

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

) MONDAY THE 30TH DAY

)

JUSTICE STRATHY

) OF APRIL, 2012

BETWEEN:

CHRISTIAN HELM

Plaintiff

- and -

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

Defendant

Proceeding under *The Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Representative Plaintiff for an Order that the Settlement Agreement be approved, was heard on April 30, 2012, in Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement reached between the Parties on February 1, 2012, attached hereto as Schedule "A" (the "Settlement Agreement") and on hearing submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that (i) the Plaintiff consents to this order; and (ii) the Defendant consents to this order:

- (1) **THIS COURT DECLARES** that the Settlement Agreement, in its entirety (including the Recitals, the definitions set out in section 1 and its Schedules), forms part of this Order and is binding upon the Representative Plaintiff, upon all Class Members who did not validly opt out of the Class, and upon the Defendant.

- (2) **THIS COURT ORDERS** that, for the purposes of this Order, except as otherwise stated, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
- (3) **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interest of the Class.
- (4) **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented in accordance with its terms.
- (5) **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Class Member that has not opted out of the Class in accordance with the Settlement Agreement, including those persons that are minors or mentally incapable, and the requirements of rules 7.04 and 7.08(5) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, are dispensed with in respect of this action.
- (6) **THIS COURT ORDERS** that upon the date the Settlement Agreement becomes final the Releasers fully, finally and forever release the Releasees from the Released Claims.
- (7) **THIS COURT ORDERS** that the disclosure and use of Identifying Information in accordance with the terms of the Settlement Agreement is hereby authorized and approved.
- (8) **THIS COURT ORDERS** that the within action is hereby dismissed against the Defendant without costs and with prejudice.

G. R. Strathy J

The Honourable Justice Strathy

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO.:
LE / DANS LE REGISTRE NO.:

MAY 01 2012

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: *RM*

SCHEDULE "A"

SETTLEMENT AGREEMENT

Made as of the 1st day of February, 2012

Between

CHRISTIAN HELM

- and -

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

RECITALS

A. WHEREAS the Action has been commenced by the Plaintiff in the Ontario Superior Court of Justice alleging that the Defendant breached its statutory obligations to the Plaintiff and Class Members by charging Class Members (retail, commercial or otherwise) interest on unpaid customer accounts at a monthly rate and not providing to Class Members the annual equivalent rate of interest charged as required by the *Interest Act*, where the rate of interest charged was in excess of 5% per annum;

B. WHEREAS the Defendant does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct contained in the Action;

C. WHEREAS the Plaintiff 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 Plaintiff's claims, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiff and the Class he seeks to represent;

D. WHEREAS the Plaintiff, Class Counsel, and the Defendant 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 Defendant or evidence of the truth of any of the Plaintiff's allegations against the Defendant, which allegations the Defendant expressly denies;

E. WHEREAS the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against it in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

F. WHEREAS the Parties therefore wish to, and hereby do, subject to the approval of the Court, finally resolve the Action without admission of liability;

G. WHEREAS for the purposes of settlement only and contingent on approvals by the Court as provided for in this Settlement Agreement, the Parties have consented to certification of the

Action as a class proceeding and have consented to a Class and a Common Issue in the Action; and

H. WHEREAS the Plaintiff asserts that he is an adequate class representative for the Class and will seek to be appointed representative plaintiff in the 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, it is agreed by the Parties that the Action be settled and dismissed on the merits with prejudice as to the Defendant, without costs as to the Plaintiff, the class he seeks to represent or the Defendant, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 - DEFINITIONS

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

- (1) *Action* means Ontario Superior Court of Justice File No. CV-10-415780 (Toronto).
- (2) *Active Customers* means Class Members that maintain accounts with Toronto Hydro as of the date Toronto Hydro queries its systems for the purpose of effecting repayment pursuant to section 2.3 of this Settlement Agreement, which date shall be within ten (10) business days of the Approval Order.
- (3) *Approval Hearing* means the hearing of the Plaintiff's motion for the Approval Order.
- (4) *Approval Hearing Notice* means the notice agreed upon by the Parties or approved by the Court for the purpose of providing Class Members with detailed information regarding: (i) the certification of the Action as a class proceeding for settlement purposes; and (ii) the manner in which and time within which Class Members may opt out.
- (5) *Approval Order* means the order or judgment issued by the Court, substantially in the form set out in Schedule "A" hereto, for the purpose of: (i) approving this Settlement Agreement; (ii) authorizing the disclosure and use of the Identifying Information in accordance with this Settlement Agreement; and (iii) dismissing the Action with prejudice.

- (6) *Class or Class Members* means all persons that were customers (retail, commercial or otherwise) of the Defendant, were billed at some time within the period from July 1, 2000 through to and including December 8, 2010, and who paid interest on an unpaid account billed during that period.
- (7) *Class Counsel* means Siskinds LLP.
- (8) *Class Counsel Fees* means the Legal Fees plus disbursements, costs, or charges of Class Counsel incurred in connection with prosecuting this Action, as approved by the Court, together with HST.
- (9) *Common Issue* means: Did the Defendant breach the *Interest Act* by charging interest on unpaid customer accounts at a monthly rate which equated to more than 5% per annum without disclosing the equivalent annual rate on its bills dated between July 1, 2000 and December 8, 2010, inclusive?
- (10) *Court* means the Ontario Superior Court of Justice.
- (11) *Cy Pres Recipients* means the United Way Centraide Canada, Red Door Family Shelter and Second Harvest.
- (12) *Defendant* means Toronto Hydro-Electric System Limited.
- (13) *Excess Interest* means interest charged at a rate greater than 5% per annum.
- (14) *Identifying Information* means the name and address of a Refund-Eligible Class Member.
- (15) *Inactive Customers* means Class Members that are not Active Customers.
- (16) *Legal Fees* means the fee to be paid to Class Counsel as approved by the Court but shall not be greater than 25% of the Settlement Amount, plus applicable taxes.
- (17) *Opt Out Deadline* means the date sixty (60) days after first publication of the Approval Hearing Notice.

(18) *Opt Out Form* means the form, substantially set out in Schedule "C" hereto, approved by the Court which must be completed and timely submitted to counsel for the Defendant by a Class Member in order for the Class Member to exclude himself, herself, or itself from the Class.

(19) *Parties* means the Plaintiff and the Defendant.

(20) *Plaintiff* means Christian Helm.

(21) *Pre-Approval Motion* means the motion brought by the Plaintiff before the Court for the Pre-Approval Order.

(22) *Pre-Approval Order* means an order, substantially in the form set out in Schedule "D" hereto, certifying the Action as a class proceeding for settlement purposes, approving the form, content, and manner of dissemination of the Approval Hearing Notice and Opt Out Form, setting the date for the Approval Hearing, and authorizing distribution of the Approval Hearing Notice.

(23) *Released Claims or Released Claim* 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 whenever incurred, and liabilities of any nature whatsoever, including interest, costs, expenses, penalties, Class Counsel Fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, 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 as against the Releasees, relating in any way to the interest payments that are the subject of this Action, or any conduct alleged (or which could have been alleged) in the Action.

(24) *Releasees* means, jointly and severally, individually and collectively, the Defendant and all of its 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 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.

- (25) *Releasers* means, jointly and severally, the Plaintiff, the Class Members who have not opted out of the Action, their respective heirs, executors, administrators, successors and assigns, and in relation to Class Members that are corporations, 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 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.
- (26) *Settlement Agreement* means this agreement, including the Recitals and Schedules hereto.
- (27) *Settlement Amount* means CAD\$5,835,882.00 (five million, eight hundred and thirty-five thousand, eight hundred and eighty-two Canadian dollars).
- (28) *Settlement Benefits* means the benefits provided for in Section 2 of this Settlement Agreement.
- (29) *Toronto Hydro* means the Defendant, Toronto Hydro-Electric System Limited.

SECTION 2 - SETTLEMENT BENEFITS

2.1 Eligibility

The Defendants shall provide Settlement Benefits to Class Members in accordance with the terms of this Settlement Agreement.

2.2 Refund-Eligible Class Members

A Class Member is entitled to partial repayment of Excess Interest paid by that Class Member to Toronto Hydro where that Class Member, between December 7, 2008 and June 29, 2011 inclusive, either paid to the Defendant or had credited to its account by the Defendant (for reasons other than the settlement of the Action) a cumulative amount equal to or greater than \$30.00 in Excess Interest in respect of a bill or bills issued on or before December 8, 2010 (a "Refund-Eligible Class Member").

2.3 Effecting Repayment

In order to effect the repayment to Refund-Eligible Class Members,

- (a) The Defendant shall:
 - (i) Identify the Refund-Eligible Class Members and determine the last known mailing address of each Refund-Eligible Class Member by querying its internal systems;
 - (ii) Calculate the amount owing to each Refund-Eligible Class Member by querying its internal systems to determine the total received Excess Interest posted to each Refund-Eligible Class Member's account and deducting the amount allocated to Class Counsel Fees as approved by the Court;
 - (iii) Create a list of Refund-Eligible Class Members who are Inactive Customers containing the amount owing to each such Inactive Customer determined in (ii) and the last known mailing address of each such Inactive Customer;
 - (iv) Convey to NPT Ricepoint:
 - (A) A list of Inactive Customers generated in (iii) in a format specified by NPT Ricepoint;
 - (B) Sufficient funds to cover the amount owing to each Inactive Customer as set out in the list in (A);
 - (C) The content for the letter to be sent to each Refund-Eligible Class Member who is an Inactive Customer and Toronto Hydro letterhead on which to print the letters; and
 - (D) Any further reasonable information requested by NPT Ricepoint.

- (v) Provide a credit or credits to the account of, or issue a cheque to, each Refund-Eligible Class Member that is an Active Customer corresponding to the amount owing to each Active Customer as determined in (ii);
 - (vi) Respond to inquiries from all Refund-Eligible Class Members and establish a dedicated phone line, including an after-hours voice mail box, for this purpose; and
 - (vii) Following receipt of the final reconciliation report from NPT Ricepoint as described in (b)(vi) below, reconcile all payments to Inactive and Active Customers and distribute payments to *Cy Pres* Recipients in accordance with section 2.7; and
 - (viii) Respond promptly to any inquiries from the Parties.
- (b) NPT Ricepoint shall:
- (i) Establish a dedicated escrow account in which to receive the funds in (iv)(B) to be used for payment of Refund-Eligible Class Members that are Inactive Customers;
 - (ii) Take reasonable steps to update the last known address of each Refund-Eligible Class Member that is an Inactive Customer, create a mailing list with the amounts owing to each Inactive Customer (“Master Inactive Customer List”), and provide a copy of the Master Inactive Customer List to Toronto Hydro in a format specified by Toronto Hydro;
 - (iii) Issue a cheque to each Refund-Eligible Class Member that is an Inactive Customer accompanied by the formal letter authored by Toronto Hydro on Toronto Hydro letterhead, with mail volumes and mailing timelines to be agreed upon by Toronto Hydro;
 - (iv) Reconcile all payments against the Master Inactive Customer List;
 - (v) Provide weekly status reports to Toronto Hydro;

- (vi) No later than thirty (30) days following six (6) months from the date of issuance of the last cheque to a Refund-Eligible Class Member that is an Inactive Customer, provide to Toronto Hydro:
 - (A) A final reconciliation summary report (audit grade); and
 - (B) All funds remaining in the dedicated escrow account;
- (vii) Direct customer and media queries to Toronto Hydro; and
- (viii) Respond promptly to any inquires from the Parties.

2.4 No Reissuance of Cheques

Once issued to a Refund-Eligible Class Member, a cheque will not be reissued for any reason, including whether it is lost or returned by the Refund-Eligible Class Member or it becomes stale-dated. Any residual Settlement Benefits in the dedicated escrow account six (6) months following the date of distribution of the last of the cheques shall be paid to the *Cy Pres* Recipients in the same proportion as applicable to section 2.7 herein.

2.5 Cancellation-Eligible Class Members

A Class Member who is currently liable to the Defendant for interest assessed prior to December 9, 2010 is entitled to have the portion of that liability that corresponds to Excess Interest cancelled by the Defendant such that the Excess Interest will not be collected by Toronto Hydro ("Cancellation-Eligible Class Members"). To this end, Toronto Hydro shall take all reasonable steps, including instructing third party collection agencies, within sixty (60) business days of the Approval Order to ensure that Excess Interest is not collected from Cancellation-Eligible Class Members. To the extent that any funds are collected from Cancellation-Eligible Class Members before the date the *Cy Pres* payments are made in accordance with section 2.7 herein, and to the extent such funds can reasonably be identified as relating to Excess Interest, such Excess Interest shall be paid to the *Cy Pres* Recipients in accordance with section 2.7.

2.6 Costs of Implementation of Settlement Agreement

In addition to the payment of the Settlement Benefits, the Defendant shall be solely responsible to pay the following costs reasonably arising in the implementation of this Settlement Agreement:

- (a) The costs of obtaining and confirming the last known mailing address of the Refund-Eligible Class Members in accordance with 2.3(a)(i) and 2.3(b)(ii);
- (b) The costs of managing correspondence and communication with Class Members and other of its customers in relation to this Action;
- (c) The costs of disseminating the Approval Hearing Notice; and
- (d) The disbursements of the Plaintiff as assessed by the Court up to \$10,000, plus applicable taxes.

The Plaintiffs shall be solely responsible to pay the following costs reasonably arising in the implementation of this Settlement Agreement:

- (a) The costs of issuing and mailing cheques to Refund-Eligible Class Members who are Inactive Customers.

2.7 *Cy Pres* Distribution

An amount equal to the Settlement Amount, less the amount paid to the Refund-Eligible Class Members by way of cheque or credit pursuant to sections 2.3(a)(v) and 2.3(b)(iii), plus the residual Settlement Benefits as described in section 2.4, less Class Counsel Fees, shall be distributed to each of the *Cy Pres* Recipients in proportions as approved by the Court.

SECTION 3 – RELEASES AND DISMISSALS

3.1 Release of Releasees

Upon finalization of the Approval Order, the Releasers forever and absolutely release the Releasees from the Released Claims.

3.2 Disposition of the Action

The Action shall be dismissed with prejudice and without costs as against the Defendant.

SECTION 4 – COURT APPROVALS

4.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete, and final dismissal with prejudice of the Action.
- (2) The Parties shall hold in abeyance all proceedings in the Action, other than the motions provided for in this Settlement Agreement, until the date this Settlement Agreement becomes final, or the Settlement Agreement is voided, whichever occurs first.

4.2 Pre-Approval Hearing

- (1) Promptly following the execution of this Settlement Agreement, Class Counsel shall file the Pre-Approval Motion with the Court and seek to obtain the Pre-Approval Order.
- (2) The Defendants shall consent to the Pre-Approval Order.
- (3) Following the hearing and determination of the Pre-Approval Motion, the Parties shall cause the Approval Hearing Notice to be provided, subject to any amendment or additional direction of the Court.
- (4) The Approval Hearing Notice shall be provided as follows:
 - (a) The Defendant shall cause the Approval Hearing Notice to be run for one day in each of the *Toronto Star* and *The Globe and Mail*;
 - (b) The Defendant shall post the Approval Hearing Notice in a prominent location on its website; and
 - (c) Class Counsel shall post the Approval Hearing Notice on a page dedicated to the Action on <http://www.classaction.ca>.

4.3 Approval Hearing

- (1) The Plaintiff shall bring a motion seeking the Approval Order from the Court.
- (2) The Defendants shall consent to the Approval Order.

4.4 Non-Approval of Settlement Agreement

- (1) If the Court does not approve this Settlement Agreement, this Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.
- (2) If the Court does not approve this Settlement Agreement, the provisions of sections 4.4 and 5 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 sections 4.4 and 5 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.
- (3) The Defendant and Plaintiff expressly reserve all of their respective rights if this Settlement Agreement does not become effective.

SECTION 5 - EFFECT OF SETTLEMENT

5.1 No Admission of Liability

Whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Defendant, or of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiff.

5.2 Agreement Not Evidence

Whether or not it is terminated, 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.

SECTION 6 - CERTIFICATION FOR SETTLEMENT ONLY

- (1) The Action shall be certified as a class proceeding solely for purposes of settlement of the Action and the approval of this Settlement Agreement by the Court.
- (2) At the Pre-Approval Motion, the only common issue that the Plaintiff will seek to define is the Common Issue and the only class that he will assert is the Class.

SECTION 7 – OPTING OUT

- (1) Each Class Member who wishes to opt out of the Class must properly complete an Opt Out Form and submit it to counsel for the Defendant by mail post-marked on or before the Opt Out Deadline.
- (2) Class Members who opt out shall be deemed to have opted out of the Class and shall be excluded from any rights and obligations arising from this Settlement Agreement.
- (3) Class Members who do not opt out of the Class in the manner and time provided above shall be deemed to have elected to participate in this Settlement Agreement.
- (4) If ten (10) or more Refund-Eligible Class Members who hold aggregate Excess Interest claims exceeding CAD\$100,000 opt out of the Class, the Defendant may, at its option and without penalty, terminate this Settlement Agreement.

SECTION 8 – MISCELLANEOUS

8.1 Entire Agreement

(1) The 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. The 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 Court.

(2) The Recitals and Schedules to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

8.2 Diligence and Good Faith

(1) With respect to the Defendant's obligations as set out in section 2, the Defendant shall act diligently and in good faith and in accordance with the terms of this Settlement Agreement.

(2) The Defendant's administrative processes in relation to the matters referred to in section 8.2(1) shall be subject to reasonable audit and review by Class Counsel for the purpose of determining that the Defendant is complying with section 8.2(1). Such audit and review shall consist of individual claim auditing, review of statistical claim data and physical auditing of the administrative processes of the Defendant, as may be reasonably required to determine compliance.

(3) If, in the opinion of Class Counsel, the Defendant is not complying with section 8.2(1), and the Defendant has not remedied the alleged non-compliance after having been given reasonable notice of its particulars, Class Counsel may bring a motion to the Court for directions.

(4) With respect to NPT Ricepoint's obligations as set out in section 2, NPT Ricepoint shall act diligently and in good faith and in accordance with the terms of this Settlement Agreement.

(5) NPT Ricepoint's administrative processes in relation to the matters referred to in section 8.2(4) shall be subject to reasonable audit and review by Class Counsel for the purpose of determining that NPT Ricepoint is complying with section 8.2(4).

(6) If, in the opinion of Class Counsel, the NPT Ricepoint is not complying with section 8.2(4), and NPT Ricepoint has not remedied the alleged non-compliance after having been given reasonable notice of its particulars, Class Counsel may bring a motion to the Court for directions.

8.3 Ongoing Jurisdiction

(1) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing this Settlement Agreement.

(3) The Parties shall report to the Court concerning the implementation of this Settlement Agreement as the Court may direct.

(4) The Parties hereby agree and acknowledge that the terms of this Settlement Agreement are subject to and must be acceptable and comply with all Laws and Regulations. In the event that Toronto Hydro is unable to perform its obligations under this Settlement Agreement due to Laws and Regulations, the parties shall negotiate in good faith to amend the terms of this Settlement Agreement in order to comply with Laws and Regulations, and will report to the Court and seek Court direction as required. In this section, the term "Laws and Regulations" means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, licences, authorisations, direction of, and agreements with Governmental Authorities that now or at any time hereafter may be applicable to either the Settlement Agreement or the obligations of Toronto Hydro thereunder, and the term "Governmental Authority" means the Ontario Energy Board and any other federal, provincial or municipal government or regulatory authority, agency, tribunal, commission, board or any court or other law, regulation or rule-making entity with jurisdiction over the matter.

8.4 Motions

- (1) Any one or more of the Parties may apply to the Court for directions in respect of any matter in relation to this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.
- (3) The Defendant shall not be party to the motion for the approval of Class Counsel Fees, but Class Counsel shall advise the Defendant of any motion for approval of, or otherwise in relation to, Class Counsel Fees. The Defendant shall be entitled to make submissions to the Court on the hearing of the motion, but shall not have the right to appeal the order approving Class Counsel Fees.

8.5 Interpretation, etc.

- (1) In this Settlement Agreement:
 - (a) the division of this Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
 - (b) the terms "this Settlement Agreement", "herein", "hereto" and similar expressions refer to this Settlement Agreement as a whole and not to any particular section or other portion of this Settlement Agreement.
- (2) 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, the act may be done on the next day that is not a holiday.

8.6 Binding Effect

If this Settlement Agreement is approved by the Court and becomes Final, this Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendant, the Releasees and the Releasers. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

8.7 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and many discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Settlement Agreement shall have no force and effect. 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.

8.8 Notice

Where this Settlement Agreement requires a notice or any other communication or document to be given to the Parties, such notice, communication, or document shall be provided by e-mail, fax, or letter by overnight delivery to the representative of the person to whom notice is being provided, as identified below:

For Plaintiff and for Class Counsel:

Daniel E. H. Bach
Siskinds LLP
680 Waterloo Street
London, ON N6A 3V8

Fax: 519.660.2085
Email: daniel.bach@siskinds.com

For Defendant:

Kelly Friedman
Davis LLP
1 First Canadian Place, Suite 6000
PO Box 367, 100 King Street W
Toronto, ON M5X 1E2

Fax: 416.777.7418
Email: kfriedman@davis.ca

8.9 Acknowledgements

Each of the Parties affirms and acknowledges that:

- (a) He or, in the case of a Defendant, its representative with the authority to bind it with respect to the matters set forth herein, has read and understood this Settlement Agreement; and
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him or, in the case of a Defendant, its representative by his or its counsel.

8.10 Authorized Signatures


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 Party for whom he or she is signing.

8.11 Counterparts

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 scanned or fax signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

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

CHRISTIAN HELM
By HIS COUNSEL,
Siskinds LLP

By: 

Daniel E. H. Bach

TORONTO HYDRO-ELECTRIC SYSTEM
LIMITED
By ITS COUNSEL,
Davis LLP

By: 

Kelly Friedman

SCHEDULE "A" – APPROVAL ORDER

Court File No. CV-10-415780

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHRISTIAN HELM

Plaintiff

- and -

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

Defendant

Proceeding under *The Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Representative Plaintiff for an order that the Settlement Agreement be approved, was heard on ♦, 2012, in Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement reached between the Parties on February 1, 2012, attached hereto as Schedule "A" (the "Settlement Agreement") and on hearing submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that a) the Plaintiff consents to this order; and b) the Defendant consents to this order:

- (1) **THIS COURT DECLARES** that the Settlement Agreement, in its entirety (including the Recitals, the Definitions set out in section 1 and its Schedules), forms part of this Order and is binding upon the Representative Plaintiff, upon all Class Members who did not validly opt out of the Class, and upon the Defendant.
- (2) **THIS COURT ORDERS** that, for the purposes of this Order, except as otherwise stated, the definitions set out in the Settlement Agreement apply and are incorporated into this Order.

- (3) **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interest of the Class.
- (4) **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *CPA* and shall be implemented in accordance with its terms.
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- (6) **THIS COURT ORDERS** that upon the date the Settlement Agreement becomes final, the Releasers fully, finally and forever release the Releasees from the Released Claims.
- (7) **THIS COURT ORDERS** that the disclosure and use of Identifying Information in accordance with the terms of the Settlement Agreement is hereby authorized and approved.
- (8) **THIS COURT ORDERS** that the within action is hereby dismissed against the Defendant without costs and with prejudice.

The Honourable Justice Strathy

SCHEDULE "B" – APPROVAL HEARING NOTICE

[INSERT TORONTO HYDRO-ELECTRIC SYSTEM LIMITED LOGO]

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

**NOTICE OF COURT HEARING
TO APPROVE PROPOSED CLASS ACTION SETTLEMENT**

PUBLICATION OF THIS NOTICE HAS BEEN ORDERED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

This notice is to persons who were customers of Toronto Hydro-Electric System Limited and paid interest on an overdue account with a statement date between July 1, 2000 and December 8, 2010, inclusive ("Class Members").

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS,
WHEREVER YOU LIVE.
YOU MAY BE ENTITLED TO COMPENSATION UNDER A CLASS ACTION SETTLEMENT.**

A class action lawsuit has been commenced in Ontario against Toronto Hydro-Electric System Limited (the "Defendant").

The class action lawsuit relates to the payment of interest on overdue customer accounts. The lawsuit alleges that the Defendant violated the *Interest Act*, R.S.C. 1985, c. I-15, as amended (the "*Interest Act*"), during the period from July 1, 2000 through to and including December 8, 2010 by billing its customers (retail, commercial or otherwise) interest on overdue accounts at a monthly rate without stating the equivalent annual rate on the bill, where the annual rate of interest charged was in excess of 5% per year.

The Parties have entered into a Settlement Agreement to resolve the litigation. The Settlement Agreement is a compromise of disputed claims and is not an admission of liability, wrongdoing, or fault on the part of the Defendant, which denies the allegations against it.

The terms of the Settlement Agreement provide for three forms of relief for the Class:

1. Class Members that, between December 7, 2008 and June 29, 2011 inclusive, either paid to the Defendant or had credited to their accounts for reasons other than this action a cumulative amount equal to or greater than \$30.00 in interest charged at a rate of more than 5% per annum in respect of bills issued on or before December 8, 2010 will be entitled to receive, by mailed cheque to your last known address in the records of the Defendant or by credit to your account if you are an existing customer, partial repayment of such monies. **If you are eligible to receive a cheque, but the cheque is lost, returned or not cashed within six (6) months following the issuance of the cheque, then your monies will be distributed to the charities listed below. You will not be issued a replacement cheque under any circumstance.**

2. Within sixty (60) business days of court approval of the Settlement Agreement, the Defendant will take all reasonable steps to cancel all outstanding interest owing by Class Members in excess of 5% per year on electricity bills dated on or before December 8, 2010.

3. The Defendant will pay \$● to the following charities: United Way Centraide Canada,

Red Door Family Shelter and Second Harvest.

The Settlement Agreement is conditional on the approval of the Ontario Superior Court of Justice. Class Members may, but are not required to, attend the settlement approval motion that will be held on ♦ at 10 a.m. in Toronto, Ontario.

If you wish to comment on, or make objection to, the Settlement Agreement, you must do so in writing. All objections must be submitted to Class Counsel (at the addresses listed below) no later than [♦]. Class Counsel will forward all such submissions to the Court.

If you wish to opt out of this proceeding, you must submit a completed opt out form to counsel for the Defendant, postmarked no later than [DATE].

More information about the settlement, including a copy of the Settlement Agreement and an Opt Out Form, is available online at www.classaction.ca. Questions about the proposed settlement should be directed to Class Counsel:

Siskinds LLP
203-47 Colborne Street
Toronto, Ontario M5E 1P8
Canada

Email: hydroclassaction@siskinds.com

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

SCHEDULE "C" – OPT OUT FORM

<u>TORONTO HYDRO CLASS ACTION SETTLEMENT</u> <u>OPT OUT FORM</u>

INSTRUCTIONS:

You do not have to take part in the In re: Toronto Hydro-Electric System Limited ("Toronto Hydro") Class Action Settlement Agreement ("Settlement"). This form can be used to exclude yourself from the group of persons included in the proceeding (the "Class") and its Settlement (a process known as "opting out").

If you wish to remain a member of the Class, **DO NOT COMPLETE OR RETURN THIS FORM. IF YOU COMPLETE THIS FORM AND OPT OUT, YOU WILL NOT RECEIVE ANY SETTLEMENT FUNDS, CANCELLATION OF INTEREST EXCEEDING 5% THAT MAY BE OUTSTANDING ON YOUR ACCOUNT, NOR ANY OTHER SETTLEMENT CONSIDERATION.** IF YOU OPT OUT, YOU WILL BE ENTITLED TO COMMENCE OR CONTINUE LEGAL PROCEEDINGS IN YOUR OWN NAME.

Before deciding whether to remain in the Class or to request exclusion, make sure you have read the enclosed Approval Hearing Notice and understand the consequences of your decision. You can obtain more information at www.classaction.ca or by emailing Class Counsel at hydroclassaction@siskinds.com.

If you exclude yourself, you cannot receive any compensation related to the Settlement or object to the Settlement in any way. Any Court orders in this matter will not apply to you. By excluding yourself, you retain any rights to file or proceed with a lawsuit regarding Toronto Hydro that you may have.

To request exclusion, you must complete in full, sign, and return this form via First Class Mail postmarked by ____, 2012 to counsel for Toronto Hydro at the address below. If you do not return this fully-completed form by this deadline, you will lose your right to exclude yourself from this Class Action and you will be bound by this Settlement and all subsequent proceedings, orders, and judgments entered by the Court. You cannot opt out without properly completing this court-approved form and submitting it on time.

<u>Address</u>	Counsel for the Defendant, Toronto Hydro Kelly Friedman Davis LLP 1 First Canadian Place, Suite 6000 PO Box 367, 100 King Street West Toronto, ON M5X 1E2
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TORONTO HYDRO CLASS ACTION SETTLEMENT
OPT OUT FORM

Print clearly in black or blue ink. Complete this form only if you wish to be excluded from participating in the Toronto Hydro Class Action.

1. Your Name and Contact Information

Name: _____

Address: _____

City: _____ State/Province: _____ Zip/Postal Code: _____ Country: _____

Are you completing this form on someone else's behalf? Yes No

If Yes, list the name and address of the person for whom you are completing this form:

Are you a lawyer acting for your client? Yes No

Lawyer's Signature: _____

2. Account Information

a. Were you a customer of Toronto Hydro at some point between July 1, 2000 and December 8, 2010, inclusive?

Yes No

b. Were you billed by Toronto Hydro at some point between July 1, 2000 and December 8, 2010, inclusive?

Yes No

c. Did you pay interest on an unpaid account during the period between July 1, 2000 and December 8, 2010, inclusive?

Yes No

d. If the answer to each of the above is YES, please indicate the billing address at which you received your bill for interest, if the address is different from the address in box 1:

e. If the answer to each of the above is YES, please indicate the address of the premise at which you received Toronto Hydro service, if the address is different from the address in box 1 or the billing address provided above:

f. If the answer to each of the above is YES, please indicate the Toronto Hydro account number for which you paid such interest, if you know it: _____

3. Legal Representation

Have you entered into a written or oral agreement to be represented by counsel regarding a potential claim against Toronto Hydro?

Yes No

If Yes, please list the lawyer's name and address:

UNLESS YOU PROPERLY COMPLETE AND RETURN THIS OPT OUT FORM, YOU WILL BE BOUND BY ANY JUDGMENT IN THE LITIGATION AND YOU WILL NOT BE PERMITTED TO PURSUE ANY PENDING OR FUTURE LITIGATION ON MATTERS RESOLVED IN THIS SETTLEMENT. THIS IS TRUE:

- 1) EVEN IF YOU HAVE OBJECTED TO THE SETTLEMENT;
- 2) EVEN IF YOU ARE ACTIVELY LITIGATING MATTERS REGARDING THE INTEREST BILLING PRACTICES OF TORONTO HYDRO; AND
- 3) EVEN IF YOU MAILED THIS EXCLUSION REQUEST BUT EITHER SENT IT TO AN INCORRECT ADDRESS OR MISSED THE DEADLINE.

Dated: _____

Submitted by: _____ (Printed)

Signed: _____ (Signature)

SCHEDULE "D" – PRE-APPROVAL ORDER

Court File No. CV-10-415780

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHRISTIAN HELM

Plaintiff

- and -

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

Defendant

Proceeding under *The Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the proposed Representative Plaintiff for an order that the within proceeding be certified as a class proceeding for settlement purposes, approving the form, content, and manner of distribution of the Approval Hearing Notice and Opt Out Form, and setting a date for the Approval Hearing, was heard on February 8, 2012, in Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement reached between the Parties on February 1, 2012, attached hereto as Schedule "A" (the "Settlement Agreement") and on hearing submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that a) the Plaintiff consents to this order; and b) the Defendant consents to this order:

- (1) **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
- (2) **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding, for purposes of settlement only, pursuant to *The Class Proceedings Act, 1992*, SO 1992, c 6, ss. 2 and 5 ("*CPA*").

- (3) **THIS COURT ORDERS** that the Class be defined as:

All persons that were customers (retail, commercial or otherwise) of the Defendant, Toronto Hydro-Electric System Limited, were billed at some time within the period from July 1, 2000 through to and including December 8, 2010, and who paid interest on an unpaid account billed during that period.

- (4) **THIS COURT ORDERS** that Christian Helm be appointed as Representative Plaintiff for the Class.

- (5) **THIS COURT ORDERS** that the within proceeding be certified on the basis of the following Common Issue:

Did the Defendant breach the *Interest Act* by charging interest on unpaid customer accounts at a monthly rate which equated to more than 5% per annum without disclosing the equivalent annual rate on its bills dated between July 1, 2000 and December 8, 2010, inclusive?

- (6) **THIS COURT ORDERS** that putative Class Members may opt out of the Class in accordance with the terms of the Settlement Agreement.

- (7) **THIS COURT ORDERS** that any putative Class Member who opts out of the Class in accordance with the Settlement Agreement is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of this action.

- (8) **THIS COURT ORDERS** that any putative Class Member who does not opt out of the Class in accordance with the Settlement Agreement is bound by the Settlement Agreement and may not opt out of this action in the future.

- (9) **THIS COURT ORDERS AND DECLARES** that each Class Member who does not opt out of the Class in accordance with the Settlement Agreement shall consent and shall be deemed to have consented to the dismissal, without costs and with prejudice, of any other action the Class Member has commenced against the Releasees, or any of them, in relation to a Released Claim (an "Other Action").

- (10) **THIS COURT ORDERS AND DECLARES** that each Other Action commenced in Ontario by any Class Member who does not opt out of the Class in accordance with the

Settlement Agreement is dismissed against the Releasees, without costs and with prejudice.

- (11) **THIS COURT ORDERS** that the form, content, and manner of distribution of the Approval Hearing Notice, attached hereto as Schedule "B", is hereby approved.
- (12) **THIS COURT ORDERS** that the Defendants shall pay any costs of distributing the Approval Hearing Notice in accordance with the Settlement Agreement.
- (13) **THIS COURT ORDERS** that the form, content, and manner of publication of the Opt Out Form, attached hereto as Schedule "C", is hereby approved.
- (14) **THIS COURT ORDERS** that the Approval Hearing shall be heard on ♦, 2012.

Date:

The Honourable Justice Strathy

Christian Helm and Toronto Hydro-Electric Systems Limited
Plaintiff Defendant

Court File No. CV-10-415780

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

Siskinds LLP

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Class Counsel