Court File No.: CV-19-00614686-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VICTOR ROMITA and CHRISTOPHER PEARCE

Plaintiffs

– and –

INTELLIPHARMACEUTICS INTERNATIONAL INC. and ISA ODIDI

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

(Made as of the 6th day of November, 2020)

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SETTLEMENT AGREEMENT

Subject to the approval of the Court as provided herein, the Parties agree that, in consideration of the promises and covenants set forth in this Agreement and upon the Approval Order becoming a Final Order, this Action will be settled and compromised on the terms and conditions contained herein.

SECTION 1: RECITALS

1.1 **WHEREAS:**

a. The Plaintiffs commenced this Action in Ontario against the Defendants, alleging that certain disclosure documents released by Intellipharmaceutics International Inc. ("IPCI") contained misrepresentations within the meaning of the *OSA*, with said misrepresentations alleged to have caused IPCI's securities to trade at artificially high prices.

b. The Defendants have denied and continue to deny all of the Plaintiffs' claims in this Action, have vigorously denied any wrongdoing or liability of any kind whatsoever, and state that they would have actively and diligently pursued affirmative defences and other defences had this Action not been settled.

c. The Plaintiffs, with the benefit of advice from Class Counsel, have concluded that this Agreement, which resolves finally and completely the Action against all of the Defendants, is fair, reasonable and in the best interests of the Class based upon an analysis of the facts and law applicable to the issues in this Action, and taking into account factors including the burdens, complexities, risks and expense of continued litigation, including causation, the determination of damages to the Class, the effect of applicable statutes of limitations, the effect of recent case law, any potential appeals, and the potential risks to recovery in

continuing the Action.

d. The Defendants similarly have concluded that this Agreement is desirable in order to avoid the time, risk and expense of continuing with the litigation, including any potential appeals, and any other present or future litigation arising out of the facts that gave rise to this Action, and to resolve finally and completely the pending claims advanced or that could have been advanced against them in this Action.

e. The Plaintiffs and the Defendants, through counsel, have engaged in hard-fought and extensive arm's length settlement discussions and negotiations in respect of the Action for over a year.

f. The Plaintiffs and the Defendants intend to and hereby do finally resolve the Action and all the claims that were or could have been asserted in the Action, subject to the approval of the Court as hereinafter provided, without any admission of liability or wrongdoing whatsoever by the Defendants.

g. The Plaintiff Victor Romita asserts that he is a suitable representative for the Class and will seek to be appointed as the representative Plaintiff for the certified Class in this Action.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the settlement set out herein.

SECTION 2: DEFINITIONS

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

1. ***Action*** means the action styled *Romita et al. v. Intellipharmaceutics International Inc. et al.* filed in the Ontario Superior Court of Justice (Toronto Registry), Court File. No.: CV-19-00614686-00CP.

2. ***Agreement*** means the within settlement agreement, including the Recitals and Schedules hereto.

3. ***Approval Motion*** means a motion to be brought by the Plaintiffs, in the Court, for the Approval Order.

4. ***Approval Order*** means an order made by the Court:

   a. approving this Agreement and the proposed distribution of the Settlement Amount;

   b. approving the form of the Second Notice; and

   c. dismissing the Action as against the Defendants with prejudice and without costs, on the Effective Date;

5. ***Certification and First Notice Motion*** means a motion to be brought by the Plaintiff Romita, in the Court, for the Certification and First Notice Order.

6. ***Certification and First Notice Order*** means an order by the Court:

   a. granting leave of the Court, pursuant to s. 138.8 of the *OSA,* to commence an action under s. 138.3 of the *OSA* for settlement purposes only;

   b. certifying the Action pursuant to ss. 2 and 5 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6 for settlement purposes only;

   c. approving the form, content and method of dissemination of the First Notice;

   d. prescribing opt-out procedures; and

   e. fixing the date for the Approval Motion

7. ***Class or Class Members means all persons, other than Excluded Persons, who acquired IPCI's common shares listed on the TSX on or after February 29, 2016, and who held some or all of those common shares after the close of trading on July 26, 2017***.

8. ***Class Counsel*** means Morganti & Co., P.C.

9. ***Class Counsel Fees*** means the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel, as approved by the Court.

10. ***Class Period*** means the period from and including February 29, 2016 to and including July 26, 2017.

11. ***Common Issues*** means:

a. Did IPCI's Class Period disclosure documents contain a misrepresentation within the meaning of the *OSA*?; and

b. Did the statements released on July 26, correct the previously released impugned documents containing alleged misrepresentations within the meaning of the OSA?

12. ***Company*** means IPCI.

13. ***Counsel for the Defendants*** means DLA Piper (Canada) LLP.

14. ***Court*** means the Ontario Superior Court of Justice.

15. ***CPA*** means the *Class Proceeding Act, 199*2, S.O. 1992, c. 6, as amended.

16. ***Defendants*** means IPCI and Isa Odidi.

17. ***Effective Date*** means the date on which both of the following occur or have occurred:

a. the Settlement Amount has been paid into the Escrow Account; and

b. the Defendants' collective right to terminate the Agreement has expired and the Approval Order becomes a Final Order.

18. ***Eligible Shares*** means the Shares purchased or otherwise acquired by a Class Member or Opt-Out Party during the Class Period and still held at the close of trading on July 26, 2017.

19. ***IPCI*** means Intellipharmaceutics International Inc.

20. ***Equivalent Securities Acts*** means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as amended; the *Securities Act*, R.S.P.E.I. 1988, c S-3.1, as amended; the *Securities Act*, R.S.Q. c V-1.1, as amended; and *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended.

21. ***Escrow Account*** means the trust account of Class Counsel or, if directed by the Court, an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of a

claims administrator appointed by the Court.

22. ***Excluded Persons*** means (i) the Defendants, their legal representatives (including all partners), and directors and officers' insurers (including all employees), (ii) IPCI's subsidiaries, affiliates, officers, directors, senior employees, heirs, predecessors, successors and assigns, and (iii) Odidi's immediate family and any entity in which Odidi or his immediate family had a controlling interest during the Class Period.

23. ***First Notice*** means the Long-Form Notice of Certification and Settlement Approval Hearing and/or the Short-Form Notice of Certification and Settlement Approval Hearing.

24. ***Final Order*** means any order of the Court contemplated by this Agreement from which any right of appeal has been exhausted, expired, or where no appeal lies.

25. ***Individual Defendant*** means Isa Odidi.

26. ***Long-Form Notice of Certification and Settlement Approval Hearing*** and ***Short-Form Notice of Certification and Settlement Approval Hearing*** mean Court-approvde notice to the Class of:

a. the granting of leave to proceed and certification of the Action as against the Defendants, for settlement purposes only;

b. the procedure for submitting an Opt-Out Form; and

c. the pendency of the Approval Motion.

27. ***Long-Form Notice of Settlement*** and ***Short-Form Notice of Settlement*** mean Court-approved notice to the Class of the Approval Order.

28. ***Opt-Out Deadline*** means the date sixty (60) days after the date on which the First Notice is first published on Class Counsel's website.

29. ***Opt-Out Form*** means the document, as approved by the Court, that if properly completed and submitted by a Class Member to Class Counsel before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class, the Action, and participation in the Settlement, as further explicated in section 8.2 herein.

30. ***Opt-Out Party or Opt-Out Parties*** means any and all persons who would otherwise be Class Members and who submit a valid Opt-Out Form to Class Counsel by the Opt-Out Deadline.

31. ***Opt-Out Period*** means the period up to and including the Opt-Out Deadline, during which Opt-Out Forms may be submitted by persons who fall within the Class and wish to opt-out of the Action and the Settlement.

32. ***OSA*** means the S*ecurities Act*, R.S.O. 1990, c. S.5, as amended.

33. ***Parties*** mean the Plaintiffs and the Defendants.

34. ***Plan of Notice*** means the Court-approved plan for disseminating the First Notice and Second Notice to the Class.

35. ***Released Claims*** (or ***Released Claim*** in the singular) means any and all claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, including assigned claims, existing now or arising in the future, whether known or unknown, asserted or unasserted, regardless of the legal theory, arising from, related to, or based on any allegations, transactions, facts, matters, occurrences, representations, or omission that were or could have been asserted in the Action, including, without limitation, all claims in connection with the purchase, other acquisition, sale, other disposition, or holding of IPCI's securities and all claims for damages including, but not limited to punitive, aggravated, statutory and other multiple damages or penalties of any kind, known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute, at common law or in equity, relating in any way to any conduct anywhere, from the beginning of time to the date hereof; and remedies of whatever kind or character, known or unknown, that are now recognized by law or equity or that may be created and recognized in the future by statute, regulation, judicial decision, or in any other manner, including but not limited to injunctive and declaratory relief; economic or business losses or disgorgement of revenues or profits and restitution; and costs, expenses, class administration expenses, and lawyers' fees (including Class Counsel Fees); and prejudgment and post-judgment interest.

36. ***Releasees*** mean, jointly and severally, individually and collectively, the Defendants and all of their respective present and former, 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 respective 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

37. ***Releasors*** mean, jointly and severally, individually and collectively, the Plaintiffs, the Class Members, and their respective heirs, executors, trustees, administrators, assigns, attorneys, representatives, partners and insurers and their predecessors, successors, heirs, executors, trustees, administrators and assignees; but, for greater certainty, excludes Opt-Out Parties.

38. ***Second Notice*** means the Long-Form Notice of Settlement and/or the Short-Form Notice of Settlement.

39. ***Settlement*** means the settlement provided for in this Agreement.

40. ***Settlement Amount*** means $200,000 in United States currency (at the exchange rate of $1 USD = $1.33 CAD which for certainty is $266,000 Canadian currency) inclusive of settlement administration expenses, if any, *cy près* payments, Class Counsel's disbursements and legal fees

plus taxes, and any other costs or expenses otherwise related to the Action.

41. ***Shares*** means common shares of IPCI.

42. ***TSX*** means the Toronto Stock Exchange and any alternate trading platform in Canada.

SECTION 3: APPROVAL AND NOTICE PROCESS

Best Efforts

3.1 The Parties shall use their best efforts to effectuate this Settlement and to secure the Approval Order in a prompt and timely manner.

3.2 Until the Approval Order becomes a Final Order or the termination of this Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Action, other than the motions provided for in this Agreement and such other matters required to implement the terms of this Agreement.

Certification and First Notice Motion

3.3 Plaintiff Romita will, as soon as is reasonably practicable following the execution of this Agreement, bring the Certification and First Notice Motion. Subject to the content of the First Notice and the Certification and First Notice Order being satisfactory to the Defendants, and for the purpose of this Agreement only, the Defendants will consent to the Certification and First Notice Order being issued by the Court for the purposes of the Settlement only.

3.4 Upon entry of the Certification and First Notice Order, Class Counsel shall cause the First Notice to be published in accordance with the Plan of Notice and the directions of the Court. Any third-party costs for publishing the First Notice shall be paid by the Plaintiffs.

Approval Motion and Notice

3.5 Plaintiff Romita will thereafter bring the Approval Motion before the Court in accordance with the Court's directions. The Defendants will consent to the issuance of the Approval Order, subject to the content of the Approval Order sought at the Approval Motion being satisfactory to the Defendants, and for the purposes of the Settlement only.

3.6 Upon entry of the Approval Order, Class Counsel shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. Any third-party costs for publishing the Second Notice shall be paid by the Plaintiffs.

Notice of Termination

3.7 If this Agreement is terminated after the First Notice has been published and disseminated, a notice of the termination will be given to the Class. Class Counsel will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs. Any third-party costs for publishing a notice of termination shall be shared equally (1/2 each) between the Parties.

Report to the Court

3.8 After publication and dissemination of each of the notices required by this Section, Class Counsel shall file with the Court an affidavit confirming publication and dissemination.

SECTION 4: SETTLEMENT BENEFIT

Payment of Settlement Amount

4.1 Within thirty (30) days after the Approval Order is granted (but in any event no earlier than February 1, 2021), the Defendants, or their insurers as the case may be, shall cause the Settlement Amount to be paid into the Escrow Account.

4.2 Neither the Defendants nor the Defendants' insurers shall have any obligation to pay any amount to the Plaintiffs, the Class Members or Class Counsel other than the Settlement Amount with respect to this Agreement or the Action for any reason whatsoever, including any amount for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Action, including as described in Sections 3.4 and

3.6, the Released Claims, the Settlement, and settlement administration expenses, if any.

4.3 Class Counsel shall provide an accounting to the Court for all payments made from the Escrow Account by Class Counsel, who will also serve as claims administrator. In the event this Agreement is terminated, Class Counsel shall deliver an accounting to the Court no later than ten (10) days after the termination.

4.4 Any dispute concerning an entitlement to or quantum of expense incurred in the publication and dissemination of the First Notice, or subsequently, shall be dealt with by a motion to the Court on notice to the Parties.

Settlement Amount to be Held in Trust

4.5 Class Counsel shall maintain the Settlement Amount in the Escrow Account for the benefit of the Class, as provided for in this Agreement; however, in the event it is appropriate to appoint a claims administrator and one is appointed by the Court, Class Counsel shall, as directed by the Court, immediately transfer the full balance of the Settlement Amount to such claims administrator, who shall maintain the Settlement Amount in the Escrow Account for the benefit of the Class, as provided for in this Agreement.

4.6 No amount shall be paid out from the Escrow Account by Class Counsel or a Court appointed claims administrator except in accordance with this Agreement, or in accordance with an order of the Court obtained on notice to the Parties.

Taxes on Interest

4.7 Except as expressly provided herein, any interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the Escrow Account.

4.8 Subject to Section 4.9, all taxes payable on any interest which accrues on or otherwise in relation to the Settlement Amount in the Escrow Account shall be the responsibility of the Class. Class Counsel or a claims administrator, as may be appointed by the Court, shall be solely responsible for fulfilling all applicable tax reporting and payment requirements arising from the Settlement Amount in the Escrow Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Escrow Account.

4.9 The Defendants shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Agreement is terminated, in which case any interest earned on the Settlement Amount in the Escrow Account shall be paid to the Defendants or their insurers, as may be directed, who, in such case, shall be responsible for the payment of any applicable taxes on such interest not previously paid by Class Counsel or a Court appointed claims administrator.

SECTION 5: NO REVERSION

5.1 Unless this Agreement is terminated as provided herein, the Defendants or their insurers, as the case may be, shall not be entitled to the repayment of any portion of the Settlement Amount contributed under Section 4.1 and then only to the extent of and in accordance with the terms provided herein.

SECTION 6: EFFECT OF SETTLEMENT

No Admission of Liability

6.1 Whether or not this Agreement is terminated, this Agreement, anything contained in it, any

and all negotiations, discussions, and communications associated with this Agreement, shall not be deemed, construed or interpreted as a concession or admission of wrongdoing or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in this Action. Neither this Agreement nor anything contained herein shall be used or construed as an admission by the Releasees of any fault, omission, liability or wrongdoing in connection with any statement, release, written document, offering document or financial report, or otherwise, and in fact the Defendants continue to vigorously dispute and contest the allegations made in this Action.

Agreement Not Evidence

6.2 The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to implement this Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in this Action or in any other pending or future civil, criminal, quasi-criminal, administrative action, disciplinary investigation or other proceeding as any presumption, concession or admission: (i) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiffs against the Defendants, or the deficiency of any defence that has been or could have been asserted in the Action; (ii) of wrongdoing, fault, neglect or liability by the Defendants; and (iii) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Action after trial.

6.3 Notwithstanding Section 6.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released

Claims, or as otherwise required by law.

No Further Litigation

6.4 Class Counsel, and anyone formerly, currently or hereafter employed by, associated with, or a partner with Class Counsel may not, directly or indirectly participate or be involved in, or in any way assist with respect to any claim made by any person, including but not limited to any putative class member who opts-out of the settlement, in relation to any claim they have or may in the future assert, regarding the subject matter of the Action.

6.5 Class Counsel also is prohibited from divulging to anyone for any purpose any information obtained in the course of the negotiation, preparation or execution of this Agreement, without the prior written consent of the Defendants or unless ordered to do so by a court.

SECTION 7: CERTIFICATION AND LEAVE FOR SETTLEMENT ONLY

Consent to Certification and Leave to Proceed

7.1 The Defendants will consent to the Court granting the Plaintiffs leave to commence a claim under s. 138.3 of the *OSA* pursuant to s. 138.8 of the *OSA* ("leave to proceed"), solely for the purpose of effecting this Agreement.

7.2 The Defendants will consent to certification of the Action as a class proceeding, pursuant to Sections 2, 5 and 6 of the *CPA,* solely for the purpose of effecting this Agreement.

7.3 The Plaintiffs and the Defendants agree that the only common issues that the Plaintiffs will seek to define as against the Defendants are the Common Issues and the only class that the Plaintiffs will assert is the Class.

Certification and Leave to Proceed Without Prejudice

7.4 The Parties agree that the granting of leave to proceed and certification of the Action as a class proceeding in accordance with Sections 7.1-7.3 hereof is for the sole purpose of effecting the Settlement. In the event that this Agreement is terminated as provided herein, the Certification and First Notice Order shall be vacated or set aside to the extent of the order granting leave to proceed and certifying this Action as a class proceeding for the purposes of implementing this Agreement, and shall be without prejudice to any position that any of the Parties may later take on any issue in the Action including in subsequent leave to proceed and certification motions. In particular, the fact of the Defendants' consent to leave to proceed and certification for settlement purposes shall not be referenced in any way in the further prosecution of the Action, nor shall such consent be deemed to be an admission by the Defendants, or any of them, that the Plaintiffs have met any of the requisite criteria for granting leave to proceed or certification of the Action as a class proceeding.

SECTION 8: OPTING OUT

Awareness of any Potential Opt-Outs

8.1 Plaintiff Romita and Class Counsel represent and warrant that:

a. they are unaware of any Class Member who has expressed an intention to opt-out of the Class;

b. they are unaware of any Class Member who has expressed an intention to object to this Settlement; and

c. they will not encourage or solicit any Class Member to opt-out of the Class.

Opt-Out Procedure

8.2 Each Class Member who wishes to exclude him, her or itself from the Class must submit a properly completed Opt-Out Form along with all required supporting documents to Class

Counsel on or before the Opt-Out Deadline. An Opt-Out Form shall consist of the following:

a. a statement of intention to opt out of the Action, signed by the Class Member or a person authorized to bind the Class Member;
b. a listing of all purchases and sales of IPCI securities during the Class Period;
c. the total number of IPCI securities held at the end of the Class Period;
d. supporting documents to evidence such transactions, in the form of trade confirmations, brokerage statements, other transaction records or suitable alternative documentation as may be agreed between the Class Member and Class Counsel; and
e. contact information for the Class Member, including name, address, telephone number and email address.

8.3 In order to remedy any deficiency in the completion of an Opt-Out Form, Class Counsel may require and request that additional information be submitted by a Class Member who submits an Opt-Out Form.

8.4 If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to Class Counsel or fails to remedy any deficiency by the Opt-Out Deadline, the Class Member shall not have opted out of the Action, subject to any order of the Court to the contrary, and will in all other respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein.

8.5 The Opt-Out Deadline will not be extended unless the Court orders otherwise.

8.6 Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt-out shall be bound by the Settlement and the terms of

this Agreement.

Notification of Number of Opt-Outs.

8.7 After the Opt-Out Deadline and prior to the hearing of the Approval Motion, Class Counsel shall report to the Court and the Defendants the number of Eligible Shares held by each Opt-Out Party, a summary of the information delivered by each Opt-Out Party, and the total number of Eligible Shares held by all Opt-Out Parties.

8.8 Class Counsel shall also provide to Counsel for the Defendants copies of all of the Opt-Out Forms submitted by Opt-Out Parties at the same time as the report provided for in Section 8.7.

SECTION 9: TERMINATION OF THE AGREEMENT

General

9.1 This Agreement shall, without notice, be automatically terminated if:

a. the Court declines to grant the Certification and First Notice Order and such order becomes a Final Order;

b. the Court grants the Certification and First Notice Order but such order is reversed on appeal and the reversal becomes a Final Order;

c. the Court declines to grant the Approval Order and such order becomes a Final Order; or

d. the Court grants the Approval Order but such order is reversed on appeal and the reversal becomes a Final Order.

9.2 The Defendants shall each have the right to terminate this Agreement by delivering a written notice pursuant to s. 13.19 below within thirty (30) days after any of the following events:

a. the Court grants the Certification and First Notice Order in a form that is not

satisfactory to the Defendants, acting reasonably; or

b. the Court grants the Approval Order in a form that is not satisfactory to the Defendants, acting reasonably.

9.3 In the event this Agreement is terminated in accordance with its terms:

a. the Parties will be restored to their respective positions prior to the execution of this Agreement;

b. the Parties will consent to an Order vacating or setting aside the Certification and First Notice Order to the extent of the order granting leave to proceed and certifying this Action as a class proceeding for the purposes of implementing this Agreement; and, such order shall include a declaration that:

i. the prior consent granting of leave to proceed and certification of this Action for settlement purposes shall not be deemed to be an admission by the Defendants that the Action met any of the criteria for granting leave to proceed or certification as a class proceeding; and

ii. no Party to this Action and no other person may rely upon the fact of the prior consent granting of leave to proceed and certification for any purpose whatsoever;

c. the Escrow Settlement Amount will be returned to the Defendants or their insurers, as directed, in accordance with Section 9.6(d) hereof;

d. this Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;

e. this Agreement and the consent leave to proceed and certification order will not be introduced into evidence or otherwise referred to in any litigation against the

Defendants.

9.4 Notwithstanding the provisions of Section 9.3(d), if this Agreement is terminated, the provisions of this Section 9 and Sections 2, 3.7, 3.8, 4.3, 4.9, 5.1, 6.1, 6.2, 6.3, 6.5, 7.4, 8.1, 11.4, 11.6, and 13 shall survive termination and shall continue in full force and effect.

Allocation of Monies in the Escrow Account Following Termination

9.5 Class Counsel shall account to the Court and the Parties for the amounts maintained in and disbursed from the Escrow Account. If this Agreement is terminated, consistent with Section 4.3, this accounting shall be delivered no later than ten (10) days after such termination.

9.6 If this Agreement is terminated, the Defendants shall, within thirty (30) days after termination, apply to the appropriate Court, on notice to the Plaintiffs, for an order:

a. declaring this Agreement null and void and of no force or effect except for the provisions listed in Section 9.4;
b. determining whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
c. requesting an order setting aside, *nunc pro tunc*, all prior orders or judgments entered by the Court in accordance with the terms of this Agreement, including any order granting leave to proceed and/or certifying the Action as a class proceeding for the purposes of implementing this Agreement; and
d. authorizing the payment of all remaining funds in the Escrow Account, including accrued interest, to the Defendants or their insurers as the case may be.

9.7 Subject to Section 9.8, the Parties shall consent to the orders sought in any motion made by the Defendants pursuant to Section 9.6.

Disputes Relating to Termination

9.8 If there is any dispute about the termination of this Agreement, the Court shall determine any dispute by motion made by a Party on notice to the other Parties.

No Right to Terminate

9.9 For greater certainty, no dispute or disagreement among the Plaintiffs and/or members of the Class or any of them about the proposed distribution of the Settlement Amount shall give rise to a right to terminate this Agreement.

SECTION 10: DETERMINATION THAT THE SETTLEMENT IS FINAL

10.1 The Settlement shall be considered final on the Effective Date.

SECTION 11: RELEASES AND JURISDICTION OF THE COURT

Release of Releasees

11.1 Upon the Effective Date, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Agreement, the Releasors forever and absolutely release, waive and forever discharge the Releasees from the Released Claims.

11.2 The Releasors acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the Action and the subject matter of this Agreement, and that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, this release and, subject to the provisions of Section 9, this Agreement, shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

11.3 Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released

Claims.

No Further Claims

11.4 As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Ontario 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 of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees in respect of any Released Claim. For greater certainty, this provision does not prohibit the Releasors or Class Counsel from advancing any cause of action against the Releasees that does not arise from the material facts that formed the basis of the Action.

Dismissal of the Action

11.5 As of the Effective Date, the Action shall be dismissed as against the Defendants with prejudice and without costs.

No Claims in Interim

11.6 As of the date of this Agreement, Class Counsel represent that they do not represent the Plaintiffs in any other proceeding related to any matter at issue in this Action.

SECTION 12: THE FEE AGREEMENT AND CLASS COUNSEL FEES

Motion for Approval of Class Counsel Fees and Directions for Distribution of the Remainder of the Settlement Amount

12.1 At the Approval Hearing, Class Counsel may seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount and seek directions as to the distribution of the remainder of the Settlement Amount, including a direction that it be distributed to (an) appropriate *cy près* recipient(s) as approved by the Court.

12.2 The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and they will not take any position or make any submissions to the Court concerning Class Counsel Fees, except as requested and required by the Court. Subject to the foregoing, the Plaintiffs will provide the Defendants with notice of the motion to approve Class Counsel Fees and copies of the materials filed with the Court and the Defendants and their counsel are entitled to attend any motion for approval of Class Counsel Fees.

12.3 The procedure for and the allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Settlement Amount are not part of the Settlement provided for herein, and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

12.4 Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Approval Order and the Settlement of this Action provided herein.

Payment of Class Counsel Fees and Distribution of the Remainder of the Settlement Amount

12.5 Forthwith after the Settlement becomes final, as contemplated in Section 10.1, and the time for the Defendants to elect to terminate pursuant to Section 9.6 has expired or the Defendants have waived their collective right to elect to terminate the Agreement, Class Counsel may withdraw the Class Counsel Fees approved by the Court from the Escrow Account and transfer or otherwise disburse the remainder of the Settlement Amount in accordance with the Court's directions contemplated by Section 12.1.

SECTION 13: MISCELLANEOUS

Motions for Directions

13.1 Any one or more of the Parties, Class Counsel, or the Administrator (should one be appointed), may apply to the Court for directions in respect of any matter in relation to this Agreement and the future distribution of the Settlement Amount.

13.2 All motions contemplated by this Agreement shall be on notice to the Parties.

Defendants Have No Responsibility or Liability for Administration

13.3 Except for the obligations in respect of the performance of the obligations under Section 4.1, the Defendants shall have no responsibility for and no liability whatsoever with respect to the implementation of this Agreement, including, without limitation, the distribution of the Settlement Amount

Headings, etc.

13.4 In this Agreement:

a. the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;

b. the terms "the Agreement", "this Agreement", "herein", "hereto" and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement;

c. "person" means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies, by whatever name in the jurisdiction in

which the person is domiciled.

13.5 In the computation of time in this 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, the act may be done on the next day that is not a holiday.

Governing Law

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

13.7 The Parties agree that the Court shall retain exclusive and continuing jurisdiction over this Proceeding, the Parties and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

Severability

13.8 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall, upon the agreement of all of the Parties, be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

Entire Agreement

13.9 This Agreement constitutes the entire agreement among the Parties and supersede 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 Agreement, unless expressly incorporated herein. This 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 Court.

Binding Effect

13.10 If the Settlement is approved by the Court and becomes final as contemplated in Section 10, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendants, Class Counsel, the Releasees and the Releasors, the insurers, or, any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein shall be binding upon all Releasors and Releasees, as applicable.

Survival

13.11 The representations and warranties contained in this Agreement shall survive its execution and implementation.

Negotiated Agreement

13.12 This Agreement and the underlying settlement have been the subject of arm's length negotiations and many discussions among the undersigned and counsel. The Parties have been represented and advised by competent counsel. The Parties agree that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

Recitals

13.13 The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

Acknowledgements

13.14 Each Party hereby affirms and acknowledges that:

a. its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
b. the terms of this Agreement and the effects thereof have been fully explained to it by his or its counsel; and
c. he, she or its representative fully understands each term of this Agreement and its effect.

Counterparts

13.15 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a signature delivered by email shall be deemed an original signature for purposes of executing this Agreement.

Confidentiality and Communications

13.16 In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about this Agreement, the Parties and their respective counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Class.

13.17 Nothing in this Section shall prevent the Parties or their counsel, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any disclosure or comment required by this Agreement, or from making any necessary disclosure or

comment for the purposes of any applicable securities or tax legislation or from making any disclosure or comment to Class Members or the Court or for the purposes of any proceedings as between the Defendants.

13.18 Without limiting the generality of the foregoing, other than in materials filed in Court for purposes of effecting the Settlement, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process, unless required to do so by law. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Agreement, the Parties and their counsel agree and undertake to make no statement or comment that the Agreement is other than fair, reasonable and in the best interests of the Class, unless required to do so by law.

Notice

13.19 Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered both: (i) by e-mail; and (ii) personally during normal business hours, by registered or certified mail, or courier postage paid addressed as follows:

For the Plaintiffs:
Ian Literovich
Morganti & Co., P.C.
21 St. Clair Avenue East, Suite 1102
Toronto, ON M4T 1L9
(647) 344-1900 ext. 9
iliterovich@morgantico.com

For the Defendants:
Rebecca von Rüti
DLA Piper (Canada) LLP

Suite 6000, 1 First Canadian Place
Toronto, ON M5X 1E2
(604) 643-6493
rebecca.vonruti@dlapiper.com

Date of Execution:

_____, 20th day of January 2021

for: Andrew Morganti, on behalf of the Plaintiffs

Rebecca von Rüti
_____, 20th day of January 2021

Rebecca von Rüti, on behalf of the Defendants