

**AMENDED PAXIL® AND PAXIL CR™
NATIONAL CLASS ACTION SETTLEMENT AGREEMENT**

WHEREAS the Plaintiffs brought this proceeding under the *Class Proceedings Act*, SA 2003 c C-16.5, and the Honourable Associate Chief Justice J.D. Rooke certified the Class Proceeding by *Order (Class Certification)* pronounced November 17th, 2022 and filed December 19th, 2022;

AND WHEREAS the Defendants appealed all aspects of the *Order (Class Certification)* by *Civil Notice of Appeal*, filed December 16th, 2022, and deny that any Damages are payable and that the Plaintiffs and/or other Class Members are entitled to relief, and have not conceded but deny all liability and believe that they have reasonable defences to the Class Proceeding and the Allegations;

AND WHEREAS the common issues proposed for certification relate to allegations that Paxil® and Paxil CR™ cause or increase the likelihood of certain congenital malformations in children born to women who ingested Paxil® or Paxil CR™ while pregnant, and that the Defendants failed to provide an appropriate warning of that risk during the Class Period;

AND WHEREAS counsel for the Plaintiffs have conducted a thorough analysis of the merits of the Allegations, and have also taken into account the extensive burdens and expense of litigation, including the risks of trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arm's length negotiations, both directly and with the assistance of a mediator, the Parties wish to settle any and all issues between the Defendants and Class Members in any way relating to the Allegations;

AND WHEREAS after their investigation, the Representative Plaintiff and Class Counsel have concluded that this *Settlement Agreement* is fair, reasonable, and in the best interests of the Class;

AND WHEREAS for the purposes of settlement, and contingent on orders by the Court approving the settlement and the terms of this *Settlement Agreement*, the Representative Plaintiff, on her behalf, on behalf of the minor, Muzzafar Hussain, and on behalf of Class Members, has consented to a dismissal of the Class Proceeding against the Defendants and the release of the Defendants from liability in accordance with the terms of this *Settlement Agreement* having been fully advised of the terms of this *Settlement Agreement* and the settlement herein;

AND WHEREAS the Defendants have entered into this *Settlement Agreement* without any admission of liability;

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 Class Proceeding be settled and dismissed on the following terms and conditions:

Section 1 – Definitions

1.1 For the purposes of this *Settlement Agreement*, including its recitals and schedules, the following definitions apply:

- (a) **“Account”** means a special interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank into which the Compensation Fund shall be paid by the Defendants and on which the interest accrued will be added to the Compensation Fund.
- (b) **“Administration Costs”** means the costs of giving the *Notice of Certification*, *Notice of Settlement Approval Hearing*, and the *Notice of Settlement Approval* and the amounts

invoiced to administer and distribute the Compensation Fund, including the expenses and professional fees of the Notice Provider, Claims Officer, and the Claims Administrator.

- (c) **“Allegations”** means the assertions of fact or law, causes of action, injuries, and damages that were pleaded in the *Amended Amended Statement of Claim*, filed January 9th, 2019.
- (d) **“Certification Order”** means the *Order (Class Certification)* of the Honorable Associate Chief Justice Rooke, pronounced November 17th, 2022 and filed December 19th, 2022.
- (e) **“Claim”** means the claim made by a Claimant in accordance with the procedure in the Distribution Protocol, which is attached hereto as **Schedule “D”**.
- (f) **“Claimant Child”** means a Class Member who was born with a Qualifying Congenital Malformation, or his or her estate or legal representative, who files a Claim pursuant to the terms hereof.
- (g) **“Claimant Mother”** means a Class Member who was prescribed Paxil® or Paxil CR™ in Canada and subsequently aborted, delivered, or miscarried children with Qualifying Congenital Malformations after ingesting Paxil® or Paxil CR™ while pregnant, or her estate or legal representative, who files a Claim pursuant to the terms hereof.
- (h) **“Claims Administrator”** means Trilogy Class Action Services, the person or entity agreed to by the Parties and approved by the Court to assist the Claims Officer with the administration of the claims process in accordance with the Distribution Protocol.
- (i) **“Claims Deadline”** means 90 days from the publication of the *Notice of Settlement Approval*, unless extended as provided for in the *Settlement Approval Order*.
- (j) **“Claims Officer”** means a qualified and independent physician agreed to by the Parties who will determine, *inter alia*: whether a Claimant was born with a Qualifying Congenital Malformation; identify the category in the Distribution Protocol within which each Claim falls; and assign a points value within the range identified in the Distribution Protocol.
- (k) **“Claims Perfection Deadline”** means 90 days after the Claims Deadline.
- (l) **“Class”** means women who were prescribed Paxil® or Paxil CR™ in Canada and subsequently aborted, delivered, or miscarried children with congenital malformations after ingesting Paxil® or Paxil CR™ while pregnant; family members who may make claims under *Family Compensation Legislation* following the death of, or injury in relation to the congenital malformations; children born alive to such women; and provincial and territorial governments who paid health care costs on their behalf.
- (m) **“Class Counsel”** means
 - (i) Casey R. Churko, practicing through KoT Law Professional Corporation; and
 - (ii) Clint Docken, K.C., practicing through Clint Docken Professional Corporation.
- (n) **“Class Counsel Disbursements”** means the agreed amount of legitimate and reasonable disbursements incurred by or at the request of Class Counsel and Former Class Counsel between the filing of this Class Proceeding (and no other class action or class proceeding filed anywhere in Canada at any time relating to the prescription or use of Paxil®, Paxil CR™, or paroxetine) and the Effective Date; except that the disbursements that may be claimed by Former Class Counsel shall further be limited to

those incurred before April 12th, 2019, being the date that the Plaintiffs served a *Notice of Change of Representation*. The amount of disbursements as agreed to is: \$175,000 for Napoli Shkolnik Canada; and \$175,000 for Merchant Law Group LLP.

- (o) **“Class Counsel Fees”** is CDN \$2,000,000, separate and apart from Lawyers’ Fees, to be paid as follows:
 - (i) \$850,000, to be paid to KoT Law Professional Corporation;
 - (ii) \$50,000, to be paid to Clint Docken Professional Corporation; and
 - (iii) \$1,100,000, to be paid to Former Class Counsel in full and final satisfaction of the undertaking that the Honourable Associate Chief Justice J.D. Rooke referenced at ¶38 of *Singh v Glaxosmithkline Inc.*, 2021 ABQB 316.
- (p) **“Class Member”** means any person, or his/her estate or legal representative, who is a member of the Class and did not deliver an *Opt-Out Form* to the Notice Provider on or before April 8th, 2024.
- (q) **“Class Period”** means the period that runs from January 1st, 1993 to April 8th, 2024.
- (r) **“Class Proceeding”** means the proceeding commenced by Muzzafar Hussain, by his Mother and Litigation Guardian, Fiona Singh, and the said Fiona Singh, in the Court of King’s Bench of Alberta against the Defendants (Court File No. 1201-12838), and that was certified as a class proceeding by the *Certification Order*.
- (s) **“Compensation Fund”** means the Settlement Fund after deducting: Administration Costs incurred before the *Settlement Approval Order* is made; \$525,000 to resolve Health Insurer Claims; the Class Counsel Fees and Class Counsel Disbursements and applicable taxes thereon; and the Honorarium; and after adding the interest while the Settlement Fund is held in the Account. After deductions, the Administration Costs incurred after the *Settlement Approval Order* and Compensatory Payments will be fully paid from the remainder of the Compensation Fund.
- (t) **“Compensatory Payments”** means the amounts that are allocated to Eligible Claimants out of the Compensation Fund, including the amounts allocated for Lawyers’ Fees.
- (u) **“Court”** means the Court of King’s Bench of Alberta.
- (v) **“Court Approval Date”** means the later of September 24th, 2024 and the date on which the Court approves the *Settlement Agreement*.
- (w) **“Damages”** means all claims for pain and suffering, loss of guidance, care and companionship, non-pecuniary claims, in trust claims, subrogated claims (in the form of claims of Health Insurers and non-governmental insurers), past and future income loss claims, past and future care claims, aggravated or punitive damages, and special damages.
- (x) **“Distribution Protocol”** means the plan setting out a Class Member’s entitlement to make a Claim under this *Settlement Agreement* and how Compensatory Payments to Eligible Claimants and Lawyers’ Fees shall be determined and distributed, as approved by the Court as part of the Settlement Approval Hearing, a draft of which is attached hereto as **Schedule “D”**.
- (y) **“Effective Date”** means the later of:

- (i) 60 days after the Court Approval Date if there is no appeal from the *Settlement Approval Order*; and
 - (ii) the date on which any appeals from the *Settlement Approval Order* have been quashed or finally disposed of.
- (z) **“Eligible Claimant”** means a Claimant, or his or her estate representative, who has satisfied the Claims Officer that he or she is a Class Member who is eligible for a Compensatory Payment, and, in particular that:
- (i) the Claimant Mother or the biological mother of a Claimant Child was prescribed Paxil® or Paxil CR™ for use during her First Trimester of pregnancy;
 - (ii) the Claimant Mother or the biological mother of a Claimant Child took Paxil® or Paxil CR™ during the Class Period while in her First Trimester of pregnancy who delivered a Claimant Child, born alive, who has been diagnosed with one or more Qualifying Congenital Malformations; and
 - (iii) there is a medical or other reliable record or affidavit indicating that (1) a physician determined that the Claimant Child had or has one or more Qualifying Congenital Malformations, and (2) the biological mother of the Claimant Child took Paxil® or Paxil CR™ (and not generic paroxetine) during her First Trimester of pregnancy.

Further information with respect to eligibility is contained within the Distribution Protocol.

- (aa) **“First Trimester”** means the first 13 weeks of pregnancy calculated from the date of the last menstrual period.
- (bb) **“Former Class Counsel”** means E.F. Anthony Merchant, K.C. of Merchant Law Group LLP (being Class Counsel before April 12th, 2019).
- (cc) **“Health Insurers”** means all of the provincial and territorial ministries of health or governmental bodies that provide publicly funded plans of health care in Canada.
- (dd) **“Health Insurer Claims”** means the entitlement of the Health Insurers to any subrogated or direct claims arising from the provision of health care services to Class Members in relation to the Allegations, and pursuant to legislation that permits the recovery of health care costs or medical expenses from third parties.
- (ee) **“Honorarium”** means the amount of CDN \$50,000.
- (ff) **“Lawyers’ Fees”** are, subject to section 8.5, up to 35% of Compensatory Payments paid to Eligible Claimants who are represented by Class Counsel or another lawyer of their choosing who has a valid and enforceable retainer agreement with an Eligible Claimant. Lawyers’ Fees paid to lawyers other than Class Counsel shall not exceed 25% where the retainers were executed before the *Notice of Settlement Approval Hearing* is given and 10% where the retainers were executed after. Class Counsel will receive 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented.
- (gg) **“Notice Provider”** means Trilogy Class Action Services, who provided the *Notice of Certification* and the *Notice of Settlement Approval Hearing* and will provide the *Notice of Settlement Approval*.

- (hh) **“Notice of Certification”** means the form of notice, approved by the Court on February 8th, 2024 that informed Class Members of certification of the Class Proceeding.
- (ii) **“Notice of Settlement Approval”** means the form of notice, agreed to by the Parties and approved by the Court, and to be given within 30 days of the Court Approval Date, that informs Class Members, including Health Insurers, of the approval of this *Settlement Agreement*, the process for making Claims, and the Distribution Protocol, a draft of which is attached hereto as **Schedule “A”**.
- (jj) **“Notice of Settlement Approval Hearing”** means the form of notice, approved by the Court as Schedule 1 to the *Order (Settlement Approval Hearing Notice)* pronounced June 5th, 2024 and filed June 10th, 2024, that informed Class Members, including Health Insurers, of the Settlement Approval Hearing.
- (kk) **“Notice Plan for Notice of Settlement Approval”** is the means used for giving the *Notice of Settlement Approval*, attached hereto as **Schedule “B”**.
- (ll) **“Opt-Out Form”** means the form approved by the Court as Schedule 2 to the *Order (Certification Notice)*, pronounced February 8th, 2024 and filed February 9th, 2024.
- (mm) **“Parties”** means the Representative Plaintiff and the Defendants.
- (nn) **“Qualifying Congenital Malformations”** as defined include only the following structural congenital malformations (birth defects):
- (i) anencephaly;
 - (ii) spina bifida;
 - (iii) encephalocele;
 - (iv) craniosynostosis;
 - (v) cleft lip;
 - (vi) cleft palate;
 - (vii) structural cardiovascular defects;
 - (viii) diaphragmatic hernia;
 - (ix) gastroschisis;
 - (x) omphalocele;
 - (xi) hypospadias;
 - (xii) undescended testes; and
 - (xiii) club foot.
- (oo) **“Released Claims”** means any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, whether personal or subrogated, whenever incurred for liabilities of any nature whatsoever, including without limitation claims, demands, actions, suits or causes of action for personal injuries, general damages, special damages, punitive damages, interest, costs, expenses, penalties, and lawyers’ fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, arise in law, under statute or in equity, that the Plaintiffs, the Releasors, Class Members (excluding provincial and territorial governments who paid health care costs, which released claims are as specified in Appendix A), or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating directly or indirectly, to the production, manufacture, design, sale, marketing, advertising, sale, possession, handling, ingestion, exposure, or use of Paxil® or Paxil CR™ as they relate to the conduct of the proceedings or in any other manner whatsoever to the Allegations.
- (pp) **“Releasees”** means, jointly and severally, the Defendants, GlaxoSmithKline Inc., GlaxoSmithKline LLC, and GlaxoSmithKline PLC, and their respective present and

former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing as well as anyone involved in the distribution, prescription or dispensation of Paxil® or Paxil CR™ to the Class Member and it is agreed that to the extent that a Releasee is not a Party to the *Settlement Agreement* all such releases are intended third party beneficiaries of the *Settlement Agreement*.

- (qq) **“Releasors”** means, jointly and severally, individually and collectively, the Plaintiffs, Class Members (excluding provincial and territorial governments who paid health care costs), and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns.
- (rr) **“Representative Plaintiff”** means Fiona Singh.
- (ss) **“Settlement Agreement”** means this agreement, as executed by Class Counsel, Former Class Counsel, and counsel for the Defendants on behalf of, respectively, the Representative Plaintiff and the Defendants.
- (tt) **“Settlement Approval Hearing”** means the hearing at the Court to approve the dismissal of the Class Proceeding, the settlement, and the terms of this *Settlement Agreement* (including its *Schedules*).
- (uu) **“Settlement Approval Order”** means the Order of the Court approving the dismissal of the Action, the settlement, and the terms of this *Settlement Agreement*, which shall be substantially in the form attached as **Schedule “C”**.
- (vv) **“Settlement Fund”** means CDN \$7,500,000, and for greater clarity, will be the maximum amount paid by the Defendants in any and all circumstances, as described herein.
- (ww) **“Trilogy Invoices”** means the invoices delivered by Trilogy Class Action Services from time to time for services rendered as the Notice Provider and Claims Administrator in the implementation of this *Settlement Agreement*, including for services already provided respecting the *Notice of Certification* and the *Notice of Settlement Approval Hearing*.

Section 2 – Conditions Precedent To Settlement Approval

- 2.1 This *Settlement Agreement* is subject to and conditional upon Court approval and shall be null and void and of no force or effect if the *Settlement Approval Order* is not granted and sustained on any appeals therefrom.
- 2.2 Class Counsel shall ensure that, prior to or concurrently with filing the application for approval of the *Settlement Agreement*, that all Health Insurers have been provided with *Notice of the Settlement Approval Hearing*, have been asked to approve the *Settlement Agreement*, and have been asked to agree to sign a release agreeable to the Defendants that is in accordance with each Health Insurers’ respective subrogation and/or health care cost recovery legislation. Class Counsel shall also make best efforts to ensure that, prior to the Settlement Approval Hearing, any documentation required by the Health Insurers in relation to the approval of the *Settlement Agreement*, such as but not limited to the *Notice of Proposed Terms of Settlement* pursuant to Section 13 of the *Health Care Costs Recovery Act* (British Columbia), has been requested from, or completed and provided by, the Health Insurers.

Section 3 – Settlement Approval

- 3.1 The Parties shall use their best efforts in good faith to effect this *Settlement Agreement*, both before and after it receives Court approval. The Representative Plaintiff shall bring applications seeking approval of: the appointment of the Notice Provider; the appointment of the Claims Administrator; the content and means of giving the *Notice of Settlement Approval*; the Distribution Protocol; and this *Settlement Agreement* and the settlement outlined herein.
- 3.2 In the event that: (1) the Court declines to approve this *Settlement Agreement* or any part hereof; or (2) the Court order approving this *Settlement Agreement* does not become a final order; then this *Settlement Agreement* shall, unless the Parties agree otherwise, be terminated and, except as provided for herein, it shall be null and void and will have no further force or effect, shall not be binding on the Parties or the Class, and shall not be used as evidence or otherwise in any litigation in accordance with section 9.2 of this *Settlement Agreement*, or disclosed to anyone other than as may be required by law or agreed upon by the Parties.

Section 4 – Settlement Fund

- 4.1 The Settlement Fund is intended to compensate Class Members in relation to Claims arising from the Allegations, and to pay: the Health Insurer Claims; the Class Counsel Fees, Lawyers' Fees, Class Counsel Disbursements and applicable taxes thereon; the Honorarium; the Administration Costs; and any such further amounts as may be payable in relation to the settlement and Class Proceeding.
- 4.2 The maximum, all-inclusive payment the Defendants will make, in full and final satisfaction of all claims, costs and expenses, including the Claims of the Plaintiffs, Claims of the Class Members, Health Insurer Claims, Class Counsel Fees and Lawyers' Fees and Class Counsel Disbursements plus applicable taxes thereon, Honorarium, and Administration Costs (which include the Trilogy Invoices), is CDN \$7,500,000.
- 4.3 On the Effective Date, the Defendants shall pay the Settlement Fund to the Claims Administrator in trust. The Defendants shall have no responsibility or liability, under any circumstances, for any additional or further payments under this *Settlement Agreement* or in relation to the settlement and/or Class Proceeding, including as it pertains to any dispute, arisen, arising, or yet to arise, as to the Class Counsel Fees, Class Counsel Disbursements, Lawyers' Fees, the Honorarium, the Trilogy Invoices, Administration Costs, or costs from any action or proceeding relating to the subject matter of the Class Proceeding. In the event that any such dispute arises, the Defendants will be immediately notified of the dispute by Class Counsel, and will have the right, at their option, to participate and make submissions in the determination of that dispute by Court hearing if necessitated.

Section 5 – Notice Provider And Claims Administrator

- 5.1 Class Counsel has and shall continue to retain Trilogy Class Action Services as the Notice Provider, subject to the approval of the Court.
- 5.2 Class Counsel shall retain Trilogy Class Action Services as the Claims Administrator, subject to the approval of the Court.
- 5.3 The Claims Officer shall be agreed to by the Parties or be the subject of a further Order of the Court,
- 5.4 Before the Effective Date, Class Counsel and the Defendants paid or will pay the Notice Provider up to \$52,500, which the Parties agree would or will be divided equally between them. Class Counsel agrees and will ensure that the Notice Provider has already or will promptly prepare and

deliver corresponding Trilogy Invoices before payment is made. After the Effective Date, the Claims Administrator shall pay the Claims Administrator from the Account:

- (i) \$77,500 if the number of Eligible Claimants is between 1 and 49,
- (ii) \$102,500 if the number of Eligible Claimants is between 50 and 74, and
- (iii) \$127,250 if the number of Eligible Claimants is 75 or more.

All amounts stated in this section are exclusive of applicable taxes and the expenses of the Claims Administrator. Such expenses may be reimbursed to the Claims Administrator from the Account on a dollar-for-dollar basis based on the actual expenses incurred by the Claims Administrator. Such expenses are anticipated to include (but are not limited to) expenses for any long distance phone calls, postage, courier, bank fees, travel, and costs related to maintaining a post office box, toll-free telephone number, and claims portal devoted to the administration of this settlement.

- 5.5 The Claims Administrator shall receive the Claims of the Claimants provided these are initiated by the Claimants before the Claims Deadline or any extension thereof provided for herein, and shall assist the Claims Officer with the Claims Officer's determination of the amounts of Compensatory Payments and Lawyers' Fees in accordance with the Distribution Protocol.

Section 6 – Objections

- 6.1 Class Counsel will provide the Health Insurers with formal notice of the proposed settlement as required under applicable subrogation and/or health care costs recovery legislation, in addition to a copy of the *Settlement Agreement*.
- 6.2 Class Counsel will ensure that any revisions or objections to the *Settlement Agreement* and the terms therein are immediately brought to the attention of counsel for the Defendants.
- 6.3 A Class Member may object to the approval of this *Settlement Agreement* only by sending a written objection by courier, email, fax, or mail to the Notice Provider. Any objecting Class Member shall provide his or her name, contact information, and a brief statement of the nature and reasons for the objection.
- 6.4 The Claims Administrator shall report to the Court, by affidavit, with a copy to the Defendants, and provide copies of any objections received prior to the Settlement Approval Hearing.

Section 7 – Releases And Dismissals

- 7.1 Upon approval by the Court of this *Settlement Agreement*, and in consideration of the payment of the Settlement Fund, and for other valuable consideration set forth in this *Settlement Agreement*, the Releasers will be deemed and hereby expressly agree to forever and absolutely release the Releasees from the Released Claims, and further agree not to make any claim or take, participate in, or continue any proceedings (including a cross claim, third party or other claim) arising out of or relating to the subject matter of the Released Claims against the Releasees and/or any other person, corporation, or entity (including, without limitation, any pharmacists, pharmacies, health care professionals, health care providers, or health care facilities) that might give rise to a claim for damages and/or contribution and indemnity and/or other relief either generally or under the provisions of any provincial or territorial apportionment or contributory negligence legislation, and any amendments thereto, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.

- 7.2 The Releases and Dismissals set out herein apply to each Class Member whether or not the Class Member receives compensation under this *Settlement Agreement* as an Eligible Class Member and can be relied on as a defence in any further claim that may be advanced by any Class Member.
- 7.3 The Representative Plaintiff agrees to make best efforts to obtain through Class Counsel a full and final release of the claims of the Health Insurers in substantially the form attached hereto as **Appendix "A"** and the Releasors undertake to indemnify the Releasees from all awards, recoveries, amounts, costs and expenses incurred on account of any claims, liens, demands, rights, or causes of action by the Health Insurers and/or U.S. Medicare (if applicable) claiming a lien upon, subrogated interest in, or right or entitlement to the proceeds of this settlement, in whole or in part, for any reason, including the provision of medical and/or hospital care and/or the payment of medical and/or hospital expenses by any third party provider/payer, and/or a right to reimbursement or subrogation for any reason arising out of the consideration payable under this *Settlement Agreement*.
- 7.4 As of the Effective Date, the Class Proceeding shall be dismissed with prejudice and without costs and the Defendants shall abandon their appeal in the Alberta Court of Appeal.
- 7.5 The Defendants agree to further abandon any claim for costs against any Class Member who has been a plaintiff in any previously filed class action or other proceeding in Canada, and whether costs have been ordered to date or not.
- 7.6 After the Effective Date, any Class Member who has not opted out, will immediately dismiss on a with prejudice basis any action or proceeding pertaining to recovery relating to the subject matter of the Class Proceedings on a without costs basis, regardless of whether or not compensation is received under this *Settlement Agreement*, including the plaintiffs Megan and Tammy Thompson (Saskatchewan Court of King's Bench (QBG-PA-000276-2019)).
- 7.7 To the extent such action or proceeding is not dismissed within 30 days of the Effective Date as contemplated in section 7.6, the Plaintiff on behalf of each Class Member, agrees to consent to a dismissal or discontinuance of the action or proceeding at the request of, or on the application of the Defendants, on a with prejudice and without costs basis and to pay the legal costs associated with the steps taken by the Defendants.

Section 8 – Legal Fees

- 8.1 Class Counsel may bring applications at the Settlement Approval Hearing or on a subsequent date for Court approval of payment of the Class Counsel Fees and Class Counsel Disbursements and applicable taxes thereon. Notice of such a hearing will be provided to the Defendants. The Defendants will not oppose any applications for approval of the Class Counsel Fees, Class Counsel Disbursements, Honorarium, and Lawyers' Fees, insofar as any such applications are not contrary to the terms of this *Settlement Agreement*.
- 8.2 Class Counsel and other lawyers retained by an Eligible Claimant may charge Lawyers' Fees as a percentage of the Compensatory Payments paid to an Eligible Claimant that they represent after the determination of the Compensatory Payment by the Claims Officer, plus disbursements and applicable taxes, but subject to the limits provided for in section 8.5.
- 8.3 The amount of the Lawyers' Fees shall not exceed 35% of the Compensatory Payment allocated to any Class Member who is represented, subject to the limits provided for in section 8.5. For any Eligible Claimants who are unrepresented, Lawyers' Fees will be 15% of the Compensatory Payments to the Eligible Claimant.

- 8.4 The Claims Administrator shall pay each lawyer of Class Counsel and Former Class Counsel their respective shares of the Class Counsel Fees within 7 days of the Effective Date, and Lawyers' Fees plus disbursements and applicable taxes directly to Class Counsel and other lawyers retained by Eligible Claimants when payments are made to Eligible Claimants.
- 8.5 Notwithstanding any other provision of this *Settlement Agreement*, the aggregate amount of the Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) shall not exceed 33.33% of the Settlement Fund plus interest thereon, and the amount of the Class Counsel Fees shall not be less nor more than \$2,000,000 plus GST.

Section 9 – No Admission of Liability

- 9.1 The Parties agree that whether or not the *Settlement Agreement* is approved by the Court, the *Settlement Agreement* and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with the *Settlement Agreement*, and any action taken to carry out the *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 made in the Class Proceeding or in any other pleading filed by the Plaintiffs.
- 9.2 The Parties further agree that whether or not the *Settlement Agreement* is approved by the Court, neither the *Settlement Agreement* nor any document relating to it shall be disclosed as or offered in evidence in any action, claim, or proceeding in any court, agency, arbitration, or tribunal, except to seek Court approval of the *Settlement Agreement* or to give effect to and enforce the provisions of the *Settlement Agreement*.
- 9.3 The Parties further understand and agree that the Defendants have entered into this *Settlement Agreement* without any admission of liability, and that the *Settlement Agreement* is conditional on the agreement not being used as a precedent or in evidence in any proceedings whatsoever, regardless of venue or jurisdiction, whether between the Defendants and any other person, including by a party, legal counsel, or Class Member involved in this Class Proceeding at any point.

Section 10 – General Provisions

- 10.1 This *Settlement Agreement* shall be governed, construed, and interpreted in accordance with the laws of Alberta and Canada.
- 10.2 The Court shall retain exclusive jurisdiction in the implementation and administration of the *Settlement Agreement* and any disputes arising therefrom.
- 10.3 Class Counsel, the Defendants, or the Claims Administrator may apply to the case management judge in the Class Proceeding for directions in respect of the implementation and administration of this *Settlement Agreement*, including the Distribution Protocol.
- 10.4 Other than the payments contemplated under this *Settlement Agreement*, the Releasees shall have no responsibility for, and no liability with respect to, the administration of this *Settlement Agreement* and the Compensation Fund.
- 10.5 This *Settlement Agreement*, including its *Schedules*, constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and settlement terms in connection herewith.

- 10.6 The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this *Settlement Agreement*. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this *Settlement Agreement*, unless expressly incorporated herein.
- 10.7 This *Settlement Agreement* may not be modified or amended except on written consent of all Parties, and any such modification or amendment must be approved by the Court.
- 10.8 The representations and warranties contained in this *Settlement Agreement* shall survive its execution and implementation.
- 10.9 This *Settlement Agreement* may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an email or facsimile signature shall be deemed an original signature for purposes of executing this *Settlement Agreement*. This *Settlement Agreement* may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.
- 10.10 This *Settlement Agreement* has been the subject of negotiations, mediation, and further discussions among the Parties, 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.
- 10.11 The Parties further agree that the language contained 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*.
- 10.12 Class Counsel shall not publish on their website, or otherwise distribute, any documents relating to the Class Proceeding (including pleadings, expert reports, and transcripts) other than as may be required to advise of the fact that a settlement has occurred and to administer the approved *Settlement Agreement* in accordance with its terms.
- 10.13 Class Counsel confirms that all mediation and negotiations, direct or indirect, leading up to this *Settlement Agreement* are confidential and shall not be disclosed to the public by Class Counsel or the Parties themselves.
- 10.14 The Parties acknowledge that they have required and consented that this *Settlement Agreement* and all related documents be prepared in English and French. *Les parties reconnaissent avoir exigé et consenti à ce que cette Entente de Règlement et Quittance et tous les documents connexes soient rédigés en langue anglaise et française.*
- 10.15 The *Schedules* to this *Settlement Agreement* are as follows:
- (a) Schedule A – *Notice of Settlement Approval*
 - (b) Schedule B – *Notice Plan for Notice of Settlement Approval*
 - (c) Schedule C – *Settlement Approval Order*
 - (d) Schedule D – *Distribution Protocol*
 - (e) Schedule E – *Claim Form*
- 10.16 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*.
- 10.17 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, Class Counsel:

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Randy Sutton

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Email: Randy.Sutton@nortonrosefulbright.com

IN WITNESS WHEREOF, each of the signatories, whether personally or by counsel, has caused this *Settlement Agreement* to be executed on her/his/their behalf as follows:

Dated: _____
Casey R. Churko, as Class Counsel on behalf of the Plaintiffs

Dated: _____
E.F. Anthony Merchant, K.C., as Former Class Counsel

Dated: _____
Norton Rose Fulbright Canada LLP on behalf of the Defendants