Settlement Class Member in the Quebec Action shall be determined by the BC Court.

14.5 Governing Law

- (1) Subject to Section 14.5(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- (2) Notwithstanding Section 14.5(1), for matters relating specifically to the Quebec Action, the Quebec Court shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

14.6 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

14.7 Amendments

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

14.8 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the successors and assigns of the Plaintiffs and Settling Defendants. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs or Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than the Settling Defendants which are parties hereto) are third party beneficiaries of this Settlement Agreement and are authorized to enforce its terms applicable to them.

14.9 Counterparts

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.10 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.11 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related Documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

(2) Notwithstanding Section 14.11(1), if required by the Quebec Court, Class Counsel and/or a translation firm mandated by Class Counsel shall prepare a French translation of the Settlement Agreement, notice, orders or other documents contemplated by the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.12 Transaction

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

14.13 Recitals

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

14.14 Schedules

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

14.15 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

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

14.16 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

14.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

Reidar Mogerman and David Jones
**CAMP FIORANTE MATTHEWS
 MOGERMAN LLP**
 4th Floor, 856 Homer St.
 Vancouver, BC V6B 2W5
 Tel.: 604-689-7555
 Fax: 604-689-7554
 Email: service@cfmlawyers.ca

Charles M. Wright and Linda Visser
SISKINDS LLP
 Barristers and Solicitors
 680 Waterloo Street
 London, ON N6A 3V8
 Tel.: 519-660-7753
 Fax: 519-672-6065
 Email: charles.wright@siskinds.com
 linda.visser@siskinds.com

Jeff Orenstein
CONSUMER LAW GROUP INC.
 1030 rue Berri, Suite 102
 Montreal, Quebec, H2L 4C3
 Tel.: 514-266-7863
 Fax: 514-868-9690
 Email: jorenstein@clg.org

For the Settling Defendants in the Proceedings:

W. Michael G. Osborne

CASSELS BROCK & BLACKWELL LLP

Scotia Plaza
40 King St W, Suite 2100
Toronto, ON M5H 3C2

Tel: 416.860.6732
Fax: 416.360.8877
Email: mosborne@cassels.com

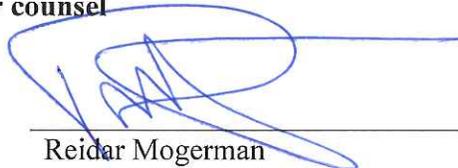
14.18 Date of Execution

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

NEIL GODFREY and CARLOS FOGELMAN on their own behalf and on behalf of the Settlement Class by their counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:



Reidar Mogerman
Camp Fiorante Matthews Mogerman LLP
BC Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Jeff Orenstein
Consumer Law Group Inc.
Quebec Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Charles M. Wright
Siskinds LLP

For the Settling Defendants in the Proceedings:

W. Michael G. Osborne

CASSELS BROCK & BLACKWELL LLP

Scotia Plaza
40 King St W, Suite 2100
Toronto, ON M5H 3C2

Tel: 416.860.6732
Fax: 416.360.8877
Email: mosborne@cassels.com

14.18 Date of Execution

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

NEIL GODFREY and CARLOS FOGELMAN on their own behalf and on behalf of the Settlement Class by their counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Reidar Mogerman
Camp Fiorante Matthews Mogerman LLP
BC Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:



Jeff Orenstein
Consumer Law Group Inc.
Quebec Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Charles M. Wright
Siskinds LLP

For the Settling Defendants in the Proceedings:

W. Michael G. Osborne

CASSELS BROCK & BLACKWELL LLP

Scotia Plaza
40 King St W, Suite 2100
Toronto, ON M5H 3C2

Tel: 416.860.6732
Fax: 416.360.8877
Email: mosborne@cassels.com

14.18 Date of Execution

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

NEIL GODFREY and CARLOS FOGELMAN on their own behalf and on behalf of the Settlement Class by their counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Reidar Mogerman
Camp Fiorante Matthews Mogerman LLP
BC Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Jeff Orenstein
Consumer Law Group Inc.
Quebec Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:



for: Charles M. Wright
Siskinds LLP

**PIONEER CORPORATION, PIONEER NORTH AMERICA, INC.,
PIONEER ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY
TAIWAN CO., LTD. AND PIONEER ELECTRONICS OF CANADA, INC, by
their counsel**



Signature of Authorized Signatory:

Name of Authorized Signatory:

W. Michael G. Osborne

Cassels Brock & Blackwell LLP

Counsel for the Settling Defendants

SCHEDULE “A”

PROCEEDINGS

Proceeding	Plaintiffs	Defendants	Settlement Class
Supreme Court of British Columbia (Vancouver Registry) (Court File No. S-106462) (the “ BC Action ”)	Neil Godfrey	Sony Corporation, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony Of Canada Ltd., Sony Electronics, Inc., NEC Corporation, NEC Canada Inc., Toshiba Corporation, Toshiba Samsung Storage Technology Corporation, Toshiba Samsung Storage Technology Korea Corporation, Toshiba of Canada Ltd., Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., Samsung Electronics America, Inc., Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., Hitachi Ltd., LG Electronics, Inc., LG Electronics Canada, LG Electronics USA, Inc., TEAC Corporation, TEAC America, Inc., TEAC Canada, Ltd., Koninlijke Philips Electronics N.V., Lite-On It Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., Philips Electronics Ltd., Quanta Storage, Inc., Quanta Storage America, Inc., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., BenQ Corporation, BenQ America Corporation, BenQ Canada Corp., Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd. and Pioneer Electronics of Canada Inc.	All Persons resident in Canada who purchased an ODD and/or an ODD Product during the Class Period, except Excluded Persons and Persons who are included in the Quebec Settlement Class. (the “ BC Settlement Class ”)
Superior Court of Québec (Québec) (File No. 500-06-000504-106) (the “ Quebec Action ”)	Carlos Fogelman	Sony Corporation, Sony of Canada Ltd., Sony Corporation of America, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony NEC Optiarc, Inc., Toshiba Corporation, Toshiba America Consumer Products, LLC, Toshiba of Canada Limited, Samsung Electronics Company, Ltd., Samsung Electronics America Inc., Samsung Electronics Canada	All Persons in Quebec who purchased an ODD and/or an ODD Product during the Class Period, except the Excluded Persons. (the “ Quebec Settlement Class ”)

Proceeding	Plaintiffs	Defendants	Settlement Class
		Inc., Toshiba Samsung Storage Technology Corporation, Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., LG Electronics, Inc., LG Electronics Canada, LG Electronics USA, Inc., Hitachi-LG Data Storage, Inc., Koninklijke Philips Electronics N.V., Philips Electronics North America Corporation, Philips Canada Ltd., Lite-On It Corporation, Philips & Lite-On Digital Solution Corporation, Philips & Lite-On Digital Solutions USA, Inc., NEC Corporation, NEC Electronics America, Inc., TEAC Corporation, TEAC America, Inc., TEAC Canada Ltd., Panasonic Corporation of North America, Panasonic Canada Inc., BenQ America Corporation, BenQ Canada Corp., Pioneer North America, Inc., Pioneer Electronics (USA) Inc., and Pioneer Electronics of Canada, Inc.	

SCHEDULE “B”

**FORM OF BC CERTIFICATION FOR
SETTLEMENT PURPOSES AND NOTICE APPROVAL ORDER**

No. S-106462
Vancouver Registry

In the Supreme Court of British Columbia

Between:

NEIL GODFREY

Plaintiff

and:

**SONY CORPORATION, SONY OPTIARC, INC., SONY OPTIARC AMERICA
INC., SONY OF CANADA LTD., SONY ELECTRONICS, INC., NEC
CORPORATION, NEC CANADA INC., TOSHIBA CORPORATION, TOSHIBA
SAMSUNG STORAGE TECHNOLOGY CORP., TOSHIBA SAMSUNG
STORAGE TECHNOLOGY CORP. KOREA, TOSHIBA OF CANADA LTD.,
TOSHIBA AMERICA INFORMATION SYSTEMS, INC., SAMSUNG
ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS CANADA INC.,
SAMSUNG ELECTRONICS AMERICA, INC., HITACHI-LG DATA STORAGE,
INC., HITACHI-LG DATA STORAGE KOREA, INC., HITACHI LTD., LG
ELECTRONICS, INC., LG ELECTRONICS CANADA, LG ELECTRONICS
USA, INC., TEAC CORPORATION, TEAC AMERICA, INC., TEAC CANADA,
LTD., KONINLIJKE PHILIPS ELECTRONICS N.V., LITEON IT
CORPORATION OF TAIWAN, PHILIPS & LITE-ON DIGITAL SOLUTIONS
CORPORATION, PHILIPS & LITE-ON DIGITAL SOLUTIONS USA, INC.,
PHILIPS ELECTRONICS LTD., QUANTA STORAGE, INC., QUANTA
STORAGE AMERICA, INC., PANASONIC CORPORATION, PANASONIC
CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC., BENQ
CORPORATION, BENQ AMERICA CORPORATION BENQ CANADA CORP.,
PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER
ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD.
AND PIONEER ELECTRONICS OF CANADA INC.**

Defendants

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

**ORDER MADE AFTER APPLICATION REGARDING
PIONEER CERTIFICATION FOR SETTLEMENT AND
NOTICE OF SETTLEMENT APPROVAL HEARING**

BEFORE))	
)	THE HONOURABLE)	dd/mm/yyyy
)	MR. JUSTICE MASUHARA)	
))	
))	
))	

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on [dd/mmm/yyyy] and on hearing [**counsel appearing**]; and on reading the materials filed, including the Settlement Agreement; and on the consent of the Settling Defendants; and the Non-Settling Defendants taking no position;

THIS COURT ORDERS that:

1. 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.

Certification for Settlement

2. The BC Action is certified as a class proceeding as against, Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd., and Pioneer Electronics Of Canada Inc. (collectively, the "Settling Defendants") for settlement purposes only.

3. The BC Settlement Class is defined as:

All Persons resident in Canada who purchased an ODD and/or an ODD Product during the Class Period, except Excluded Persons and Persons who are included in the Quebec Settlement Class.

4. Neil Godfrey is appointed as the representative plaintiff for the BC Settlement Class.

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

Did the Settling Defendants, or any of them, conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, ODD directly or indirectly in Canada during the Class Period? If so, what damages, if any, are payable by the Settling Defendants, or any of them, to the Settlement Class Members?

6. The certification of the BC Action as against the Settling Defendants for settlement purposes pursuant to this Order, including the definition of the BC Settlement Class, the Class Period and the Common Issue, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing BC Action.

7. This Order is binding upon each BC Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rule 20-2 of the Supreme Court Civil Rules are dispensed with in respect of the BC Action.

Notices of Certification for Settlement and Settlement Approval Hearing

7. The long-form Notice of Certification and Settlement Approval Hearing substantially in the form attached hereto as **Schedule "A"** is approved.

8. The short-form Notice of Certification and Settlement Approval Hearing substantially in the form attached hereto as **Schedule "B"** is approved.

9. The publication-form Notice of Certification and Settlement Approval Hearing substantially in the form attached hereto as **Schedule "C"** is approved

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

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

12. Endorsement of this Order by counsel for the Non-Settling Defendants and Settled 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

Reidar Mogerman

Signature of lawyer for the Settling Defendants

W. Michael G. Osborne

By the Court

Registrar

SCHEDULE "C"
FORM OF BC SETTLEMENT APPROVAL ORDER

No. S-106462
Vancouver Registry

In the Supreme Court of British Columbia

Between:

NEIL GODFREY

Plaintiff

and:

**SONY CORPORATION, SONY OPTIARC, INC., SONY OPTIARC AMERICA
INC., SONY OF CANADA LTD., SONY ELECTRONICS, INC., NEC
CORPORATION, NEC CANADA INC., TOSHIBA CORPORATION, TOSHIBA
SAMSUNG STORAGE TECHNOLOGY CORP., TOSHIBA SAMSUNG
STORAGE TECHNOLOGY CORP. KOREA, TOSHIBA OF CANADA LTD.,
TOSHIBA AMERICA INFORMATION SYSTEMS, INC., SAMSUNG
ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS CANADA INC.,
SAMSUNG ELECTRONICS AMERICA, INC., HITACHI-LG DATA STORAGE,
INC., HITACHI-LG DATA STORAGE KOREA, INC., HITACHI LTD., LG
ELECTRONICS, INC., LG ELECTRONICS CANADA, LG ELECTRONICS
USA, INC., TEAC CORPORATION, TEAC AMERICA, INC., TEAC CANADA,
LTD., KONINLIJKE PHILIPS ELECTRONICS N.V., LITEON IT
CORPORATION OF TAIWAN, PHILIPS & LITE-ON DIGITAL SOLUTIONS
CORPORATION, PHILIPS & LITE-ON DIGITAL SOLUTIONS USA, INC.,
PHILIPS ELECTRONICS LTD., QUANTA STORAGE, INC., QUANTA
STORAGE AMERICA, INC., PANASONIC CORPORATION, PANASONIC
CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC., BENQ
CORPORATION, BENQ AMERICA CORPORATION BENQ CANADA CORP.,
PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER
ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD.
AND PIONEER ELECTRONICS OF CANADA INC.**

Defendants

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

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

BEFORE)	THE HONOURABLE)	dd/mm/yyyy
)	MR. JUSTICE MASUHARA)	
))	
))	
))	

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on [dd/mmm/yyyy] and on hearing [**counsel appearing**]; and on reading the materials filed, including the Settlement Agreement; and on the consent of the Settling Defendants; and the Non-Settling Defendants taking no position;

This Court certified the BC Action as a class proceeding as against Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd., and Pioneer Electronics of Canada Inc. (collectively the “Settling Defendants”) for settlement purposes only on .

Settlement Class Members were previously provided with the opportunity to opt-out of the Proceedings. The deadline for opting-out was April 15, 2018. No persons opted-out of the Proceedings.

Settlement Class Members were advised of the right to object to the Settlement Agreement. The deadline for objecting was . Class Counsel received objections.

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the settlement agreement reached with the Settling Defendants, dated , 2020 (the "Settlement Agreement") attached as Schedule "A" apply to and are incorporated into this Order.
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
4. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 as amended and shall be implemented in accordance with its terms.
5. The Settlement Agreement is incorporated by reference to and forms part of this Order and is binding upon the BC Plaintiff and all BC Settlement Class Members.

6. Upon the Effective Date,
 - (a) each BC Settlement Class Member shall be deemed to have irrevocably consented to the dismissal of any Other Actions he, she or it has commenced as against the Releasees, without costs and with prejudice; and
 - (b) each Other Action commenced in British Columbia by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
7. This Order, including the Settlement Agreement, is binding upon each member of the BC Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Action.
8. Upon the Effective Date, in accordance with the Settlement Agreement, each Releasor resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors covenants and undertakes not to sue and undertakes not to make any claim in any way nor to threaten, commence, institute, prosecute, participate in, maintain or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims, whether on their own behalf or as part of any putative, proposed or certified class of purchasers or consumers. 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.
9. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, participate in, provide assistance for, intervene in, 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 proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee whether pursuant to the *Negligence Act*, RSBC 1996, c. 333, *Civil Code of Quebec* or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants, or named or unnamed alleged co-conspirators who are not Releasees or, if the BC Action is decertified or the Quebec Action is not authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.
10. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order.

11. If this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise, is a legally recognized claim:

- (a) the BC Plaintiff and the BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the BC Plaintiff and the BC Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitution, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the BC Plaintiff and BC Settlement Class Members, if any, and, for greater certainty, the BC Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and
- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Action, whether or not the Releasees remain in the BC Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Action and shall not be binding on the Releasees in any other proceeding.

12. 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 favour of BC Settlement Class Members in the BC Action or the rights of the BC Plaintiff and the BC Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

13. A Non-Settling Defendant may, on application to this Court and on at least twenty (20) days notice to Counsel for the Settling Defendants seek orders for the following:

- (a) documentary discovery and a list of document(s) in accordance with the *Supreme Court Civil Rules* from the Settling Defendants;
- (b) oral discovery of a representative(s) of the Settling Defendants, the transcript of which may be read in at trial;
- (c) leave to serve a notice(s) to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of a representative(s) of the Settling Defendants to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.

14. The Settling Defendants retain all rights to oppose such application(s) brought under paragraph 13. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or information obtained from discovery in accordance with paragraph 13. Notwithstanding any provision in this Order, on any application brought pursuant to paragraph 13 the Court may make such orders as to costs and other terms as it considers appropriate.

15. A Non-Settling Defendant may effect service of the application(s) referred to in paragraph 13 above on the Settling Defendants by service on their counsel of record in the BC Action.

16. For the purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants and the other Releasees acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement.

17. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in the BC Action.

18. The Releasees have no responsibility for and no liability whatsoever relating to:

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

19. BC Counsel and the Claims Administrator shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class and the Settling Defendants, as applicable, and make only such payments therefrom as are provided for in the Settlement Agreement, pending further Orders of the Courts.

20. The Settlement Amount shall be held in the Trust Account by Camp Fiorante Matthews Mogerman LLP for the benefit of Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of

the Settlement Classes in the continued prosecution of the Proceedings against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Classes to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.

21. In the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.

22. Approval of the Settlement Agreement is contingent upon approval by the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Quebec Court and the Quebec Action is declared settled out of court with prejudice and without costs and without reservation as against the Settling Defendants. If such relief is not secured in Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the BC Action and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

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

24. Upon the Effective Date, the BC Action is hereby dismissed against the Settling Defendants without costs and with prejudice.

25. The approval of the Settlement Agreement and any reasons given in relation thereto, except any reasons given by the BC Court in connection with paragraphs 10 to 15 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing BC Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the BC Action, as against the Non-Settling Defendants.

26. Endorsement of this Order by counsel for the Non-Settling Defendants and Settled 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

Reidar Mogerma

Signature of lawyer for the Settling Defendants

W. Michael G. Osborne

By the Court

Registrar