

**CANADIAN DRYWALL CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of November 30, 2018

Between

BOWEN REAL ESTATE HOLDINGS INC. and SYLVIE CLOUTIER

(the “**Plaintiffs**”)

and

LAFARGE NORTH AMERICA INC. and LAFARGE CANADA INC.

(the “**Settling Defendants**”)

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RECITALS

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

B. WHEREAS the Proceedings allege that the Settling Defendants participated in an unlawful conspiracy with other manufacturers of Drywall to raise, fix, maintain or stabilize the prices of Drywall sold in Canada and elsewhere as early as September 1, 2011 until at least when the Proceedings were commenced, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 and the common law and/or the civil law;

C. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or in any Other Actions, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceedings and any Other Actions or otherwise;

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

E. WHEREAS, despite their belief that they are not liable in respect of the claims as alleged in the Proceedings and any Other Actions and have good and reasonable defences in respect of jurisdiction and the merits, the Settling Defendants are entering into this Settlement Agreement

in order to achieve a final and nationwide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings and any Other Actions, and to avoid further expense, inconvenience, the distraction of burdensome and protracted litigation, and the risks associated with trials and appeals;

F. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement with respect to the Proceedings;

G. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Classes, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes the Ontario and Quebec Plaintiffs seek to represent;

H. WHEREAS the Ontario and Quebec Plaintiffs assert that they are adequate class representatives for the Settlement Classes they seek to represent and will seek to be appointed representative plaintiffs in the Ontario and Quebec Proceedings, as applicable;

I. WHEREAS all of the claims in the BC Proceeding are subsumed by the Ontario Proceeding and the BC Plaintiff has consented to a dismissal of the BC Proceeding as a necessary precondition to resolving on a nationwide basis, without admission of liability, all of the Proceedings and any Other Actions as against the Releasees;

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

K. WHEREAS the Parties therefore wish to and hereby finally resolve on a nationwide basis, without admission of liability, all of the Proceedings and any Other Actions as against the Releasees;

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

M. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Ontario and Quebec Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Ontario and Quebec Plaintiffs, both individually and on behalf of the Settlement Classes they seek to represent, subject to approval of the Ontario and Quebec Courts; and

N. WHEREAS the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court;

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 Ontario Proceeding be settled and dismissed as to the Settling Defendants only, the Quebec Proceeding be declared settled out of court as against the Settling Defendants, and the BC Proceeding be dismissed as against the Settling Defendants, all without costs as to the Plaintiffs, the Settlement Classes the Ontario and Quebec Plaintiffs seek to represent or the Settling Defendants, subject to the approval of the Ontario and Quebec Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) ***Approval Hearings*** means the hearings for the Ontario and Quebec Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) ***BC Court*** means The Supreme Court of British Columbia.

- (4) **BC Plaintiff** means Dann Hickman.
- (5) **BC Proceeding** means the proceeding commenced by the BC Plaintiff before the BC Court as identified in Schedule A of this Settlement Agreement.
- (6) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Ontario and Quebec Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (7) **Class Counsel** means Ontario Counsel and Quebec Counsel.
- (8) **Class Counsel Disbursements** include the disbursements, and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (9) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.
- (10) **Class Period** means September 1, 2011 to March 17, 2016.
- (11) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Drywall in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (12) **Counsel for the Settling Defendants** means McCarthy Tétrault LLP.

- (13) **Courts** means the Ontario Court, the BC Court and the Quebec Court.
- (14) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (15) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule A to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants and Settled Defendants.
- (16) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as proposed by Class Counsel and as approved by the Ontario and Quebec Courts.
- (17) **Documents** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure*.
- (18) **Drywall**, sometimes known as gypsum board, wallboard, green glass, sheetrock or plasterboard, means a panel made of gypsum plaster pressed between two thick sheets of paper.
- (19) **Effective Date** means the day that is the earliest day when each of the Ontario and Quebec Courts has pronounced an order approving this Settlement Agreement, and the BC Court has pronounced an order dismissing the BC Proceeding, and each such order has become a Final Order.
- (20) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or

any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

- (21) ***Final Order*** means a final order made by the Ontario and Quebec Courts approving this Settlement Agreement or an order made by the BC Court dismissing the BC Proceeding that either (i) has not been appealed before the time to appeal such order has expired, if an appeal lies, or (ii) has been affirmed upon a final disposition of all appeals. For further certainty, any order made by the Ontario and Quebec Courts approving this Settlement Agreement will not become a Final Order until the time to appeal such an order has expired without any appeal having been taken or until the order has been affirmed upon a final disposition of all appeals.
- (22) ***Non-Settling Defendant*** means a Defendant that is not: (i) the Settling Defendants; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Date of Execution.
- (23) ***Notice of Hearing*** means the form or forms of notice, agreed to by the Ontario and Quebec Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Ontario and Quebec Courts, which informs the Settlement Class of: (i) the dates and locations of the Approval Hearings; (ii) the principal elements of the Settlement Agreement; and (iii) the process by which Settlement Class Members may object to the settlement.
- (24) ***Ontario Counsel*** means Siskinds LLP.
- (25) ***Ontario Court*** means the Ontario Superior Court of Justice.

- (26) **Ontario Plaintiff** means Bowen Real Estate Holdings Inc.
- (27) **Ontario Proceeding** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule A to this Settlement Agreement and includes any action subsequently consolidated into the Ontario Proceeding, including the Second Ontario Proceeding.
- (28) **Ontario Settlement Class** means the settlement class in respect of the Ontario Proceeding that is defined in Schedule A to this Settlement Agreement.
- (29) **Other Actions** means actions or proceedings, other than the Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (30) **Parties** means the Plaintiffs, the Settlement Class Members (where appropriate) and the Settling Defendants.
- (31) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (32) **Plaintiffs** means the Ontario Plaintiff, the Quebec Plaintiff and the BC Plaintiff.
- (33) **Proceedings** means the Ontario Proceeding, the Second Ontario Proceeding, the BC Proceeding and the Quebec Proceeding, all as defined in Schedule A to this Settlement Agreement.

- (34) ***Proportionate Liability*** means that proportion of any judgment that, had the Settling Defendants not settled, the Ontario Court would have apportioned to the Releasees.
- (35) ***Purchase Price*** means the sale price paid by Settlement Class Members for Drywall purchased in Canada during the Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.
- (36) ***Quebec Counsel*** means Siskinds Desmeules s.e.n.c.r.l.
- (37) ***Quebec Court*** means the Superior Court of Quebec.
- (38) ***Quebec Plaintiff*** means Sylvie Cloutier.
- (39) ***Quebec Proceeding*** means the proceeding commenced by the Quebec Plaintiff before the Quebec Court identified in Schedule A to this Settlement Agreement.
- (40) ***Quebec Settlement Class*** means the settlement class in respect of the Quebec Proceeding that is identified in Schedule A to this Settlement Agreement.
- (41) ***Released Claims*** means any and all claims, demands, actions, suits, injuries, and causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, and damages and liabilities of any nature, whenever or however incurred (whether actual, compensatory, punitive or otherwise), including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, relating in any way to any conduct, act or omission of the Releasees (or any of them) during the Class Period concerning any of the facts, occurrences, transactions,

agreements, conspiracies, communications, announcements, notices, or other matters alleged in the Proceedings, including, without limitation, any causes of action which have been asserted or could have been asserted, directly or indirectly, whether in Canada or elsewhere, regarding the matters alleged in the Proceedings, including, without limitation, any claims for consequential, subsequent, or follow-on harm that arises after the date hereof in respect of any agreement, combination or conduct that occurred during the Class Period. However, nothing herein shall be construed to release any claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, warranty claim, securities, or other similar claim relating to Drywall.

(42) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants, and all of their present, former and future direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), 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, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(43) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former and future parents,

subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(44) ***Second Ontario Proceeding*** means the Second Ontario Proceeding as defined in Schedule A to this Settlement Agreement.

(45) ***Settled Defendants*** means:

(a) TIN Inc.; and

(b) any Defendant that executes its own settlement agreement whether before or after the execution of this Settlement Agreement, which settlement agreement is finally approved by the requisite Courts and becomes effective in accordance with its terms.

(46) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(47) ***Settlement Amount*** means CDN\$500,000, to be paid by Lafarge North America Inc.

(48) ***Settlement Class*** means, in respect of the Ontario and Quebec Proceedings, the settlement class defined in Schedule A to this Settlement Agreement.

(49) ***Settlement Class Member*** means a member of a Settlement Class.

(50) ***Settling Defendants*** means Lafarge North America Inc. and Lafarge Canada Inc.

(51) ***Trust Account*** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian

financial institution under the control of Ontario Counsel or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

- (52) ***U.S. Litigation*** means the class action proceeding pending in the United States District Court for the Eastern District of Pennsylvania, under the caption *In re Domestic Drywall Antitrust Litigation*, 13-MD-2437, and includes all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.
- (53) ***U.S. Settlement Agreements*** includes any settlement reached with the Settling Defendants in the U.S. Litigation.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

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

2.2 Motions Approving Notice

- (1) The Ontario and Quebec Plaintiffs shall bring motions before the Ontario and Quebec Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the Notice of Hearing.
- (2) The order approving the Notice of Hearing shall be substantially in the form attached hereto as Schedule B. The Quebec order approving the Notice of Hearing shall be agreed

upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule B.

2.3 Motions for Approval of the Settlement and Certification or Authorization

- (1) The Ontario and Quebec Plaintiffs shall bring motions before the Ontario and Quebec Courts for orders certifying or authorizing the Ontario and Quebec Proceeding as applicable, and approving this Settlement Agreement as soon as practicable after:
 - (a) the orders referred to in Section 2.2(2) are granted,
 - (b) the Notice of Hearing has been published; and
 - (c) the deadline for objecting to the Settlement Agreement has expired.
- (2) The Ontario order certifying the Ontario Proceeding for settlement purposes against the Settling Defendants and approving this Settlement Agreement shall be substantially in the form attached hereto as Schedule C. The Quebec order seeking consent authorization as against the Settling Defendants and approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.
- (3) The Plaintiffs shall contemporaneously apply for an order from the BC Court dismissing the BC Proceeding as against the Settling Defendants with prejudice and without costs.
- (4) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

- (1) Until the first of the motions required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law. Notwithstanding the foregoing, the Settling Defendants are permitted to withdraw from any joint defence group and may disclose the existence of the Settlement Agreement to the joint defence group, but shall not disclose any of the terms of the Settlement Agreement.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within ninety (90) days after the Date of Execution, Lafarge North America Inc. shall pay the Settlement Amount to Ontario Counsel for deposit into the Trust Account.
- (2) Lafarge North America Inc. shall deposit the Settlement Amount into the Trust Account by wire transfer. Ontario Counsel shall provide the necessary wire transfer information to Counsel for the Settling Defendants with reasonable advance notice so that Lafarge North America Inc. has a reasonable period of time to comply with Section 3.1(1) of this Settlement Agreement.
- (3) The Settlement Amount and other valuable consideration set forth in the Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

- (4) The Settlement Amount shall be all-inclusive of all amounts, including without limitation, interest, costs, Class Counsel Fees and Class Counsel Disbursements.
- (5) There will be no further payment made by the Settling Defendants, or further obligation, in relation to the settlement of the claims or the administration or settlement of the Proceedings, or for any other step or steps taken in the Proceedings.
- (6) Once a Claims Administrator has been appointed, Ontario Counsel may transfer the Settlement Amount and interest earned on the Settlement Amount, less taxes paid and any deductions made in accordance with this Settlement Agreement or an order of the Ontario and Quebec Courts on notice to the Settled Defendants, to the Claims Administrator.
- (7) Ontario Counsel and the Claims Administrator, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) While in control of the Trust Account, each of Ontario Counsel and the Claims Administrator, respectively, shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Ontario and Quebec Courts obtained after notice to the Parties.

3.2 Taxes and Interest

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

- (2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.
- (3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

3.3 Intervention in the U.S. Litigation

- (1) The Settling Defendants shall not oppose any application that may be brought by or on behalf of the Ontario or Quebec Plaintiffs to intervene in the U.S. Litigation in order to seek to gain access to discovery Documents produced, deposition or other transcripts, or other Documents that might be filed in the U.S. Litigation, including any discovery that may be subject to a protective order. However, it is understood and agreed that nothing in

this Settlement Agreement shall be construed to require the Settling Defendants and other Releasees to bring a motion requesting that the U.S. protective order be lifted.

SECTION 4 - COOPERATION

4.1 Extent of Cooperation

- (1) The Settling Defendants sold their Drywall business in 2013, before the Proceedings were commenced. Plaintiffs understand and agree that as a result, the ability of the Settling Defendants to provide cooperation is constrained.
- (2) Within thirty (30) days of the Effective Date, or at a time mutually agreed upon by the Parties, the Settling Defendants agree to use reasonable efforts to:
 - (a) to the extent it is in their possession and reasonably accessible, provide to Class Counsel transactional sales data for sales by the Settling Defendants to Canadian customers between January 2010 and August 2013. Available transactional data may be provided in the form in which it currently exists or such other format as agreed upon by the Parties, and shall be delivered as a separate production from the other Documents to be delivered pursuant to Section 4.1(2) or identified by bates number as part of the production of Documents to be delivered pursuant to Section 4.1(2);
 - (b) provide reasonable assistance to Class Counsel and/or the Plaintiffs' expert in understanding the transactional data produced by the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel;

- (c) provide to Class Counsel electronic copies of transcripts and any video recordings of all depositions of current or former employees, officers or directors of the Settling Defendants, including all exhibits thereto, taken in the U.S. Litigation, including pursuant to the terms of any U.S. Settlement Agreement;
 - (d) provide to Class Counsel electronic copies of any Documents produced by the Settling Defendants in the U.S. Litigation, including all responses to interrogatories and any Documents produced by the Settling Defendants pursuant to any U.S. Settlement Agreement; and
 - (e) provide electronic copies of any pre-existing business documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) regarding the subject matter of the U.S. Litigation produced by the Settling Defendants to the United States Department of Justice Antitrust Division.
- (3) The obligation to produce Documents pursuant to Section 4.1(2) shall be a continuing obligation to the extent additional Documents that are required to be provided under Section 4.1(2) are identified by the Settling Defendants following the initial productions pursuant to this Settlement Agreement
- (4) Documents provided to Class Counsel in accordance with this Section 4.1 will be provided in the format in which they were produced in the U.S. Litigation, and will include any pre-existing and non-privileged electronic coding. In addition, where the Documents previously produced in the U.S. Litigation contain bates stamps on their face, a field will be produced containing the corresponding bates stamps of the first page of each Document.

- (5) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of or that they have, can or will produce a complete set of any of the Documents described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.
- (6) Within thirty (90) days of the Effective Date, or at a time mutually agreed upon by the Parties, subject to the other provisions of this Settlement Agreement, Counsel for the Settling Defendants will meet with Class Counsel in Canada, or at some other location mutually agreed to by the Parties, to assist in identifying key documents or transcripts produced by the Settling Defendants pursuant to Section 4.1(2) and to respond to reasonable questions regarding same.
- (7) Subject to the rules of evidence, any Court order with respect to confidentiality and the other provisions of this Settlement Agreement,
 - (a) the Settling Defendants agree to use reasonable efforts to provide or obtain affidavits for use at trial or otherwise in the Proceedings: (i) to establish for admission into evidence the Settling Defendants' transactional sales data provided pursuant to Section 4.1(2)(a); and (ii) to establish for admission into evidence any of the Settling Defendants' Documents and information provided as cooperation pursuant to Section 4.1(2) that are reasonable and necessary for the prosecution of the Proceedings;
 - (b) Class Counsel shall use its best efforts to authenticate Documents and information for use at trial or otherwise in the Proceedings without use of a live witness. If a Court determines that affidavits are inadequate for the purpose of submitting into

evidence the transactional sales data, Documents and/or information produced by the Settling Defendants, the Settling Defendants agree to use reasonable efforts to make available for testimony at trial or otherwise in the Proceedings an appropriate current and/or former officer, director and/or employee of the Settling Defendants as is reasonably necessary to submit into evidence the data, Documents and information described in 4.1(7)(a).

- (c) To the extent reasonably possible, a single witness will be used both to authenticate documents and provide the information at trial or otherwise contemplated by this Section. Costs incurred by, and expenses of, the current and/or former officers, directors and/or employees of the Settling Defendants in relation to the authentication of documents and/or providing the information at trial or otherwise contemplated by this Section shall be the responsibility of the Settling Defendants. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.
- (d) If the Settling Defendants, despite their reasonable efforts, are unable to make available an appropriate current and/or former officer, director and/or employee of the Settling Defendants as is reasonably necessary to submit into evidence the data, Documents and information described in Section 4.1(7)(a), Class Counsel may, following reasonable written notice to Settling Defendants, contact such Persons independently or seek to compel testimony from such Persons through subpoenas or other legal means.

- (8) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any Documents or information, which would violate the law of this or any jurisdiction.
- (9) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any Documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or Documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.
- (10) If any Documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.
- (11) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise

fails to take effect for any reason, the Settling Defendants' obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants.

- (12) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against the officers, directors and/or employees of the Settling Defendants put forward to provide testimony at trial or otherwise pursuant to Section 4.1(7), if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.
- (13) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Ontario and/or Quebec Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 4.1(14) and allowing the Plaintiffs to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained party to the action, or seek such other remedy that is available at law.
- (14) Subject to Sections 4.1(7)(d), 4.1(12) and 4.1(13) above, the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, the Settlement Class Members and Class Counsel may obtain discovery, information, or Documents from the Releasees or their current or former officers, directors or employees, and the Plaintiffs, Settlement Class members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or

elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

- (15) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Settling Defendants.

4.2 Limits on Use of Documents

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants and/or Counsel for the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are or become publicly available, or as otherwise required by law provided that sufficient prior notice be given to the Settling Defendants.
- (2) If the Plaintiffs intend to produce or file with any Court any Documents or other information provided by the Settling Defendants and/or Counsel for the Settling Defendants as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement) which, at the time of being provided, were marked or designated by the Settling Defendants as "Confidential — Subject to Procedure Under Section 4.2(2) of the Settlement Agreement," and there is not already a

confidentiality order issued in the Proceedings that applies to the Documents and information provided as cooperation by the Settling Defendants, Class Counsel shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may move to obtain a sealing or confidentiality order or similar relief. If, within that thirty (30) day period, a Settling Defendant so moves, the Plaintiffs and Class Counsel shall not produce or file the confidential information or Documents until the Settling Defendant's motion has been decided and all applicable appeal periods have expired, except, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that they will keep the documents or information on an external-counsel only basis until the motion brought by the Settling Defendants has been decided and all applicable appeal periods have expired.

- (3) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or other information provided by the Settling Defendants as cooperation under this Settlement Agreement, Class Counsel shall notify the Settling Defendants of such application promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production.
- (4) In addition, until a confidentiality order that applies to the documents and information provided as cooperation under this Settlement Agreement is issued in the Proceedings,

Class Counsel shall treat any documents received from the Settling Defendants as designated as Confidential or Highly Confidential in accordance with the provisions of the stipulated Protective Order granted in the U.S. Litigation. Once such a confidentiality order(s) is issued in the Proceedings, that/those order(s) shall govern the documents and information provided as cooperation under this Settlement Agreement.

SECTION 5 - NON APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

5.1 Right of Termination

- (1) In the event that:
 - (a) the Ontario or Quebec Court declines to certify or authorize the Ontario or Quebec Proceedings, as applicable, for settlement purposes as against the Settling Defendants or does so in a materially modified form;
 - (b) the Ontario Court declines to dismiss the Ontario Proceeding against the Settling Defendants, the BC Court declines to dismiss the BC Proceeding against the Settling Defendants, or the Quebec Court declines to declare settled out of court the Quebec Proceeding against the Settling Defendants;
 - (c) the Ontario or Quebec Court declines to approve this Settlement Agreement or any material part hereof;
 - (d) the Ontario or Quebec Court approves this Settlement Agreement in a materially modified form;

- (e) the Ontario or Quebec Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule C;
- (f) any orders approving this Settlement Agreement made by the Ontario and Quebec Courts do not become Final Orders; or
- (g) the Settlement Amount is not paid in accordance with Section 3.1,

the Ontario and Quebec Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement (except that only the Settling Defendants shall have the right to terminate under subsection (b) above and only the Ontario and Quebec Plaintiffs shall have the right to terminate under subsection (g) above) by delivering a written notice pursuant to Section 13.18, within thirty (30) days following an event described above.

- (2) Except as provided for in Section 5.4, if the Settling Defendants or the Ontario and Quebec Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.
- (3) Any order, ruling or determination made (or rejected) by any Court with respect to Class Counsel Fees, Class Counsel Disbursements, or a protective order shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

5.2 If Settlement Agreement is Terminated

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) no motion to certify or authorize the Ontario or Quebec Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) the Parties will cooperate in seeking to have any issued order certifying or authorizing the Ontario or Quebec Proceedings as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;
 - (c) any prior certification or authorization of the Ontario or Quebec Proceedings as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any Other Actions or other litigation;
 - (d) within fifteen (15) days of such termination having occurred, Class Counsel shall destroy all Documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any Documents or

information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall endeavor to recover and destroy such Documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section shall be construed to require Class Counsel to destroy any of their work product. For the purposes of this Section, work product means Documents created by Class Counsel, exercising skill and judgment, in good faith for the purposes of furthering the litigation as against the Non-Settling Defendants. However, any Documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel derived from such Documents or information; and

- (e) No settlement discussions or any Documents or materials exchanged or prepared in furtherance of any settlement discussions will be used in the Proceedings or will be disclosed to any Person. The parties understand and agree that all of their communications and other exchanges regarding this Settlement Agreement and the underlying settlement are and have been and will continue to be on a “without

prejudice” basis pending approval by the Ontario and Quebec Courts of this Settlement Agreement.

5.3 Allocation of Settlement Amount Following Termination

- (1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Ontario Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon and less any taxes paid on interest, and any costs actually incurred or payable with respect to the notices required by Section 10.1(1), and any costs of translation required by Section 13.12 that have actually been incurred or are payable.

5.4 Survival of Provisions After Non Approval of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 5.1(2), 5.2, 5.3, 8.1, 8.2, 9.1, 10.1, 11.3(3)(a) and 11.3(4), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect to the benefit of Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns, excluding always the Non-Settling Defendants. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 5.1(2), 5.2, 5.3, 8.1, 8.2, 9.1, 10.1, 11.3(3)(a) and 11.3(4), within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 6 - RELEASES AND DISMISSALS

6.1 Release of Releasees

- (1) Upon the Effective Date, subject to Section 6.3, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have.
- (2) The Releasers acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of this Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

6.2 Release by Releasees

- (1) 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.

6.3 Covenant Not To Sue

- (1) Notwithstanding Section 6.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant and undertake not to sue, bring any proceeding or make any claim in any way or to threaten,

commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

6.4 No Further Claims

- (1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

6.5 Dismissal of the Proceedings

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

6.6 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Ontario Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced by any Ontario Settlement Class Member shall be dismissed against the Releasees, without costs, with prejudice and without reservation.
- (3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.
- (4) Class Counsel shall seek an order from the Quebec Court providing that each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

6.7 Claims Against Other Entities Reserved

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

6.8 Material Term

- (1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 5.1(3)), the releases, covenants, dismissals, granting of consent, and reservations of rights

contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases, covenants, dismissals, granting of consent, and reservations of rights, contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

SECTION 7 - BAR ORDER AND DECLARATION OF RENUNCIATION

7.1 Ontario Bar Order

(1) Class Counsel shall seek a bar order from the Ontario Court providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section;
- (b) If the Ontario Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
 - (i) the Ontario Plaintiff and Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or

named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Ontario Plaintiff and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, and interest, and costs (including investigative costs claims pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiff and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

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

- (c) a Non-Settling Defendant may, on application to the Ontario Court, determined as if the Settling Defendants remained party to the Ontario Proceeding, and on at least thirty (30) days' notice to Counsel for the Settling Defendants, and not to be brought until after all appeals or times to appeal certification have been exhausted, seek orders for the following:

 - (i) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;
 - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or

- (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

- (d) the Settling Defendants retain all rights to oppose any application brought pursuant to Section 7.1(1)(c), including any such application brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with Section 7.1(1)(c);

- (e) on any application brought pursuant to Section 7.1(1)(c), the Ontario Court may make such orders as to costs and other terms as it considers appropriate;

- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;

- (g) the Ontario Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario Court for these purposes; and

- (h) a Non-Settling Defendant may effect service of the application(s) referred to in Section 7.1(1)(c) on a Settling Defendant by service on Counsel for the Settling Defendants.

7.2 Quebec Waiver or Renunciation of Solidarity Order

- (1) Class Counsel shall seek a waiver or renunciation of solidarity from the Quebec Court providing for the following:
 - (a) the Quebec Plaintiff and Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
 - (b) the Quebec Plaintiff and Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including without limitation, judicial fees pursuant to the *Code of Civil Procedure of Quebec*, and investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
 - (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and

- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure of Quebec*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure of Quebec*.

7.3 Material Term

- (1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 5.1(3)), the Parties acknowledge that the bar orders and renunciation of the benefit of solidarity contemplated herein shall be considered a material term of the Settlement Agreement and the failure of the Ontario and Quebec Courts to approve the bar orders or renunciation of the benefit of solidarity contemplated herein shall give rise to a right to termination pursuant to Section 5.1 of the Settlement Agreement.

SECTION 8 - EFFECT OF SETTLEMENT

8.1 No Admission of Liability

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

or of the truth of any of the claims or allegations contained in the Proceedings or any Other Actions, or any other pleading filed by the Plaintiffs.

8.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be 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, as necessary in any insurance-related proceeding, or as otherwise required by law or as provided in this Settlement Agreement.

8.3 No Further Litigation

- (1) No Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants that relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, neither Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may divulge to anyone for any purpose, or

use for any purpose, any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent that such information is or becomes otherwise publicly available or unless ordered to do so by a court in Canada, or in the case of information obtained in the course of the Proceedings, for the purposes of the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

SECTION 9 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

9.1 Settlement Class and Common Issue

- (1) The Parties agree that the Ontario and Quebec Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Ontario and Quebec Courts. If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the Parties' stipulation to class certification as part of the Settlement Agreement shall become null and void. The Settling Defendants expressly reserves their rights to oppose class certification if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect.
- (2) The Ontario and Quebec Plaintiffs agree that, in the motions for certification or authorization of the Ontario and Quebec Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that

they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

- (3) The Parties agree that the certification or authorization of the Ontario and Quebec Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants or any other Person that is not a Releasee, except as expressly set out in this Settlement Agreement.

SECTION 10 - NOTICE TO SETTLEMENT CLASSES

10.1 Notices Required

- (1) The proposed Settlement Classes shall be given the following notices: (i) Notice of Hearing; (ii) notice if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect; and (iii) such further notice as may be directed by the Ontario and Quebec Courts.

10.2 Form and Distribution of Notices

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Ontario and Quebec Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Ontario and Quebec Courts.
- (2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Ontario and Quebec Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Ontario and Quebec Courts.

SECTION 11 - ADMINISTRATION AND IMPLEMENTATION

11.1 Mechanics of Administration

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Ontario and Quebec Courts on motions brought by Class Counsel.
- (2) Except as provided for in Section 5.3(1), the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

11.2 Distribution Protocol

- (1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Ontario and Quebec Courts approving the Distribution Protocol.
- (2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation

11.3 Information and Assistance

- (1) To the extent they have the information in their possession and it is reasonably accessible, the Settling Defendants will make reasonable best efforts to compile a list of the names and addresses of those Persons in Canada who purchased Drywall from them during the Class Period and the Purchase Price paid by each such Person for such purchases. The information may be delivered in the form in which it currently exists or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel, and shall be delivered as a separate production from the Documents to be delivered pursuant to Section 4.1. or identified by bates number as part of the production of Documents to be delivered pursuant to Section 4.1.
- (2) The available name and address information required by Section 11.3(1) shall be delivered to Class Counsel within thirty (30) days of Date of Execution. The Purchase Price information required by Section 11.3(1) shall be delivered to Class Counsel within thirty (30) days of the Effective Date.
- (3) Class Counsel may use the information provided under Section 11.3(1):
 - (a) to facilitate the dissemination of the notices required in Section 10.1;
 - (b) to advise Persons in Canada who purchased Drywall from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;

- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement and/or court award achieved in the Proceedings; and
 - (d) as otherwise authorized in Section 4.
- (4) All information provided by the Settling Defendants pursuant to Section 11.3(1) shall be dealt with in accordance with Section 4, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to Section 11.3(1) to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 11.3(3). Any Court-appointed notice provider and/or the Claims Administrator shall be bound by the same confidentiality obligations set out in Section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 11.3(1) shall be dealt with in accordance with Section 5.2(1)(d) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.
- (5) The Settling Defendants, through their counsel, will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 11.3(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section

11.3 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

SECTION 12 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

12.1 Court Approval for Class Counsel Fees and Class Counsel Disbursements

- (1) Class Counsel may seek the Ontario and Quebec Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.
- (2) In the event that some of the funds remain in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administration Expenses, Class Counsel shall seek direction from the Ontario and Quebec Courts regarding the distribution of the remaining funds.
- (3) Class Counsel reserve the right to bring motions to the Ontario and Quebec Courts for reimbursement out of the Trust Account for any future Class Counsel Disbursements.

12.2 Responsibility for Fees, Disbursements and Taxes

- (1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts which the Fonds d'aide aux actions collectives in Quebec may be entitled, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

12.3 Administration Expenses

- (1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (2) Notwithstanding Section 12.3(1), Class Counsel shall pay the costs of the notices required by Section 10.1(1) and any costs of translation required by Section 13.12 from the Trust Account, as they become due. Subject to Section 5.3(1), the Settling Defendants shall not have any responsibility for the costs of the notices or translation.

SECTION 13 - MISCELLANEOUS

13.1 Motions for Directions

- (1) Class Counsel or the Settling Defendants may apply to the Ontario and Quebec Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless a Court orders otherwise, motions for directions that do not relate solely to the matters affecting the Quebec Proceeding shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those applications concerned solely with the implementation and administration of the Distribution Protocol.

13.2 Releasees Have No Liability for Administration

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

13.3 Headings, etc.

- (1) In this Settlement Agreement:

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

13.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

13.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the Parties and the Class Counsel Fees in that Proceeding.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a

complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

- (3) Notwithstanding Section 13.5(1) and (2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the Quebec or BC Proceedings shall be determined by the Ontario Court.

13.6 Governing Law

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

13.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior

obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.8 Amendments

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

13.9 Binding Effect

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

13.10 Counterparts

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

13.11 Negotiated Agreement

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel,

so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

13.12 Language

- (1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by the Ontario or Quebec Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of this Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

13.13 Transaction

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

13.14 Recitals

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

13.15 Schedules

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

13.16 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.17 Authorized Signatures

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

13.18 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or Document to another, such notice, communication or Document shall

be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Ontario and Quebec Plaintiffs and Class Counsel:

Charles M. Wright and Linda Visser

SISKINDS LLP

Barristers and Solicitors

680 Waterloo Street

London, ON N6A 3V8

Tel: 519.672.2121

Fax: 519.672.6065

Email: charles.wright@siskinds.com

linda.visser@siskinds.com

Caroline Perrault

SISKINDS DESMEULES s.e.n.c.r.l.

Les promenades du Vieux-Quebec

43 rue Buade, bureau 320

Quebec City, QC GIR 4A2

Tel: 418.694.2009

Fax: 418.694.0281

Email: caroline.perrault@siskindsdesmeules.com

For Settling Defendants:

Donald B. Houston

MCCARTHY TÉTRAULT LLP

Suite 5300, TD Bank Tower

Box 48, 66 Wellington Street West

Toronto, ON M5K 1E6

Tel: 416.601.7506

Fax: 416.868.0673


Email: dhouston@mccarthy.ca

13.19 Date of Execution

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


BOWEN REAL ESTATE HOLDINGS INC. on its own behalf and on behalf of the Ontario Settlement Class, by its counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: 
Siskinds LLP
Ontario Counsel


SYLVIE CLOUTIER, on her own behalf and on behalf of the Quebec Settlement Class, by her counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: 
per Siskinds Desmeules s.e.n.c.r.l.
Quebec Counsel

LAFARGE NORTH AMERICA INC. and LAFARGE CANADA INC., by their counsel

Name of Authorized Signatory: DONALD HOUSTON

Signature of Authorized Signatory: 
McCarthy Tétrault LLP

SCHEDULE “A”

Proceedings

Court and File No.	Plaintiffs’ Counsel	Plaintiff	Named Defendants	Settlement Class
Ontario Proceeding				
Ontario Superior Court of Justice Court File No. CV-13-4003CP	Siskinds LLP	Bowen Real Estate Holdings Inc.	USG Corporation, United States Gypsum Company, CGC Inc., New NGC, Inc., Lafarge North America Inc., Lafarge Canada Inc., Certainteed Corporation, Certainteed Gypsum, Inc., Certainteed Gypsum Canada, Inc., TIN Inc. d/b/a Temple-Inland Inc., and Pabco Building Products, LLC	All Persons in Canada, other than Excluded Persons and Persons who are in the Quebec Settlement Class, who, during the Class Period, purchased Drywall in Canada.
Second Ontario Proceeding				
Ontario Superior Court of Justice Court File No. CV-15-2856-CP	Siskinds LLP	Bowen Real Estate Holdings Inc.	Georgia-Pacific LLC and GP Canada Operations Holding ULC	Not applicable.
Quebec Proceeding				
Superior Court of Quebec (District of Québec), File No. 200-06-000167-133	Siskinds Desmeules s.e.n.c.r.l.	Sylvie Cloutier	USG Corporation, United States Gypsum Company, CGC Inc., New NGC, Inc., Lafarge North America Inc., Lafarge Canada Inc., Certainteed Corporation, Certainteed Gypsum, Inc., Certainteed Gypsum Canada, Inc., TIN Inc. d/b/a Temple-Inland Inc., and Pabco Building Products, LLC	All (i) individuals in Quebec and (ii) legal Persons resident in Quebec established for a private interest, partnership or association which had under its direction or control no more than 50 Persons bound to it by a contract of employment who, during the Class Period, purchased Drywall in Canada. Excluded Persons are excluded from the Quebec Settlement Class.
BC Proceeding				
Superior Court of British Columbia File No. S-153468	Kieran A.G. Bridge	Dann Hickman	USG Corporation, United States Gypsum Company, CGC Inc., New NGC, Inc., Lafarge North America Inc., Lafarge Canada Inc., Certainteed Corporation, Certainteed Gypsum, Inc., Certainteed Gypsum Canada, Inc., TIN Inc. d/b/a Temple-Inland Inc.,	Not applicable.

Court and File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
			and Pabco Building Products, LLC	

SCHEDULE “B”

Court File No. CV-13-4003CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE SPROAT) OF , 2018

BETWEEN:

BOWEN REAL ESTATE HOLDINGS INC.

Plaintiff

- and -

USG CORPORATION, UNITED STATES GYPSUM COMPANY, CGC INC., NEW NGC, INC., LAFARGE NORTH AMERICA INC., LAFARGE CANADA INC., CERTAINTEED CORPORATION, CERTAINTEED GYPSUM, INC., CERTAINTEED GYPSUM CANADA, INC., TIN INC. D/B/A TEMPLE-INLAND INC., and PABCO BUILDING PRODUCTS, LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order approving the publication, abbreviated and long-form notices of settlement approval hearing (“Notice of Hearing”), and the plan of dissemination of said notices, was heard by teleconference this day at the Courthouse, 7755 Hurontario Street, Brampton, Ontario.

ON READING the materials filed, including the settlement agreement with Lafarge North America Inc. and Lafarge Canada Inc. (collectively, the “Settling Defendants”) dated ●

attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendants;

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

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the publication, abbreviated and long-form Notice of Hearing are hereby approved substantially in the form attached hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the plan of dissemination of the Notice of Hearing to Settlement Class Members (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “E” and that the Notice of Hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that this Order is contingent upon a parallel order being made by the Quebec Court, and the terms of this Order shall not be effective unless and until such an order is made by the Quebec Court.

The Honourable Justice Sproat

SCHEDULE “C”

Court File No. CV-13-4003CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE SPROAT) OF , 2018

BETWEEN:

BOWEN REAL ESTATE HOLDINGS INC.

Plaintiff

- and -

USG CORPORATION, UNITED STATES GYPSUM COMPANY, CGC INC., NEW NGC, INC., LAFARGE NORTH AMERICA INC., LAFARGE CANADA INC., CERTAINTEED CORPORATION, CERTAINTEED GYPSUM, INC., CERTAINTEED GYPSUM CANADA, INC., TIN INC. D/B/A TEMPLE-INLAND INC., and PABCO BUILDING PRODUCTS, LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against Lafarge North America Inc. and Lafarge Canada Inc. (collectively, the “Settling Defendants”) and approving the settlement agreement entered into with Settling Defendants and dismissing this action as against the Settling Defendants, was heard this day at the Courthouse, 7755 Hurontario Street, Brampton, Ontario.

AND ON READING the materials filed, including the settlement agreement dated ● attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendants;

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

AND ON BEING ADVISED that the deadline for opting-out of the Proceedings has passed and there were no opt-outs;

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

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, 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 in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Ontario Proceeding be and is hereby certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the “Ontario Settlement Class” be defined as:

All Persons in Canada, other than Excluded Persons and Persons who are in the Quebec Settlement Class, who, during the Class Period, purchased Drywall in Canada.

5. **THIS COURT ORDERS** that Bowen Real Estate Holdings Inc. is appointed as the representative plaintiff for the Ontario Settlement Class.

6. **THIS COURT ORDERS** that the following issue is common to Ontario Settlement Class Members:

Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the price of Drywall in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

7. **THIS COURT ORDERS** that the approval of the Settlement Agreement and paragraphs 1 and 3 to 6 of this Order, including the certification of the Ontario Proceeding as against the Settling Defendants for settlement purposes and the definitions of the Ontario Settlement Class and the Common Issue, and any reasons given by the Court in connection with the approval of the Settlement Agreement (except any reason given in connection with paragraphs 17-22) or paragraphs 1 and 3 to 6 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Proceeding and the Second Ontario Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Proceeding or the Second Ontario Proceeding, as against the Non-Settling Defendants.

8. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who

are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Proceeding.

9. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
10. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
11. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
12. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
13. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 15, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
14. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief,

from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

15. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
16. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
17. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions or otherwise, by any Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any

Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order.

18. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

(a) the Ontario Plaintiff and Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

(b) the Ontario Plaintiff and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest, and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the Non-Settling Defendants

and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiff and Ontario Settlement Class Members, if any, and, for greater certainty, Ontario Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding, whether or not the Releasees remain in the Ontario Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceeding and shall not be binding on the Releasees in any other proceeding.

19. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of Ontario Settlement Class Members in the Ontario Proceeding or the rights of the Ontario Plaintiff and the Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

20. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Ontario Proceeding, and on at least thirty (30) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Ontario Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
- (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;
 - (b) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
 - (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
21. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 20. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 20. Notwithstanding any provision

in this Order, on any motion brought pursuant to paragraph 20, the Court may make such orders as to costs and other terms as it considers appropriate.

22. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 20 above by service on Counsel for the Settling Defendants.
23. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
24. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have in the Ontario Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
25. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
26. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel for the benefit of Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred

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

27. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administration Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
28. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the Quebec Court and on dismissal of the BC Proceeding by the BC Court, and the terms of this Order shall not be effective unless and until the Parties have signed and filed a notice of settlement out of court with the Quebec Court and have obtained a Final Order from the BC Court dismissing the BC Proceeding. If such relief is not secured in Quebec, or if such dismissal is not secured in BC, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Proceeding and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
29. **THIS COURT ORDERS** that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

30. **THIS COURT ORDERS** that the Ontario Proceeding be and is hereby dismissed as against the Settling Defendants, without costs and with prejudice.

The Honourable Justice Sproat