

**ONTARIO GASOLINE CLASS ACTION  
SETTLEMENT AGREEMENT**

Made on August 28, 2014

Between

**JAMES LORIMER**

(the "Plaintiff")

and

**SUNCOR ENERGY PRODUCTS INC.**

**(incorrectly named as Suncor Energy Products Group)**

(the "Settling Defendant")

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**RECITALS**

- A. WHEREAS the Plaintiff has commenced the Proceeding in the Court and alleges that the Defendants participated in an unlawful conspiracy to raise, maintain, fix, or stabilize the price of Gasoline in Eastern Ontario, contrary to Part VI of the *Competition Act* and common law, and the Plaintiff claims class-wide damages allegedly caused as a result of the same;
- B. AND WHEREAS the Settling Defendant sold Gasoline in Eastern Ontario during the Settlement Class Period but vigorously denies any and all liability in respect of all claims alleged in the Proceeding, and strongly asserts that it has complete defences in respect of the merits in the Proceeding;
- C. AND WHEREAS the Settling Defendant would have actively and diligently pursued all of its defences in respect of the merits had this settlement not occurred and the Plaintiff continued the Proceeding against it;
- D. AND WHEREAS, despite its strong belief that it is not liable in respect of any of the claims alleged in the Proceeding and that it has complete defences in respect of the merits, the Settling Defendant has entered into this Settlement Agreement solely to avoid the further considerable expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation, to achieve final resolutions of all claims asserted or which could have been asserted against the Releasees by the Plaintiff on his own behalf and on behalf of the Settlement Class, and to avoid the risks inherent in uncertain, complex and protracted litigation;
- E. AND WHEREAS counsel for the Settling Defendant has engaged in extensive arm's-length settlement negotiations with Class Counsel in respect of this Settlement Agreement;
- F. AND WHEREAS as a result of these settlement negotiations, the Settling Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement of the Proceeding between the Settling Defendant and the Plaintiff, both individually and on behalf of the Settlement Class, subject to approval of the Court;

G. AND WHEREAS the Plaintiff has agreed to accept this settlement because of the value of the Settlement Amount and cooperation provided under this Settlement Agreement, as well as the attendant risks of litigation in light of the defences that would be asserted by the Settling Defendant;

H. AND WHEREAS the Settling Defendant does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding and has always and will continue to deny all such allegations;

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

J. AND WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, and having regard to the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Settlement Class;

K. AND WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Settlement Class, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

L. AND WHEREAS the Plaintiff and the Settlement Class Members intend to fully and completely settle and resolve all of their claims as against the Releasees on the Effective Date pursuant to this Settlement Agreement;

M. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Proceeding as against all of the Releasees;

N. AND WHEREAS for the purposes of settlement only and contingent on approval by the Court as provided for in this Settlement Agreement, the Parties have consented to certification of the Proceeding as a class proceeding as against the Settling Defendant and have consented to a Settlement Class and a Common Issue in the Proceeding;

O. AND WHEREAS for the purposes of settlement only and contingent on approval by the Court as provided for in this Settlement Agreement, the Plaintiff has consented to a dismissal of the Proceeding as against the Settling Defendant;

P. AND WHEREAS the Plaintiff asserts that he is an adequate class representative for the Settlement Class and will seek to be appointed representative plaintiff in the Proceeding;

Q. AND WHEREAS the deadline for Settlement Class Members to opt-out of the Proceeding has passed and no Settlement Class Members opted-out of the Proceeding;

R. 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 Proceeding be settled and dismissed with prejudice as to all Releasees, without costs as to the Plaintiff, the Settlement Class, or the Releasees, subject to the approval of the Court, on the following terms and conditions:

## **SECTION 1 – DEFINITIONS**

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

(2) *Administration Expenses* mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of the Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.

(3) *Claims Administrator* means the Person proposed by Class Counsel and appointed by the Court to administer the Settlement Agreement, including the claims process, in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.

- (4) **Class Counsel** means Siskinds LLP.
- (5) **Class Counsel Fees** means the fees, disbursements, costs, interest, and other applicable taxes or charges of Class Counsel, including any applicable taxes.
- (6) **Common Issue** in the Proceeding means: Did the Settling Defendant conspire to raise, maintain, fix or stabilize the prices of Gasoline in Eastern Ontario during the Settlement Class Period contrary to Part VI of the *Competition Act* and the common law? If so, what damages, if any, did Settlement Class Members suffer?
- (7) **Court** means the Ontario Superior Court of Justice.
- (8) **Defendants** mean Pioneer Energy LP, Canadian Tire Corporation, Limited, Mr. Gas Limited and Suncor Energy Products Group (dba Sunoco), as well as any named or unnamed alleged co-conspirator who is added as a defendant or third party in the Proceeding.
- (9) **Document** has the meaning given to that term in rule 30.01(1)(a) of the *Ontario Rules of Civil Procedure*.
- (10) **Distribution Protocol** means the plan developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or part, as approved by the Court.
- (11) **Eastern Ontario** means the Kingston, Brockville and Belleville regional markets.
- (12) **Effective Date** means the date the Final Order is received from the Court approving the Settlement Agreement.
- (13) **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.
- (14) **Final Order** means a final order made by the Court in respect of the approval of the Settlement Agreement once the time to appeal such order has expired without any appeal being

taken, if an appeal lies, or once there has been affirmation of the approval of the Settlement Agreement upon a final disposition of all appeals.

(15) **Gasoline** means all grades of gasoline (excluding diesel) sold at retail gas stations.

(16) **Non-Settling Defendant** means any Defendant that is not a Releasee, a Settling Defendant or a Settled Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the date of execution of this Settlement Agreement.

(17) **Other Actions** mean actions or proceedings, other than the Proceeding, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(18) **Parties** mean the Plaintiff, Settlement Class Members, Class Counsel and the Settling Defendant.

(19) **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.

(20) **Plaintiff** means James Lorimer.

(21) **Proceeding** means the action commenced in the Ontario Superior Court of Justice (Kingston) by the Plaintiff against the Defendants in Court file no. CV-12-142CP.

(22) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Court would have apportioned to the Releasees.

(23) **Released Claims** mean any and all manner of claims, demands, actions (including any Other Actions), suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including



compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, during 2007, in respect of the purchase, sale, pricing, discounting, marketing or distributing of Gasoline in Eastern Ontario, or relating to any conduct alleged (or which could have been alleged) in the Proceeding including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Gasoline in Eastern Ontario during the Settlement Class Period and including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement or conduct that occurred during the Settlement Class Period.

**(24) *Releasees*** mean, jointly and severally, individually and collectively, the Settling Defendant, and all of its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing (excluding always the Non-Settling Defendants).

**(25) *Releasors*** mean, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective parents, subsidiaries, predecessors, successors, heirs, executors, administrators, insurers, and assigns, and any other person claiming by or through them.

**(26) *Settlement Agreement*** means this agreement, including the recitals.

- (27) *Settlement Amount* means the sum of CDN \$362,500.00.
- (28) *Settlement Class* means all Persons who purchased Gasoline in Eastern Ontario during the Settlement Class Period, except the Excluded Persons.
- (29) *Settlement Class Member* means a Person who is a member of the Settlement Class.
- (30) *Settlement Class Period* means May 1, 2007 to November 30, 2007.
- (31) *Settled Defendant* means Canadian Tire Corporation
- (32) *Settling Defendant* means Suncor Energy Products Inc. (dba Sunoco).
- (33) *Trust Account* means an interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of Class Counsel for the benefit of Settlement Class Members.

## **SECTION 2 – SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

- (1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendant.

### **2.2 Motions for Approval**

- (1) As soon as practical after this Settlement Agreement is executed, the Plaintiff shall bring a motion before the Court for an order approving the form of notice advising Settlement Class Members of the main provisions of the Settlement Agreement, the date of the hearing to certify the Proceeding as a class proceeding for settlement purposes and approve the Settlement Agreement, and the process for objecting to the Settlement Agreement, as required pursuant to section 9.1(1).
- (2) As soon as practical after the order referred to in section 2.2(1) is granted, and after the notice referred to in section 2.2(1) has been published, the Plaintiff shall bring a motion before the Court for an order certifying the Proceeding as a class proceeding for settlement purposes and approving the Settlement Agreement.

(3) It is a fundamental term of this Settlement Agreement that the Plaintiff and the Settling Defendant must agree on the form and content of the orders to be sought pursuant to sections 2.2(1) and 2.2(2) and every order must be consistent with the terms of the Settlement Agreement. If agreement on the form and content of the orders is not reached within a reasonable period of time, the Settling Defendant and the Plaintiff shall have a right of termination pursuant to section 12.1.

(4) The form and content of the orders agreed upon pursuant to section 2.2(3) shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the form and content of the orders agreed upon shall give rise to a right of termination pursuant to section 12.1.

(5) This Settlement Agreement shall only become final on the Effective Date.

### **2.3 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, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Settling Defendant and Class Counsel, as the case may be, except as required for the purposes of financial or insurance reporting, the preparation of financial records (including tax returns and financial statements), the conduct of due diligence for a transaction, giving effect to the terms of this Settlement Agreement, or as otherwise required by law.

## **SECTION 3 – SETTLEMENT BENEFITS**

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

(1) Within 30 days of execution of the Settlement Agreement, the Settling Defendant shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account to be held for the benefit of Settlement Class Members. Except as otherwise provided in section 9.1(2), the payment of the Settlement Amount shall be in full satisfaction of all settlement payment obligations under the Settlement Agreement and in full satisfaction of the Released Claims against the Releasees. Except as otherwise provided in section 9.1(2), the Releasees have no

obligation to pay any amount other than the Settlement Amount, for any reason, pursuant to or in furtherance of the Settlement Agreement.

(2) Class Counsel shall maintain the Trust Account as provided for in the Settlement Agreement. Class Counsel shall not pay out all or part of the monies in the Trust Account, except in accordance with the Settlement Agreement or in accordance with an order of the Court obtained on notice to the Settling Defendant.

### **3.2 Taxes and Interest**

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

(2) Subject to 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 the responsibility of the Settlement Class. Class Counsel 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 on the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendant 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 is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

### **3.3 Cooperation**

(1) The cooperation to be provided by the Settling Defendant under this section 3.3 shall be limited to the allegations made in the Proceeding and, for greater certainty, shall be limited to the allegation that the Defendants conspired to raise, maintain, fix and stabilize the price of Gasoline in Belleville, Ontario during the Class Period (the "Alleged Conduct").

(2) All Documents and other information provided by the Settling Defendant or its counsel to the Plaintiff and Class Counsel under this Settlement Agreement are confidential. Except as authorized by this Settlement Agreement, such Documents and other information may not be disclosed to any Person in any manner, 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 Defendant, except that Class Counsel is permitted to provide such Documents and information to the Plaintiff's experts in the Proceeding. It is agreed that Class Counsel will take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel and Plaintiff's experts.

(3) All Documents and other information provided by the Settling Defendant or its counsel to the Plaintiff and Class Counsel under this Settlement Agreement may be used by Class Counsel, the Plaintiff and their experts only in connection with the prosecution of the Proceeding, and shall not be used directly or indirectly for any other purpose, including the prosecution of any claim against any one or more of the Releasees.

(4) If the Plaintiff or Class Counsel intends to produce or file in the Proceeding any Documents or other information provided by the Settling Defendant 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 Defendant as "Confidential – Subject to Procedure Under Section 3.3(4) of the Suncor Settlement Agreement", Class Counsel shall provide the Settling Defendant with an advance description of the Documents or other information sought to be produced or filed in the Proceeding at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendant may intervene for the purposes of obtaining a sealing or confidentiality order or similar relief. If the Settling Defendant intervenes for this purpose, the Plaintiff, Settlement Class Members and Class Counsel shall not oppose the position taken by the Settling Defendant.

(5) In the event that a Person applies for an order requiring the Plaintiff or Settlement Class Members to disclose or produce any Documents or other information provided by the Settling Defendant as cooperation under this Settlement Agreement which, at the time of being provided,

were marked or designated by the Settling Defendant as "Confidential – Subject to Procedure Under Section 3.3(4) of the Suncor Settlement Agreement", Class Counsel shall notify the Settling Defendant of such application promptly upon becoming aware of it in order that the Settling Defendant may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiff, Settlement Class Members or Class Counsel apply for or consent to such an application for disclosure or production.

(6) The Settling Defendant shall be required to provide cooperation pursuant to this Section 3.3 only if the Proceeding is certified and not earlier than 180 days prior to the scheduled commencement of the common issues trial.

(7) The Settling Defendant shall produce to Class Counsel the following information currently in the Settling Defendant's possession, to the extent reasonably available and on the following basis:

- (a) Documents from the Settlement Class Period that originated with the Settling Defendant and deal with the Alleged Conduct;
- (b) Documents necessary to confirm the total sales of Gasoline by the Settling Defendant under the Sunoco brand, in Belleville, Ontario during the Settlement Class Period;
- (c) Documents necessary to confirm the total sales of Gasoline by the Settling Defendant under the Sunoco brand, in Kingston, Ontario during the Settlement Class Period, but only to the extent that sufficient data from other sources is not otherwise reasonably available to the Plaintiff or his experts, and the data is necessary in order for the Plaintiff's expert to calculate aggregate damages or to otherwise analyze the Retail Gasoline market in Kingston, Ontario;
- (d) Information on the prices charged for Gasoline by the Settling Defendant under the Sunoco brand in Belleville, Ontario during the Settlement Class Period; and
- (e) Information on the prices charged for Gasoline by the Settling Defendant under the Sunoco brand in Kingston, Ontario during the Settlement Class Period, but

only to the extent that sufficient data from other sources is not otherwise reasonably available to the Plaintiff or his experts, and the data is necessary in order for the Plaintiff's expert to calculate aggregate damages or to otherwise analyze the Retail Gasoline market in Kingston, Ontario.

(8) Counsel for the Settling Defendant will meet with Class Counsel, as often as is reasonably necessary at times mutually agreed to, but for no more than ten (10) hours in the aggregate, to provide information about the Alleged Conduct, including by providing an evidentiary proffer setting forth information originating with the Settling Defendant and in its possession about the Alleged Conduct and any potential testimony by current employees of the Settling Defendant. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by counsel for the Settling Defendant are privileged, will be kept strictly confidential and will not be used by Class Counsel for any purpose other than the prosecution of the Proceeding.

(9) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendant agrees to produce at trial and/or discovery or through acceptable affidavits or other testimony in the Proceeding, representatives qualified to establish for admission into evidence any of the Settling Defendant's Documents provided as cooperation pursuant to this Settlement Agreement, and agrees to authenticate to the extent it can any Documents produced by the Defendants that were created by, sent to, or received by the Settling Defendant, should such proof or authentication by the Settling Defendant prove to be necessary.

(10) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant (or any of its former or current officers, directors or employees) to perform any act which would violate any provincial, federal or foreign law, to disclose or produce any Documents or information prepared by or for counsel for the Settling Defendant, or to disclose or produce any Documents or information in breach of or inconsistent with any order, regulatory directive, rule or provincial, federal or foreign law, 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 Person, including any party to any action or proceeding who is not a Settling Defendant.

(11) 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 produced, such Documents shall be promptly destroyed 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 Defendant, and the production of such Documents shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents.

(12) The Settling Defendant's obligation to cooperate as particularized in this section 3.3 shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved or is terminated (at which time the Settling Defendant's obligation to cooperate ceases), the Settling Defendant's obligations to cooperate shall cease at the date of final judgment in the Proceeding against all Defendants. In the event that either party materially breaches this section 3.3, the other party may move before the Court to enforce the terms of this Settlement Agreement.

(13) The provisions set forth in this section 3.3 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or disclosure of Documents or information relevant to the Alleged Conduct from the Settling Defendant or its current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery or disclosure against the Settling Defendant or its current or former officers, directors or employees.

(14) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is its desire to limit the burden and expense of the Proceeding. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, and to avoid seeking Documents or information that are unnecessary, cumulative or duplicative of Documents and information which Class Counsel did obtain or could have obtained elsewhere using reasonable efforts, and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Settling Defendant.



(15) Notwithstanding any other provision of this Settlement Agreement, the Settling Defendant (and any of its former or current officers, directors or employees) is not required to produce any Documents or information where such production would be contrary to the rules, laws or policies of a competition authority or would interfere with an ongoing investigation by a competition authority. Further, nothing in this Settlement Agreement requires, or shall be construed to require, the Settling Defendant to disclose any privileged Documents or any communications with the Canadian Competition Bureau in respect of its investigation relating to the sale of Gasoline, or any Documents, evidence or other information created for or by the Canadian Competition Bureau in respect of its investigation relating to the sale of Gasoline.

#### **SECTION 4 – DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST**

##### **4.1 Distribution Protocol**

(1) At a time within the discretion of Class Counsel, Class Counsel will seek an order from the Court approving the Distribution Protocol and the monies in the Trust Account shall be treated in accordance with the Distribution Protocol once approved.

##### **4.2 No Responsibility for Administration or Fees**

(1) The Settling Defendant 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.

#### **SECTION 5 – RELEASES AND DISMISSALS**

##### **5.1 Release of Releasees**

(1) Upon the Effective Date, and subject to section 5.2, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims and agree that they will not commence, pursue or maintain any claim against the Releasees or any of them based on the Released Claims.

(2) The Plaintiff and Settlement Class Members 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 the 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 any such additional or different facts.

## **5.2 Covenant Not To Sue**

(1) Notwithstanding section 5.1(1), for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

## **5.3 No Further Claims**

(1) The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceeding against the Non-Settling Defendants and/or any unnamed co-conspirator that is not a Releasee or, if the Proceeding is not certified, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant and/or any unnamed co-conspirator that is not a Releasee.

## **5.4 Dismissal of the Proceeding**

(1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendant.

## **5.5 Dismissal of the Other Actions**

(1) Upon the Effective Date, any Other Actions that were commenced by any Settlement Class Member shall be dismissed against any and all Releasees who are named as defendants, without costs and with prejudice.

(2) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

#### **5.6 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.

#### **5.7 Releases**

(1) The releases contemplated in this section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to section 12.1 of the Settlement Agreement.

### **SECTION 6 – BAR ORDER**

#### **6.1 Form of Bar Order**

- (1) The Plaintiff shall seek a bar order from 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 Proceeding, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any other Person or party (excepting a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against any Non-Settling Defendant), are barred, prohibited and enjoined in accordance with the terms of the order.
  - (b) If the Court determines that there is a right of contribution and indemnity or other claim over as between a Non-Settling Defendant and a Releasee, whether in equity or in law, by statute or otherwise:

- (i) the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants 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; and,
  - (ii) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceeding, whether or not the Releasees 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 Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceeding and shall not be binding on the Releasees in any other proceedings.
- (c) A Non-Settling Defendant may, on motion to the Court brought on at least ten (10) days notice and to be determined as if the Settling Defendant is a party to the Proceeding, not to be brought until the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal from such certification have been exhausted, seek orders for the following:
- (i) documentary discovery and an affidavit of documents from the Settling Defendant;
  - (ii) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
  - (iii) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
  - (iv) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.

(2) The Settling Defendant retains all rights to oppose such motion(s) brought under section 6.1(1)(c).

(3) A Non-Settling Defendant may serve the motion(s) referred to in section 6.1(1)(c) on the Settling Defendant by service on counsel of record for the Settling Defendant in the Proceeding.

(4) To the extent that an order is granted pursuant to section 6.1(1)(c) and discovery is provided by the Settling Defendant to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendant to Class Counsel, at Class Counsel's expense, within thirty (30) days of such discovery being provided to a Non-Settling Defendant.

## **6.2 Material Term**

(1) The form and content of the bar order contemplated in section 6.1 shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the bar order contemplated herein shall give rise to a right of termination pursuant to section 12.1 of the Settlement Agreement.

## **SECTION 7 – EFFECT OF SETTLEMENT**

### **7.1 No Admission of Liability**

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

## **7.2 Agreement Not Evidence**

(1) Whether or not it is terminated, the Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with the Settlement Agreement, and any action taken to carry out the Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (a) by the Parties in a proceeding to approve or enforce the Settlement Agreement; (b) by a Releasee to defend against the assertion of a Released Claim; (c) by a Releasee in any insurance-related proceeding; or (d) as otherwise required by law or as provided in this Settlement Agreement.

## **7.3 No Further Litigation**

(1) Except as provided in section 7.3(3) of this Settlement Agreement, no Class Counsel, no Plaintiff, no Settlement Class Member, 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 which relates to, is in connection with or arises from the Released Claims.

(2) No Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by or a partner with Class Counsel may divulge to any Person for any purpose any information obtained from the Settling Defendant in the course of the Proceeding or the negotiation and preparation of the Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

(3) Section 7.3(1) does not apply to the involvement of any Person in the continued prosecution of the Proceeding against any Non-Settling Defendant and/or any unnamed co-conspirator that is not a Releasee or, if the Proceeding is not certified, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant and/or any unnamed co-conspirator that is not a Releasee.

(4) Class Counsel represents and warrants that it is not working with another firm or independent lawyer with respect to the Proceeding or any claim made or action commenced by any Person which relates to, is in connection with or arises from the Released Claims.

## **SECTION 8 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

### **8.1 Settlement Class and Common Issue**

(1) The Parties agree that the Proceeding shall be certified as a class proceeding solely for purposes of settlement of the Proceeding and the approval of the Settlement Agreement by the Court.

(2) The Plaintiff agrees that, in the motion for certification of the Proceeding as a class proceeding and for the approval of the Settlement Agreement, the only common issue that he will seek to define is the Common Issue and the only class that will be asserted is the Settlement Class. The Plaintiff acknowledges that the Settling Defendant agrees to the definition of the Settlement Class and the Common Issue for purposes of settlement only.

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

### **9.1 Notice Required**

(1) The Settlement Class shall receive notices that include the following information (i) a summary of the main provisions of the Settlement Agreement, (ii) the certification of the Proceeding as a class proceeding for settlement purposes, (iii) the date of the hearing to approve the Settlement Agreement, (iv) the process for objecting to the Settlement Agreement, (v) the fact of approval of the Settlement Agreement, if granted, and (vi) the process by which Settlement Class Members may make claims pursuant to the Distribution Protocol.

(2) In the event that the motions required by section 2.2 do not proceed in conjunction with settlement approval motions involving another Defendant, the Settling Defendant will contribute up to CDN \$15,000 towards the actual cost of the Notices required by section 9.1. This contribution would be in addition to the Settlement Amount, and would be paid to Class Counsel (to be added to the Trust Account) within thirty (30) days of receipt by the Settling Defendant of invoices confirming the actual cost of the relevant Notices.

### **9.2 Form and Distribution of Notice**

(1) The form of the notices referred to in section 9.1 and the manner and extent of their publication and distribution shall be as agreed to by the Plaintiff and the Settling Defendant and approved by the Court. Any disagreement between the Plaintiff and Settling Defendant on the

form of notices or manner and extent of their publication and distribution shall be resolved by the Court.

## **SECTION 10 – ADMINISTRATION AND IMPLEMENTATION**

### **10.1 Mechanics of Administration**

(1) Except to the extent provided for in the Settlement Agreement, the mechanics of the implementation and administration of the Settlement Agreement and the Distribution Protocol shall be determined by the Court on motions brought by Class Counsel.

## **SECTION 11– CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

(1) Class Counsel shall pay the costs of the notices required by section 9.1 from the Trust Account as they become due.

(2) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Administration Expenses contemporaneously with seeking approval of the Settlement Agreement, or at such other time as they shall determine in their sole discretion.

(3) Except as provided in section 11(1), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, the Plaintiff's or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

## **SECTION 12 – TERMINATION OF SETTLEMENT AGREEMENT**

### **12.1 Right of Termination**

(1) The Settling Defendant or the Plaintiff may terminate this Settlement Agreement in the event that,

(a) the Parties do not reach agreement on the form and content of any order pursuant to section 2.2(3);



- (b) the form and content of any of the Final Orders approved by the Court departs from the form and content of the orders agreed upon by the Plaintiff and the Settling Defendant under section 2.2(3);
- (c) the Court declines to approve the Settlement Agreement or any material term or part hereof;
- (d) the Court approves the Settlement Agreement in a materially modified form; or
- (e) the order approving the Settlement Agreement made by the Court does not become a Final Order.

(2) To exercise a right of termination under section 12.1(1), a terminating party shall deliver a written notice of termination pursuant to section 13.14 of the Settlement Agreement. Upon delivery of such a written notice, the Settlement Agreement shall be terminated and, except as provided for in section 12.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by the Court that is not substantially in the form and content of the Final Order, as agreed upon by the Plaintiff and the Settling Defendant in accordance with section 2.2(3), shall be deemed to be a material modification of the Settlement Agreement and shall provide a basis for the termination of the Settlement Agreement, provided however that the Settling Defendant may agree to waive this provision.

(4) Any order, ruling or determination made by the Court with respect to Class Counsel Fees or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of the Settlement Agreement and shall not provide any basis for the termination of the Settlement Agreement.

## **12.2 If Settlement Agreement is Terminated**

(1) In the event the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that:

- (a) no motion to certify the Proceeding as a class proceeding on the basis of the Settlement Agreement or to approve the Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving the Settlement Agreement shall be set aside and declared null and void and of no force and effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceeding, the Other Actions or any other litigation;
- (d) the Parties shall negotiate in good faith to determine a new timetable, if the Proceeding is to continue against the Settling Defendant;
- (e) within ten (10) days of the date of written notice of termination, Class Counsel shall destroy all Documents or other information provided by the Settling Defendant under this Settlement Agreement, or containing or reflecting information derived from such Documents or other information and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendant to any other Person, shall recover and destroy such Documents or information, and shall certify in writing to the Settling Defendant that the destruction required by this section has taken place; with the exception that Class Counsel are not required to destroy any of their work product, it being understood and agreed that such work product may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel in any way for any reason, without the express prior written permission of the Settling Defendant. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of their work product; and

- (f) Class Counsel shall forthwith deliver consents in writing to counsel for the Settling Defendant authorizing the Settling Defendant to obtain orders declaring the Settlement Agreement to be null and void and of no force and effect (except for the provisions set out in section 12.4), setting aside any order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement and directing Class Counsel to pay the balance in the Trust Account in accordance with section 12.3(1).

### **12.3 Allocation of Monies in the Trust Account Following Termination**

- (1) If the Settlement Agreement is terminated, Class Counsel shall pay to the Settling Defendant the Settlement Amount plus all accrued interest thereon, less the costs of the notices required by section 9.1 which are intended to be paid out of the Trust Account and not yet paid, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms.

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

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2(3), 7.1, 7.2, and 12 shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of the Settlement Agreement, but for no other purposes. All other provisions of the Settlement Agreement and all other obligations pursuant to the Settlement Agreement shall cease immediately.

- (2) The Releasees and the Plaintiff expressly reserve all of their respective rights if the Settlement Agreement is terminated.

## **SECTION 13 – MISCELLANEOUS**

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

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

### **13.2 Motions for Directions**

- (1) The Settling Defendant or the Plaintiff may apply to the Court for directions in respect of the interpretation, implementation and administration of the Settlement Agreement.
- (2) Class Counsel may apply to the Court for directions in respect of the Distribution Protocol.
- (3) All motions contemplated by or referred to in this Settlement Agreement shall be on notice to the Plaintiff and the Settling Defendant.

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

- (1) In the 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 the Settlement Agreement; and
  - (b) the terms "the Settlement Agreement", "hereof", "hereunder", "herein" and similar expressions refer to the Settlement Agreement and not to any particular section or other portion of the Settlement Agreement.

### **13.4 Computation of Time**

- (1) In the computation of time in the 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 that term is defined in the *Interpretation Act*, RSC 1985, c. I-21), the act may be done on the next day that is not a holiday.

### **13.5 Governing Law**

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

### **13.6 Entire Agreement**

(1) The Settlement Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Settlement Agreement, unless expressly incorporated herein.

### **13.7 Amendments**

(1) The Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto. The Court must approve any such modification or amendment.

### **13.8 Binding Effect**

(1) The Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, Class Counsel, the Settling Defendant, 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 Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Releasees.

### **13.9 Counterparts**

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

### **13.10 Interpretation**

(1) The 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 the Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Settlement Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of the Settlement Agreement.

### **13.11 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, the Settling Defendant shall prepare a French translation of the Settlement Agreement if required by the Court. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

### **13.12 Transaction**

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

### **13.13 Recitals**

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

### **13.14 Notice**

(1) Any and all notices, requests, directives, or communications required by the Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

**For the Plaintiff and for Class Counsel:**

Linda J. Visser

SISKINDS LLP  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8

Tel: 519-660-7700

Fax: 519-672-6065

Email: [linda.visser@siskinds.com](mailto:linda.visser@siskinds.com)

**For the Settling Defendant:**

James Musgrove and David Kent

MCMILLAN LLP  
181 Bay Street  
Toronto, ON  
M5J 2T3

Tel: 416-307-4078 / 416-865-7143

Fax: 416-865-7048

Email: [james.musgrove@mcmillan.ca](mailto:james.musgrove@mcmillan.ca)  
[david.kent@mcmillan.ca](mailto:david.kent@mcmillan.ca)

**13.15 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 the 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 the Settlement Agreement, with respect to the first Party's decision to execute the Settlement Agreement.

**13.16 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, the Settlement Agreement on behalf of the Parties identified below their respective signatures.

**Executed in counterparts as at August 28, 2014**

**JAMES LORIMER**, on his behalf and on behalf of the Settlement Class, by his counsel

Name of Authorized Signatory:

Linda Visser

Signature of Authorized Signatory:

  
Siskinds LLP

Class Counsel

**SUNCOR ENERGY PRODUCTS INC.**, by its counsel

Signature of Authorized Signatory:

David Kent  
for  
McMillan LLP