

**PARKING HEATERS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Between:

TFI TRANSPORT 11 INC. (ACTING AS RECEIVER AND LIQUIDATOR OF TRANSPORT TFI  
6, S.E.C.), JOHN DEVRIES, and DUMAS TRUCKING LTD.  
(the “**Plaintiffs**”)

- and -

EBERSPAECHER CLIMATE CONTROL SYSTEMS USA INC. (FORMERLY KNOWN AS  
ESPAR INC.), EBERSPAECHER CLIMATE CONTROL SYSTEMS CANADA INC. (FORMERLY  
KNOWN AS ESPAR PRODUCTS INC.), “ESPAR CLIMATE CONTROL SYSTEMS”,  
EBERSPAECHER CLIMATE CONTROL SYSTEMS INTERNATIONAL GMBH (FORMERLY  
KNOWN AS EBERSPAECHER CLIMATE CONTROL SYSTEMS INTERNATIONAL  
BETEILIGUNGS-GMBH), EBERSPAECHER CLIMATE CONTROL SYSTEMS GMBH  
(FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO. KG) AND EBERSPAECHER  
GRUPPE GMBH AND CO. KG.  
(the “**Settling Defendants**”)

Executed July 19, 2024

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**RECITALS**

- A. WHEREAS the Proceedings were commenced by the Ontario Plaintiff in London, Ontario, the BC Plaintiff in Vancouver, British Columbia and the Québec Plaintiff in Montréal, Québec;
- B. WHEREAS the Plaintiffs allege in the Proceedings that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Parking Heaters in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law during the Class Period;
- C. WHEREAS the Québec Action has been authorized, by judgment of the Québec Court, on December 20, 2017, and TRANSPORT TFI 6, S.E.C. was appointed representative of the Québec Settlement Class;
- D. WHEREAS on or about September 27, 2021, TRANSPORT TFI 6, S.E.C. transferred, conveyed and assigned all its rights, titles and interests in and to all of its properties and assets and all its liabilities and obligations to TFI TRANSPORT 11 INC.;
- E. WHEREAS on or about September 27, 2021, TRANSPORT TFI 6, S.E.C. appointed TFI TRANSPORT 11 INC. its true and lawful attorney, with full power to sign any document or agreement for and in its name;
- F. WHEREAS TRANSPORT TFI 6, S.E.C. has been finally wound up and TFI TRANSPORT 11 INC. will file a Notice of Continuance of Proceedings with the Québec Court;
- G. WHEREAS the Ontario Action was certified, on consent, on a national basis excluding Québec, by order of the Ontario Court, on December 14, 2020;
- H. WHEREAS as a result of the Ontario Action being certified and the time period expiring for any appeals, the BC Actions were permanently stayed subject to further order of the BC Court;
- I. WHEREAS as a result of the Ontario Action having previously been certified, on consent, on behalf of a national class excluding Québec and as a result of the BC Actions being permanently stayed, the Parties have agreed to seek approval of the Settlement Agreement before the Ontario Court and the Québec Court;

- J. WHEREAS the deadline for opting out of the Québec Action was June 1, 2018 and the deadline for opting out of the Ontario Action was April 5, 2021 and no class members elected to opt out;
- K. WHEREAS there has been no determination or finding of any liability or wrongdoing on the part of the Settling Defendants in the Proceedings;
- L. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct, harm or damage, as alleged in the Proceedings, or otherwise, and the Settling Defendants maintain that they have good and valid defences to the claims asserted against them;
- M. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;
- N. WHEREAS the Settling Defendants represent and warrant that, during the Class Period: (i) their European sales of Parking Heaters were not targeted at the Canadian markets and that their sales of Parking Heaters to North American customers or North American affiliates of European customers were made through the Settling Defendants' North American subsidiaries or affiliates and through their North American sales channels; (ii) they have no specific knowledge that any material number of Parking Heaters were purchased from them in Europe by European OEMs for North American OEM affiliates; and (iii) they have no internal records or analysis relating to Parking Heaters sold by them in Europe being installed in commercial vehicles exported to Canada, but believe that such sales were *de minimis*;
- O. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all Released Claims, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- P. WHEREAS the Settling Defendants have agreed to provide cooperation to the Plaintiffs in addition to the Settlement Amount, which cooperation is a material factor to the Plaintiffs in the formulation of the terms of this Settlement Agreement;

- Q. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions, negotiations and mediation resulting in this Settlement Agreement;
- R. WHEREAS as a result of these settlement discussions, negotiations and mediation, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the classes they represent or seek to represent, subject to approval of the Courts;
- S. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes they represent or seek to represent;
- T. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings and the Released Claims as against the Releasees in the Proceedings; and
- U. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes they represent and/or will seek to represent in their respective Proceedings.

**NOW THEREFORE**, in consideration of the covenants, representations, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Ontario Action be settled and dismissed with prejudice as to the Settling Defendants, without costs as to the Plaintiffs, the classes they represent or seek to represent, or the Releasees, that the Québec Action shall be settled out of court without costs, subject to the approval of the Courts, and that the BC Actions be discontinued 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 the costs of claims administration, but excluding Class Counsel fees.
- (2) **Approval Hearings** mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) **BC Actions** means the proceedings commenced by the BC Plaintiff before the BC Court that are identified in Schedule "A" to this Settlement Agreement.
- (4) **BC Counsel** means CFM Lawyers LLP.
- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **BC Plaintiff** means Dumas Trucking Ltd.
- (7) **Claims Administrator** means the firm to be proposed by Class Counsel and appointed by the applicable Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (8) **Class Counsel** means Ontario Counsel, BC Counsel and Québec Counsel.
- (9) **Class Counsel Disbursements** include the disbursements, interest and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse cost awards issued against the Plaintiffs in the Proceedings.
- (10) **Class Counsel Fees** include the fees of Class Counsel, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person as a result of the Settlement Agreement, including the Fonds d'aide aux actions collectives in Québec.
- (11) **Class Period** means September 13, 2001 to December 31, 2012.
- (12) **Counsel for the Settling Defendants** means McMillan LLP.
- (13) **Courts** means the Ontario Court and the Québec Court.
- (14) **Defendants** means the entities named as defendants in the Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the



Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants.

- (15) **Distribution Protocol** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses, Class Counsel Fees and Class Counsel Disbursements, to Settlement Class Members, as approved by the Court(s).
- (16) **Documents** mean all papers, computer or electronic records, or other materials within the scope of *Rule 1.03(1)* and *Rule 30.01(1)* of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (17) **Effective Date** means the date when the Final Orders have been received from the Courts approving this Settlement Agreement.
- (18) **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.
- (19) **Execution Date** means the date on the cover page, effective as of which the Parties have executed this Settlement Agreement.
- (20) **Final Order(s)** means the later of a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, 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 in accordance with its terms, upon a final disposition of all appeals.
- (21) **Hohensee Litigation** means the litigation commenced by Dr. Volker Hohensee against Espar Inc., Espar Products Inc., and Eberspaecher Exhaust Systems Canada Inc. and the counterclaim by Espar Inc., Espar Products Inc., and Eberspaecher Exhaust Systems Canada Inc. against Dr. Volker Hohensee and WWH EuroTech Marketing, commenced in Toronto, Ontario, Canada (Court File No. CV-15-519400).
- (22) **Non-Settling Defendants** means any Defendant that is not a Settling Defendant, 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 Execution Date.

- (23) **Notice of Approval Hearings** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Classes of: (i) the proposed Settlement Agreement and its general terms; (ii) the dates and locations of the Approval Hearings; and, (iii) the process by which a Settlement Class Member may object to the settlement.
- (24) **Ontario Action** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (25) **Ontario Counsel** means Foreman & Company Professional Corporation.
- (26) **Ontario Court** means the Ontario Superior Court of Justice.
- (27) **Ontario Plaintiff** means John Devries.
- (28) **Ontario Settlement Class** means the settlement class in respect of the Ontario Action that is defined in Schedule "A" to this Settlement Agreement.
- (29) **Other Actions** means any other actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (30) **Parking Heaters** means a parking heater, including the heater itself, accessories and parts sold for use with parking heaters, packages containing parking heaters, and accessories and/or parts for parking heaters.
- (31) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (32) **Person(s)** 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.
- (33) **Plaintiffs** means the Ontario Plaintiff, the BC Plaintiff and the Québec Plaintiff.

- (34) **Proceedings** means the Ontario Action, the BC Actions and the Québec Action as defined in Schedule “A” to this Settlement Agreement.
- (35) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario Court would have apportioned to the Settling Defendants and the other Releasees in respect of the Released Claims.
- (36) **Québec Action** means the proceeding commenced by the Québec Plaintiff before the Québec Court identified in Schedule “A” to this Settlement Agreement.
- (37) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (38) **Québec Court** means the Superior Court of Québec.
- (39) **Québec Plaintiff** means TFI Transport 11 Inc., acting as receiver and liquidator of Transport TFI 6, S.E.C.
- (40) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule “A” to this Settlement Agreement.
- (41) **Recitals** means the recitals to this Settlement Agreement.
- (42) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred and any liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, asserted and unasserted, and liquidated or unliquidated, in law, under statute, contract, in equity or otherwise in nature, in this or any other Canadian or foreign jurisdiction, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct, from the beginning of time to the Effective Date, whether in Canada or elsewhere, as a result of or in connection with, or in any way related to the conduct alleged or that could have been alleged in the Proceedings (whether as presently constituted or as amended), and specifically including any alleged conspiracy or other unlawful agreements or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) related to

the purchase, sale, pricing, discounting, marketing or distributing of or compensation for Parking Heaters in Canada, including without limitation, any claims for consequential, subsequent or follow on harm that arise after the Effective Date. However, nothing herein shall be construed to release any claims: (1) arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed or damaged good, defective goods or similar claim between the Releasees and Releasors relating to Parking Heaters; or (2) that the Releasors may have against the Non-Settling Defendants as a result of the Releasees' conduct.

- (43) **Releasee(s)** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present, former and future, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations, with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (44) **Releasors** 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 present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.
- (45) **Schedules** mean the schedules to this Settlement Agreement.
- (46) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (47) **Settlement Amount** means the sum of nine million, four hundred thousand Canadian dollars (CAD \$9,400,000.00) to be paid by the Settling Defendants.
- (48) **Settlement Class(es)** means all Persons included in the Ontario Settlement Class and the Québec Settlement Class.
- (49) **Settlement Class Member(s)** means a member of a Settlement Class.
- (50) **Settling Defendants** means Eberspaecher Climate Control Systems USA Inc. (formerly known as Espar Inc.), Eberspaecher Climate Control Systems Canada Inc. (formerly known as Espar Products Inc.), "Espar Climate Control Systems", Eberspaecher Climate

Control Systems International GmbH (formerly known as Eberspaecher Climate Control Systems International Beteiligungs-GmbH), Eberspaecher Climate Control Systems GmbH (formerly known as J. Eberspaecher GmbH and Co. KG) and Eberspaecher Gruppe GmbH and Co. KG.

- (51) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security offered by a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) or a Provincially Registered Credit Union (listed under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11) held at a Canadian financial institution under the control of Ontario Counsel for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.
- (52) **U.S. Litigation** means the direct and indirect purchaser class proceedings in the United States which pertain to Parking Heaters which have been consolidated and are proceeding as class actions litigation under the general style of cause, for both direct and indirect purchaser class proceedings, *In re: Parking Heaters Antitrust Litigation*, case number 1:15-MC-940 JG-JO, U.S. District Court for the Eastern District of New York.

## SECTION 2 - SETTLEMENT APPROVAL

### 2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure (i) the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants who are named as Defendants in the Ontario Action, (ii) a prompt, complete declaration of settlement out of court of the Québec Action as against the Settling Defendants who are named as Defendants in the Québec Action and (iii) the prompt discontinuance of the BC Actions. The Parties agree that, subject to the availability of the respective Courts and as reasonably agreed upon between the Parties, the motions contemplated in subsections 2.2(1) and 2.3(1) shall proceed first in Québec.

### 2.2 Motions Seeking Approval of Notice

- (1) Subject to subsection 2.2(2), the Plaintiffs in the Ontario Action and the Québec Action shall bring motions before their respective Courts, as soon as practicable after the Execution Date, for orders approving the Notice of Approval Hearings.
- (2) The Ontario order approving the Notice of Approval Hearings described in subsection 2.2(1) shall be proposed to the Ontario Court substantially in the form attached as

Schedule "B". The form and content of the Québec order approving the Notice of Approval Hearings described in subsection 2.2(1) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B".

### **2.3 Motions Seeking Approval of the Settlement**

- (1) As soon as practicable after the orders referred to in subsection 2.2(1) have been granted and the Notice of Approval Hearings has been published, the Plaintiffs in the Ontario Action and the Québec Action shall bring motions before the Courts for orders approving this Settlement Agreement.
- (2) The Ontario order approving this Settlement Agreement shall be proposed to the Ontario Court substantially in the form attached as Schedule "C". The Québec order approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "C".
- (3) This Settlement Agreement shall only become final on the Effective Date.

### **2.4 Discontinuance of BC Actions**

- (1) Forthwith after the Effective Date, Class Counsel will file Notices of Discontinuance in the BC Court in each of the BC Actions.

### **2.5 Pre-Motion Confidentiality**

- (1) Until the first of the motions required by subsection 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except to legal counsel or as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of this Settlement Agreement, or as otherwise required by law.
- (2) Notwithstanding Section 2.5(1), at any time after the Execution Date, Class Counsel may provide a copy of this Settlement Agreement to the Courts and to the Non-Settling Defendants and shall notify the Settling Defendants that it is doing so.

### **SECTION 3 - SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

- (1) The Settling Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account on or before September 25, 2024.
- (2) At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide to Counsel for the Settling Defendants, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.
- (3) The Settlement Amount is inclusive of all amounts owing under this Settlement Agreement, including interest and costs. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Settling Defendants and other Releasees.
- (4) The Settling Defendants and other Releasees shall have no obligation to pay any amount in addition to the Settlement Amount with respect to the Released Claims, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings, including but not limited to, legal fees or costs of notice or administration.
- (5) Ontario Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (6) Ontario Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

#### **3.2 Taxes and Interest**

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to subsection 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the Settlement Class. Ontario Counsel or its duly appointed agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account,

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

- (3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Ontario Counsel or its duly appointed agent.

#### **SECTION 4 - COOPERATION**

##### **4.1 Limits on Cooperation**

- (1) Nothing in this Settlement Agreement shall require, or shall be construed to require the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, joint defence privilege or any other privilege, doctrine, or law, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.
- (2) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.
- (3) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.
- (4) The Settling Defendants' cooperation obligations pursuant to this Section 4 are contingent upon the continuation of the Proceedings as against the Non-Settling Defendants and



shall cease upon the settlement once approved by the Courts, dismissal, discontinuance or abandonment of the Proceedings as against all Defendants.

#### **4.2 Extent of Cooperation**

- (1) Within thirty (30) days of the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably (which may, if and only if the Parties agree, take place before the Effective Date), the Settling Defendants shall provide to Class Counsel an oral evidentiary proffer:
  - (a) The oral evidentiary proffer shall be conducted through a meeting between Class Counsel and Counsel for the Settling Defendants, including at the discretion of the Settling Defendants foreign external counsel and/or representatives of the Settling Defendants, at which time, the Settling Defendants and/or their counsel will set out the Settling Defendants' relevant and non-attorney-client privileged information derived from their pre-existing investigation and factual inquiries in respect of the matters at issue in the Proceedings, including information derived from pre-existing business records, testimonial transcripts and employee or witness interviews (if applicable).
  - (b) The oral evidentiary proffer shall focus on the subject of the Settling Defendants' specific knowledge and information concerning their knowledge of how the alleged conspiracy was formed, implemented and enforced, the conduct of the Non-Settling Defendants, including in particular the identification of "key" documents previously produced from the discovery process in the Québec and Ontario Actions and identification and production to Class Counsel of any testimony given in the U.S. Litigation in respect of the conduct of the Non-Settling Defendants. Class Counsel shall provide a non-exhaustive list of questions and more specific topics to be covered at least ten (10) days prior to the meeting.
  - (c) The oral evidentiary proffer shall be conducted virtually through a secure virtual meeting platform or, at the discretion of the Settling Defendants, in person at the offices of McMillan LLP, Toronto, Canada with an option for Class Counsel to attend virtually through a secure virtual meeting platform. The oral evidentiary proffer may last up to eight (8) hours, and may, as agreed upon the Parties, be subdivided into two or more separate sessions.

- (d) Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by the Settling Defendants and/or Counsel for the Settling Defendants as part of the oral evidentiary proffer shall comply with the applicable protective orders in the U.S. Litigation.
- (2) Within ninety (90) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall use reasonable efforts to provide to Class Counsel, to the extent permitted by relevant protective order in the U.S. Litigation and to the extent not already produced in the context of the discovery process in the Québec and Ontario Actions:
- (a) copies of all Documents produced by the Settling Defendants to the Canadian Competition Bureau, including all pre-existing translations, all to be provided in electronic form;
  - (b) copies of all Documents produced by the Settling Defendants to the United States Department of Justice, including all pre-existing translations, all to be provided in electronic form;
  - (c) copies of all Documents produced by the Settling Defendants to the European Commission, including all pre-existing translations, all to be provided in electronic form;
  - (d) copies of all Documents produced by the Settling Defendants in the U.S. Litigation, including transaction data and all pre-existing translations, all to be provided in electronic form. U.S. Litigation Documents will, to the extent possible, be produced with the same document numbers utilized in the U.S. Litigation;
  - (e) electronic copies of all deposition transcripts, exhibits and responses to written interrogatories given by current or former employees, officers and directors of the Releasees in the U.S. Litigation; and
  - (f) copies of any available Canadian transaction data, including customer information, of the Settling Defendants.
- (3) Counsel for the Settling Defendants shall make themselves available for reasonable follow-up questions from Class Counsel regarding the oral evidentiary proffer given pursuant to Section 4.2(1) or the documents produced pursuant to Section 4.2(2). Class

Counsel may request a virtual meeting with Counsel for the Settling Defendants, of up to two (2) hours, for the purpose of discussing Class Counsel's consolidated reasonable follow-up questions.

- (4) In the event that the evidentiary proffer described in this Section 4.2(1) or any follow-up questions and responses described in Section 4.2(3) takes place before the Effective Date, which shall only occur pursuant to a subsequent agreement of the Parties, the following additional terms shall apply:
  - (a) any Documents or information provided in the course of that evidentiary proffer or follow-up questions and responses shall be subject to the terms and protections of this Settlement Agreement; and
  - (b) In the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the Documents and information provided during the evidentiary proffer and any follow-up questions and responses shall not be used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Settling Defendants as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Settling Defendants or of the truth of any claims or allegations in the Proceedings, and such information shall not be discoverable by any Person or treated as evidence of any kind. In order to give effect to this agreement, Class Counsel agrees to make reasonable efforts to promptly return all copies of any Documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), the evidentiary proffer or follow-up questions and responses and to provide written confirmation to the Settling Defendants after having done so.
- (5) If requested by Class Counsel, the Settling Defendants agree to:
  - (a) provide affidavit evidence and/or live testimony, as required, from one (1) current representative of each of the Settling Defendants to assist the Plaintiffs in authenticating any of the Documents produced in accordance with this Settlement Agreement to the extent that there is a current representative of each of the Settling Defendants who can establish their authenticity and the Plaintiffs require their authentication for their admission and use at any point in the Proceedings, including at trial. The Parties agree to collaborate and the Settling Defendants

agree to provide reasonable assistance, to the extent available, to authenticate any remaining Documents for use at trial. The Parties agree to collaborate for efficiency and to minimize the number of representatives required, the costs incurred by, time or travel requirements incurred by, and the expenses of, the Settling Defendants in relation to such evidence, including any cost for travel and a translator where necessary; and

- (b) make available a maximum of four (4) current employee(s), officer(s) or director(s) of the Settling Defendants with relevant knowledge of the alleged conspiracy and its related events and subject matter, if any, to provide affidavit and/or testimonial evidence on summary judgment or at the trial or as the Parties may otherwise agree. The parties agree to collaborate to minimize the number of representatives required, the costs incurred by, time or travel requirements incurred by, and the expenses of, the employee(s) of the Settling Defendants in relation to such testimony, including any cost for travel and a translator.
- (6) The failure of any officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. Class Counsel shall be responsible for all reasonable associated costs incurred by such representatives in connection with fulfilling the Settling Defendants' obligations under section 4.2(5).
- (7) If any of the Documents or information produced by the Settling Defendants pursuant to Sections 4.2(1), 4.2(2) and 4.2(3) are accidentally or inadvertently disclosed or produced, the Settling Defendants shall so notify Class Counsel and (i) such Documents shall be promptly returned to the Settling Defendants, (ii) 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, (iii) the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents, and (iv) the Plaintiffs shall not assert that any such waiver has occurred.
- (8) The obligations of the Settling Defendants to cooperate as particularized in this Section 4.2 shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. The obligations of the Settling Defendants to cooperate shall cease at the date the Proceedings are finally resolved as against all Defendants, whether by final judgment, final settlement approval order, discontinuance or otherwise.

- (9) If the Settling Defendants materially breach this Section 4.2, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement and may exercise any rights they have to seek or obtain testimony, discovery, information or Documents from the Settling Defendants.
- (10) Subject to Section 4.2(9), the provisions set forth in this Section 4.2 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendants and other Releasees, and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendants or other Releasees, whether in Canada or elsewhere and whether under the rules or laws of any Canadian or foreign jurisdiction.
- (11) For greater clarity, the Plaintiffs through this Settlement Agreement do not waive any rights they may have to seek or obtain cooperation testimony, discovery, information or Documents from those officers, directors and/or employees of the Settling Defendants and other Releasees who, as at the Effective Date, are former officers, directors and/or employees of the Settling Defendants or other Releasees.
- (12) The Settling Defendants shall make their best efforts to ensure the completeness of any of the Documents or information to be provided in accordance with this Section 4.2, but do not represent that they can or will produce a complete set of any of the Documents or information described in this Section, and failure to do so shall not result in liability or constitute a breach of this Settlement Agreement provided that the Settling Defendants comply with the obligation to make best efforts.

#### **4.3 Limits on Use of Documents and Other Information**

- (1) It is understood and agreed that all information made available or provided by the Settling Defendants to the Plaintiffs exclusively through the oral evidentiary proffer and any follow-up questions and responses are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, except to the extent that the Documents or information are or become publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel, unless there is an agreement between the Plaintiffs and the Settling Defendants to make such disclosure. Further, Class Counsel will not attribute any factual information obtained from the proffer or follow-up questions and responses to the Settling Defendants and/or Counsel for the Settling

Defendants. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer and follow-up questions and responses that is reasonably necessary for the prosecution of the Proceedings, including for the purpose of developing the Distribution Protocol(s) or any other allocation plan relating to any settlement or judgment proceeds, except the prosecution of any claims against Releasees; and (ii) rely on such information to certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but the Plaintiffs shall not introduce any information from a proffer or a response to a follow-up question into the record or subpoena any Counsel for the Settling Defendants related to a proffer or follow-up questions and responses.

- (2) The Plaintiffs and Class Counsel agree they will not disclose the Documents provided by the Settling Defendants and any information contained therein except: (i) to experts, consultants or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued as contemplated by Section 4.3(3); (ii) as evidence in the Proceedings; (iii) to counsel for Non-Settling Defendants for the purposes of settlement negotiations, only to be shared on a highly confidential and without-prejudice basis, and with advance notice to Counsel for the Settling Defendants; or (iv) as otherwise required by law. Subject to the foregoing, the Plaintiffs and 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, except to the extent that the Documents and information are or become publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel.
- (3) If the Plaintiffs intend to produce for discovery or file in the Proceedings any Documents or other information provided by the Settling Defendants as cooperation under the Settlement Agreement, the Plaintiffs shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least sixty (60) days in advance of the proposed production or filing, in order that the Settling Defendants may make a motion to obtain a sealing or confidentiality order or similar relief. If, within the sixty (60) day period, the Settling Defendants do not so move, the Plaintiffs and Class Counsel can produce or file the information or Documents in the ordinary

course. If, within that sixty (60) day period, the Settling Defendants so move, the Plaintiffs and Class Counsel shall not oppose the position taken by the Settling Defendants and shall not disclose the confidential Documents or information until the Settling Defendants' motion has been decided and all applicable appeal periods have expired.

- (4) Notwithstanding Section 4.3(3), so as not to delay prosecution of the Proceedings, Class Counsel may:
  - (a) provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that, until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, they will keep the Documents or information on an external counsel only basis and will only disclose such Documents or information to independent expert(s) retained by a Party 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. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings, or a competitor of the Settling Defendants; and
  - (b) file such Documents or information with the relevant Court in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the Proceeding and the following statement: "This envelope/box/container containing documents which are filed by [name of Party] and subject to a pending confidentiality motion is not to be opened nor the contents thereof to be displayed or revealed to any non-Court personnel except by order of the Court", and such records shall not form part of the public record in the relevant Proceeding except upon order of the relevant Court or by agreement of all Parties and/or the Settling Defendants whose confidential information is contained therein.
- (5) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement, the Plaintiffs shall notify the Settling Defendants of such application promptly upon becoming aware of it and no later than ten (10) days after disclosure or production is sought, in order that the Settling Defendants may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not oppose the position taken by the Settling Defendants

and shall not disclose the confidential information or Documents until the Settling Defendants' motion has been decided and a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or Documents and any applicable appeal periods have expired, except: (i) to the extent such information or Documents are or become otherwise publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel; (ii) as ordered to do so by a Court; or (iii) in accordance with Section 4.3(4)(a).

- (6) The Plaintiffs shall in good faith consult with the Settling Defendants before the Plaintiffs agree to the terms of any confidentiality agreement or confidentiality order which would govern the confidentiality of Documents or information originating from the Settling Defendants in the Proceedings and shall make best efforts to accommodate the Settling Defendants' reasonable requests in respect of the same.

## **SECTION 5 - DISTRIBUTION OF THE SETTLEMENT AMOUNT**

### **5.1 Distribution Protocol**

- (1) After the Effective Date, 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.

## **SECTION 6 - RELEASES AND DISMISSALS**

### **6.1 Release of Releasees**

- (1) Upon the Effective Date, subject to subsection 6.2, in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, each of the Releasors forever and absolutely releases and discharges the Releasees from the Released Claims regardless of whether such Releasor executes and delivers a proof of claim and release form.

### **6.2 Covenant Not to Sue**

- (1) Notwithstanding subsection 6.1, 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 Releasors do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.



### **6.3 No Further Claims**

- (1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, provide assistance for or 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 against any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees.
- (2) Subsection 6.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

### **6.4 Dismissal of the Proceedings**

- (1) Upon the Effective Date, the Ontario Action shall be dismissed, with prejudice and without costs, as against the Settling Defendants who are named as Defendants in the Ontario Action.
- (2) Upon the Effective Date, the Québec Action shall be settled, without costs as against the Settling Defendants.
- (3) Following the Effective Date, Class Counsel will discontinue the BC Actions as against the Settling Defendants.

### **6.5 Dismissal of Other Actions**

- (1) Upon the Effective Date, each member of the Ontario Settlement Class 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 Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Each person who would have been a member of the Québec Settlement Class but who is deemed to have opted out in accordance with the second paragraph of Article 580 of the *Québec Code of Civil Procedure* and who makes a claim and receives benefits under this

Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Settling Defendants and other Releasees.

- (4) Each Other Action commenced in Québec by a person who would have been a member of the Québec Settlement Class but who is deemed to have opted out in accordance with the second paragraph of Article 580 of the *Québec Code of Civil Procedure* and who makes a claim or receives benefits under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

#### **6.6 Releases a Material Term**

- (1) The releases and covenants contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Courts to approve the releases and covenants, in substantially the form contemplated herein, shall give rise to a right of termination pursuant to section 12.1 of the Settlement Agreement.

### **SECTION 7 - BAR ORDER AND WAIVER OF SOLIDARITY**

#### **7.1 Ontario Bar Order**

- (1) The Plaintiffs and the Settling Defendants agree that the Ontario order approving this Settlement Agreement must include a bar order in respect of the Ontario Class which includes the following terms:
  - (a) a provision that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings or any Other Actions, by any Non-Settling Defendants, any named or unnamed alleged 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 Defendants, any named or unnamed alleged 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 Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);

- (b) a provision that if the Ontario Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
- (i) the Ontario Plaintiff and Ontario 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 relating to the Released Claims proven at trial or otherwise;
  - (ii) the Ontario Plaintiff and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to include, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and
  - (iii) this Court shall have full authority to determine the Proportionate Liability of the Releasees relating to the Released Claims at the trial or other disposition of the Ontario Action, whether or not the Settling Defendants

remain in the Ontario Action or appear at trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceeding.

- (c) a provision that 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 (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Action or the rights of Ontario Plaintiff and Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
- (d) a provision that a Non-Settling Defendant may, on motion to the Ontario Court determined as if the Settling Defendants remained party to the Ontario Action and on at least thirty (30) days' notice to Counsel for the Settling Defendants, seek Orders for the following:
  - (i) documentary discovery and affidavit(s) of documents from the Settling Defendants in accordance with the *Rules of Civil 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 request 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.
- (e) a provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to subsection 7.1(1)(d). 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 for information obtained from discovery in accordance with subsection 7.1(1)(d). Notwithstanding any provision in the Ontario order approving this Settlement Agreement, on any motion brought pursuant to subsection 7.1(1)(d), the Ontario Court may make such orders as to costs and other terms as it considers appropriate.

- (f) a provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 7.1(1)(d) on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Action.
- (2) To the extent that an order is granted pursuant to subsection 7.1(1)(d) and discovery is provided to the Non-Settling Defendants, 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(s).
- (3) The Parties acknowledge that the bar orders shall be considered a material term of the Settlement Agreement and the failure of the Ontario Court to approve the bar orders, substantially in the form contemplated herein, shall give rise to a right of termination pursuant to section 12.1 of the Settlement Agreement.

## **7.2 Québec Waiver or Renunciation of Solidarity Order**

- (1) The Plaintiffs and the Settling Defendants agree that the Québec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Québec Action which includes the following:
  - (a) the Québec Plaintiff and the Québec Settlement Class 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 Québec Plaintiff and the Québec Settlement Class 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 measure 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 relating to the Released Claims shall be inadmissible and void in the context of the Québec 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 *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

### **7.3 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 Settlement Class Members against any Person other than the Releasees.

## **SECTION 8 - EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

- (1) The Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Parties further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

### **8.2 Agreement Not Evidence**

- (1) The Parties agree that, whether or not it is 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 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, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

## **SECTION 9 - NOTICE TO SETTLEMENT CLASS**

### **9.1 Notices Required**

- (1) The proposed Settlement Class shall be given the following notice: (i) Notice of Approval Hearings; and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect), if so ordered by the Court(s).
- (2) Within thirty (30) days after the Execution Date, or at a time mutually agreed upon by the Parties acting reasonably, but not later than issuance of the Order from the Courts approving notice under Section 2.2, the Settling Defendants shall (to the extent such information is known to them) provide Class Counsel with a customer list with last known contact information for each customer in Canada, if any, who purchased Parking Heaters directly from the Settling Defendants during the Class Period, as applicable, for the purpose of facilitating direct notice to the Settling Defendants' customers.

### **9.2 Form and Distribution of Notices**

- (1) The form of the notices referred to in subsection 9.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendants and as approved by the Court(s), or failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders approving the notices described in subsection 9.1 in accordance with subsection 2.2.

## **SECTION 10 - ADMINISTRATION AND IMPLEMENTATION**

### **10.1 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 the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel at a time within the discretion of Class Counsel in accordance with Section 2.3 and Section 5.1.

## **SECTION 11 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

### **11.1 No Liability of Settling Defendants**

- (1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) The Releasees shall have no responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account.

### **11.2 Payments from Trust Account**

- (1) Class Counsel shall pay the costs of the notices required by Section 9.1 and any costs of translation required by Section 13.13 from the Trust Account, as they become due.
- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Class Counsel Disbursements contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid only after the Effective Date.
- (3) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

## **SECTION 12 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT**

### **12.1 Right of Termination**

- (1) In the event that:
  - (a) the Ontario Court declines to dismiss the Proceedings against the Settling Defendants who are named as Defendants or the Québec Action is not fully settled out of court as against the Settling Defendants;
  - (b) the Courts decline to approve this Settlement Agreement or any material term thereof, and the Parties agree that the releases, bar order, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
  - (c) the Courts approve this Settlement Agreement in a materially modified form;



- (d) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed by the Parties is approved by a Court in a materially modified form; or
- (e) any order approving this Settlement Agreement made by the Courts does not become a Final Order;

the Settling Defendants and/or the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.19, within thirty (30) days following the event(s) described above.

- (2) Except as provided for in Section 12.4, if the Settling Defendant, Class Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.
- (3) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(2), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.19 or move before the Court to enforce the terms of this Settlement Agreement.
- (4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, Class Counsel Disbursements or 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.

## **12.2 Effect of Non-Approval or Termination of Settlement Agreement**

- (1) If this Settlement Agreement is not approved by a Court, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
  - (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed;
  - (b) the Parties will cooperate in seeking to have any issued orders approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Person shall be estopped from asserting otherwise; and
  - (c) within ten (10) days of such termination having occurred, Class Counsel shall destroy all Documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived

from such Documents or other materials received from the Settling Defendants, including any notes or work product of Class Counsel, and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such Documents or material. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction within ten (10) days of termination.

### **12.3 Allocation of Settlement Amount Following Termination**

- (1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Ontario Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon, less any taxes paid on interest, any costs incurred with respect to the notices required by Section 9.1 and any costs of translation required by Section 13.13., such costs in total not to exceed twenty thousand Canadian dollars (CAD \$20,000).

### **12.4 Survival of Provisions After Termination**

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.2(3), 8.1, 8.2, 9.1, 9.2, 12.1(2), 12.2, 12.3, 12.4, 13.5 and 13.6, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.2(3), 8.1, 8.2, 9.1, 9.2, 12.1(2), 12.2, 12.3, 12.4, 13.5 and 13.6, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

## **SECTION 13 - MISCELLANEOUS**

### **13.1 Motions for Directions**

- (1) Class Counsel or the Settling Defendants may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the Québec Action shall be determined by the Ontario Court.

- (2) All motions or other requests for direction from the Courts contemplated by this Settlement Agreement shall be on notice to the Parties.

### **13.2 Releasees Have No Liability for Administration**

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

### **13.3 Headings, etc.**

- (1) In this Settlement Agreement:
  - (a) the division of the Settlement Agreement into sections and subsections 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, subsection, or other portion of this Settlement Agreement.

### **13.4 Computation of Time**

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
  - (a) where there is a reference to a number of days between two events, they 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 *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

### **13.5 Ongoing Jurisdiction**

- (1) Each of the Courts shall retain exclusive jurisdiction over the action commenced in its jurisdiction and the Parties thereto.
- (2) The Parties agree that any order or direction sought from a Court in respect of any matter of shared jurisdiction arising from this Settlement Agreement will be conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over the matter.

- (3) Notwithstanding Sections 13.5(1) and 13.5(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of the Québec Action shall be determined by the Ontario Court.

### **13.6 Governing Law**

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (2) Notwithstanding Section 13.6(1), for matters relating specifically to the Québec Action, the Québec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

### **13.7 Entire Agreement**

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. 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.

### **13.8 Amendments**

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

### **13.9 No Waiver**

- (1) Any failure by either Party to demand adherence to, or seek enforcement of, a deadline applicable to any obligation herein shall in no way constitute a waiver of said obligation or deadline. No waiver of any provision of this Settlement Agreement shall be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

### **13.10 Binding Effect**

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon the Releasees.

### **13.11 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 PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **13.12 Negotiated Agreement**

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

### **13.13 Language**

- (1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related Documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by the Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of 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.

**13.14 Transaction**

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

**13.15 Recitals**

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

**13.16 Schedules**

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

**13.17 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 this 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 understand each term of this 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.

**13.18 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.

**13.19 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 e-mail, 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 CLASS COUNSEL:**

**Foreman & Company  
Professional Corporation**  
c/o Jonathan Foreman  
4 Covent Market Place  
London, ON N6A 1E2

Tel: (519) 914-1175  
Fax: (226) 884-5340  
E-mail: [jforeman@foremancompany.com](mailto:jforeman@foremancompany.com)

**CFM Lawyers LLP**  
c/o David Jones  
400-586 Homer Street  
Vancouver, BC V6B 2W5

Tel: (604) 331-9528  
Fax: (604) 689-7555  
E-mail: [service@cfmlawyers.ca](mailto:service@cfmlawyers.ca)

**Belleau Lapointe s.e.n.c.r.l.**  
c/o Maxime Nasr  
300 Place D'Youville, Office B-10  
Montréal, Québec H2Y 2B6

Tel : (514) 987-6700  
Fax : (514) 987-6886  
E-mail: [mnasr@belleaulapointe.com](mailto:mnasr@belleaulapointe.com)

**FOR THE SETTLING DEFENDANTS:**

**McMillan LLP**  
c/o David Kent and Samantha Gordon  
Brookfield Place, Suit 4400  
181 Bay Street  
Toronto, ON M5J 2T3

Tel: (416) 865-7000  
Fax: (416) 865-7048  
E-mail:-: [david.kent@mcmillan.ca](mailto:david.kent@mcmillan.ca)  
[samantha.gordon@mcmillan.ca](mailto:samantha.gordon@mcmillan.ca)

**13.20 Date of Execution**

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

**John Devries**, by his counsel

Name of Authorized Signatory: Jon Foreman

Signature of Authorized Signatory:   
**Foreman & Company Professional  
Corporation**  
Class Counsel

**Dumas Trucking Ltd.**, by their counsel

Name of Authorized Signatory: Jon Foreman for CFM Lawyers LLP

Signature of Authorized Signatory:   
CFM Lawyers LLP  
Class Counsel

**TFI Transport 11 Inc.**, acting as receiver and liquidator of **Transport TFI 6, S.E.C.**, by their counsel

Name of Authorized Signatory: Jean-Philippe Lincourt

Signature of Authorized Signatory:   
Belleau Lapointe s.e.n.c.r.l.  
Class Counsel

**Eberspaecher Climate Control Systems USA Inc. (formerly known as Espar Inc.), Eberspaecher Climate Control Systems Canada Inc. (formerly known as Espar Products Inc.), "Espar Climate Control Systems", Eberspaecher Climate Control Systems International GmbH (formerly known as Eberspaecher Climate Control Systems International Beteiligungs-GmbH), Eberspaecher Climate Control Systems GmbH (formerly known as J. Eberspaecher GmbH and Co. KG) and Eberspaecher Gruppe GmbH and Co. KG.**

Name of Authorized Signatory David Kent for McMillan LLP

Signature of Authorized Signatory:   
McMillan LLP

(I have authority to bind Eberspaecher Climate Control Systems USA Inc. (formerly known as Espar Inc.), Eberspaecher Climate Control Systems Canada Inc. (formerly known as Espar Products Inc.), "Espar Climate Control Systems", Eberspaecher Climate Control Systems International GmbH (formerly known as Eberspaecher Climate Control Systems International Beteiligungs-GmbH), Eberspaecher Climate Control Systems GmbH (formerly known as J. Eberspaecher GmbH and Co. KG) and Eberspaecher Gruppe GmbH and Co. KG)



**SCHEDULE “A”  
THE ACTIONS**

<b>Proceeding</b>	<b>Plaintiff</b>	<b>Defendants</b>	<b>Settlement Classes (as certified and authorized)</b>
<p>Ontario Superior Court of Justice Court File No. 534/15 CP (the “Ontario Action”)</p>	<p>John Devries</p>	<p>Espar Inc.; Espar Products Inc.; Eberspaecher Climate Control Systems International Beteiligungs-GmbH; Eberspaecher Climate Control Systems GmbH &amp; Co. KG (formerly known as J. Eberspaecher GmbH and Co. KG); Eberspaecher Gruppe GmbH and Co. KG; Webasto Thermo and Comfort North America Inc.; Volker Hohensee; Webasto SE; and Webasto Thermo &amp; Comfort SE</p>	<p><i>All Direct Purchasers and/or Indirect Purchasers of a Parking Heater other than all Direct Purchasers and Indirect Purchasers of a Parking Heater in Québec.</i></p> <p><i>“Parking Heater” means a parking heater, including the heater itself, accessories and parts sold for use with heaters, packages containing heaters, and accessories and/or parts for parking heaters (parking heater ‘kits’), which was manufactured or sold by the Defendants for use in a commercial vehicle during the Class Period.</i></p> <p><i>“Direct Purchasers” means all persons or entities in Canada who purchased a Parking Heater directly.</i></p> <p><i>“Indirect Purchasers” means all persons or entities in Canada who purchased a Parking Heater from someone other than a Defendant including any person or entity who purchased, leased and sub-leased a commercial vehicle containing a Parking Heater.</i></p>
<p>Superior Court of Québec (No. 500-06-000736-153) (the “Québec Action”)</p>	<p>Transport T.F.I. 6, S.E.C. (TFI Transport 11 Inc.)</p>	<p>Espar Inc.; Espar Climate Control Systems; Eberspaecher Climate Control Systems International Beteiligungs-GmbH; Eberspaecher Climate Control Systems GmbH &amp; Co. KG (formerly known as J. Eberspaecher GmbH and Co. Kg); Eberspaecher Gruppe GmbH And Co. KG; Espar Products Inc.; Webasto SE; Webasto Thermo &amp; Comfort SE; Webasto Thermo &amp; Comfort North America, Inc.;</p>	<p><i>All persons who purchased in Québec one or more Parking Heaters or who purchased, leased or subleased in Québec one or more products equipped with one or more Parking Heaters during the Class Period.</i></p>

<b>Proceeding</b>	<b>Plaintiff</b>	<b>Defendants</b>	<b>Pleaded Class</b>
Supreme Court of British Columbia Court File No. S-153182 & S-175623 (collectively the "BC Actions")	Dumas Trucking Ltd.	Espar Inc.; Espar Products Inc.; Espar Climate Control Systems; Eberspaecher Climate Control Systems International Beteiligungs-GmbH; Eberspaecher Climate Control Systems GmbH & Co. KG (formerly known as J. Eberspaecher GmbH and Co. KG); Eberspaecher Gruppe GmbH and Co. KG; Webasto Thermo and Comfort North America Inc.; Marine Canada Acquisition Inc. (O/A Seastar Solutions); Proheat Mechanical Systems Inc., Proheat Canada, Webasto SE; Webasto Thermo & Comfort SE and Volker Hohensee	<i>All persons or entities in British Columbia who directly or indirectly purchased a Parking Heater for use in a commercial vehicle during the Class Period.</i>

**SCHEDULE "B"**

Court File No. 534/15 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
MR. JUSTICE R. RAIKES ) OF , 2024

B E T W E E N :

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO THERMO AND COMFORT NORTH AMERICA INC.; VOLKER HOHENSEE; WEBASTO SE; and WEBASTO THERMO & COMFORT SE

Defendants

Proceeding under the *Class Proceedings Act, 1992, S.O. 1992, c. 6*

**ORDER  
(NOTICE APPROVAL)**

**THIS MOTION** made by the Plaintiff for an Order approving the notice of settlement approval hearing and the method of dissemination of said notice was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement dated •, 2024 attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff, counsel for the Settling Defendants, and counsel for the Non-Settling Defendants in the Ontario Action;

**AND ON BEING ADVISED** that • has consented to being appointed as the notice provider in accordance with the terms of this Order;

**AND ON BEING ADVISED** that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the opt out period provided pursuant to the order of this Court made on December 14, 2020 satisfies the requirement of section 9 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 for the purposes of this action, that no further opt out period is necessary, and that the opt out period expired on April 5, 2021.
3. **THIS COURT ORDERS** that the notice of settlement approval hearing (the “Notices”) are hereby approved substantially in the form collectively attached hereto as **Schedule “B”**.
4. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the “Plan of Dissemination”) is hereby approved in the form attached hereto as **Schedule “C”** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
5. **THIS COURT ORDERS** that • is appointed to disseminate the Notice in accordance with the terms of this Order.
6. **THIS COURT ORDERS** that this Order is contingent upon a parallel order being made by the Québec Court, and the terms of this Order shall not be effective unless and until such order is made by the Québec Court.
7. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, a case management conference shall be convened to seek directions, including in respect of the need for and form and content of additional notice to Settlement Class Members.

Date:

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The Honourable Justice Raikes

JOHN DEVRIES  
Plaintiff

v.

ESPAR INC., et al.  
Defendants

Court File No. 534/15 CP

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*,  
1992

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**ORDER  
(Motion for Notice Approval)**

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**FOREMAN & COMPANY  
PROFESSIONAL CORPORATION**

4 Covent Market Place  
London, ON N6A 1E2

**Jonathan Foreman (LSO# 45087H)**

**Sarah Bowden (LSO# 56385D)**

Tel: (519) 914-1175

Fax: (226) 884-5340

E-mail: [jforeman@foremancompany.com](mailto:jforeman@foremancompany.com)

[sbowden@foremancompany.com](mailto:sbowden@foremancompany.com)

Lawyers for the Plaintiff

**SCHEDULE "C"**

Court File No. 534/15 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
MR. JUSTICE R. RAIKES ) OF , 2024

B E T W E E N :

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO THERMO AND COMFORT NORTH AMERICA INC.; VOLKER HOHENSEE; WEBASTO SE; and WEBASTO THERMO & COMFORT SE

Defendants

Proceeding under the *Class Proceedings Act, 1992, S.O. 1992, c. 6*

**ORDER  
(SETTLEMENT APPROVAL)**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement agreement entered into with Espar Inc., Espar Products Inc., Espar Climate Control Systems, Eberspaecher Climate Control Systems International Beteiligungs-GMBH, Eberspaecher Climate Control Systems GMBH & Co. KG (formerly known as J. Eberspaecher GMBH and Co. KG) and Eberspaecher Gruppe GMBH and Co. KG. (the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**AND ON READING** the materials filed, including the settlement agreement dated •, 2024 attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Action;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been • objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of *Rules 7.04(1)* and *7.08(4)* of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action.
5. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who has not validly opted out of this action shall be deemed to have irrevocably consented to the dismissal of any Other Actions as against the Releasees, without costs, with prejudice and without reservation.
6. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Settlement Class Member who has not validly opted out of this action shall be and is hereby dismissed in respect of Released Claims against the Releasees, without costs, with prejudice and without reservation.
7. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraphs 9 and 10, each Releasor who has not validly opted out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who has not validly opted out of this action, as well as Class Counsel, shall not now or hereafter institute, continue, provide assistance for or 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 the Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings as against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees.

9. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those member of the Ontario Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
10. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
11. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings or any Other Actions, by any Non-Settling Defendants, any named or unnamed alleged 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 Defendants, any named or unnamed alleged 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 paragraph (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
12. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - (a) the Ontario Plaintiff and Ontario 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 relating to the Released Claims proven at trial or otherwise;

- (b) the Ontario Plaintiff and Ontario Settlement Class members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to include, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Plaintiff and Ontario Settlement Class members, if any, and, for greater certainty, the Ontario Settlement Class members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed alleged 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 relating to the Released Claims at the trial or other disposition of the Ontario Action, whether or not the Settling Defendants remain in the Ontario Action or appear at trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceeding.

13. **THIS COURT ORDERS** that 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 (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Action or the rights of Ontario Plaintiff and Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
14. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained party to this action, brought on at least thirty (30) days' notice to Counsel for the Settling Defendants, seek orders for the following:
  - (a) documentary discovery and affidavit(s) of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;
  - (b) oral discovery of representative(s) of the Settling Defendants, the transcript of which may be read in at trial;
  - (c) leave to serve request(s) to admit on the Settling Defendants in respect of factual matters; and/or
  - (d) the production of 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.
15. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 14. 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 for information obtained from discovery in accordance with paragraph 14. Notwithstanding any provision in this order, on any motion brought pursuant to paragraph 14, this Court may make such orders as to costs and other terms as it considers appropriate.
16. **THIS COURT ORDERS** that a Non-Settling Defendant may serve the motion(s) referred to in paragraph 14 above on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Action.

17. **THIS COURT ORDERS** that this Settlement Agreement and any related bar order does not settle, compromise, release, limit or affect in any way whatsoever any rights or claims by Parties in the Hohensee Litigation.
18. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any member of the Ontario Settlement Class has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not the Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Settlement Class members, pending further order of this Court on notice to the Defendants.
22. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon a parallel order for approval being made by the Québec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Québec Court, and the Québec Action has been declared settled out of court as against the defendants in the relevant proceeding by the Courts. If such orders are not secured in Québec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void without need for

further Order of this Court but a case management conference shall be convened, on notice to the Defendants, to seek directions, including in respect of the need for and form and content of additional notice to Settlement Class Members.

25. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 11 to 16 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario 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 Ontario Action as against the Non-Settling Defendants.

Date:

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The Honourable Justice Raikes

JOHN DEVRIES  
Plaintiff

v.

ESPAR INC., et al.  
Defendants

Court File No. 534/15 CP

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

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**ORDER  
(Motion for Settlement Approval)**

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**FOREMAN & COMPANY  
PROFESSIONAL CORPORATION**  
4 Covent Market Place  
London, ON N6A 1E2

**Jonathan Foreman (LSO# 45087H)**  
**Sarah Bowden (LSO# 56385D)**  
Tel: (519) 914-1175  
Fax: (226) 884-5340  
E-mail: [jforeman@foremancompany.com](mailto:jforeman@foremancompany.com)  
[sbowden@foremancompany.com](mailto:sbowden@foremancompany.com)

Lawyers for the Plaintiff