

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE BELOBABA

)
)
)

Friday, the 17th day
of October 2013

BETWEEN:

MICHAEL CANNON

Plaintiff

- and -



FUNDS FOR CANADA FOUNDATION, MATT GLEESON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the BERMUDA LONG TAIL TRUST, EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as PATTERSON PALMER LAW, PATTERSON KITZ (Halifax), PATTERSON KITZ (Truro), McINNES COOPER, SAM ALBANESE, KEN FORD, RIYAD MOHAMMED, DAVID RABY and GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

Proceeding Under the Class Proceedings Act, 1992

ORDER

THIS MOTION made by the Plaintiff for an order approving the Settlement Agreement entered into with the defendants Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro) and McInnes Cooper (the "Settling Defendants") was heard this day at Toronto, Ontario.

ON READING the materials filed, including the Amended Settlement Agreement dated October 11, 2013, attached to this Order as Schedule "1" (the "Settlement Agreement"), and on

hearing the submissions of counsel for the Plaintiff and counsel for the Defendants and Third Parties:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the Class Proceedings Act, 1992 and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the Plaintiff and all Settlement Class Members in this proceeding provided that where the terms of the bar order contemplated by the Settlement Agreement are inconsistent with this Order, the terms of this Order shall apply.
5. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon the Plaintiff and each Settlement Class Member who has not validly opted-out of this action 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 this action.
6. **THIS COURT ORDERS AND DECLARES** that any Other Action commenced in Ontario by any Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.

7. **THIS COURT ORDERS AND DECLARES** that each Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that each Releasor who has not validly opted-out of this action 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 any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Class Action against the Non-Settling Defendants or name or unnamed co-conspirators that are not Releasees.
9. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
10. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall not make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
11. **THIS COURT ORDERS** that, subject to paragraphs 12-17, all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Gift Program which were or could have been brought in the Class Action or in a separate proceeding by any Non-Settling Defendant or any other person or party against any of the Releasees, or by the Releasees against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Order.

12. **THIS COURT ORDERS** that all other claims of any person of any nature whatsoever arising out of or relating in any way to the Gift Program including, not to limit the generality of the foregoing, all claims of any person of any nature whatsoever arising out of or relating in any way to any professional services relating to the Gift Program provided by the Settling Defendants, including those provided to the defendants ParkLane Financial Services Limited, Trafalgar Associates Limited or Trafalgar Trading Limited (the “ParkLane Defendants”), which claims could have been brought in the Class Action or in a separate proceeding brought against the Settling Defendants are barred, prohibited and enjoined (unless such a claim is made by a member of the Class who has validly opted out).
13. **THIS COURT ORDERS** that if, in the absence of paragraphs 11 and 12, a Non-Settling Defendant or any other person or party could have brought a claim of any nature whatsoever (including a claim for contribution or indemnity) arising out of or relating in any way to the Gift Program including, not to limit the generality of the foregoing, if a Non-Settling Defendant or any other person or party could have brought a claim of any nature whatsoever arising out of or relating in any way to any professional services relating to the Gift Program provided by the Settling Defendants, including those provided to the ParkLane Defendants, against any of the Settling Defendants whether in the Class Action or in a separate proceeding (and whether or not such a claim has been brought as of the date of the granting of this order), then:
- (a) if in the Class Action (which term for the purposes of this paragraph 13 includes any proceeding to determine individual issues that remain unresolved after a common issues trial) the Court ultimately determines that there is a right of contribution and/or indemnity between any or all of the Defendants in respect of any of the causes of action asserted by the Plaintiff or any individual member of the Settlement Class, the Plaintiff and/or the Settlement Class Member(s) shall restrict their claims against the Non-Settling Defendants in respect of those causes of action so that the Plaintiff and/or the Settlement Class Member(s) shall be entitled to claim and recover from the Non-Settling Defendants on a joint and

several basis, or as otherwise determined by the Court, only that portion of any damages, costs or interest awarded that is allocable to the Non-Settling Defendants' proportionate share of liability, and exclusive of any proportion of liability allocated by the Court to the Settling Defendants;

- (b) at the trial or other disposition of the Class Action, for those causes of action for which the Court ultimately determines that there is a right of contribution and/or indemnity between any or all of the Defendants, the Court shall determine the proportionate liability of the Settling Defendants to the Class as if the Settling Defendants were parties to the action and any such finding by the Court in respect of the proportionate liability shall only apply in the Class Action, and shall not be binding upon the Settling Defendants in any other proceedings;
- (c) except as provided in paragraph 13(j) below, the Court shall determine the liability (if any) of any nature whatsoever of the Settling Defendants to:
 - (i) any of the Non-Settling Defendants, and
 - (ii) the parties against whom the ParkLane Defendants have asserted a third party claim for contribution and indemnity in the Class Action (the "Third Parties") in the action bearing Court File Nos. CV-08-362807-CPA3 and CV-08-362807-CPA4 (the "ParkLane Third Party Claims"),

arising out of or relating in any way to the Gift Program including, not to limit the generality of the foregoing, any professional services relating to the Gift Program provided by the Settling Defendants, including those provided to the ParkLane Defendants, as if the Settling Defendants remained parties to the Class Action, and any such finding by the Court in respect of this liability (including damages, interest and costs) shall only be used for the purposes of determining the total quantum of damages payable (if any) by each of the Non-Settling Defendants to the Settlement Class Members in the Class Action, and by the Third Parties to the

ParkLane Defendants, and shall not be binding upon the Settling Defendants in any other proceedings;

- (d) in making the determination in paragraph 13(c), the Court shall consider arguments from any Non-Settling Defendant to the effect that liability of the Non-Settling Defendants should be on a several basis, as opposed to a joint and several basis, or that contribution or indemnity claims between or amongst the Defendants should take into account the impecuniosity of any other Non-Settling Defendant and the Court shall rule on this argument, if advanced;
- (e) nothing herein shall be deemed to establish the choice of law which governs the determinations contemplated by paragraphs 13(c) and (d);
- (f) the Settlement Class Members shall not be entitled to enforce any judgment against any Non-Settling Defendant prior to final determination of the matters provided for in paragraph 13(c);
- (g) the Settlement Class Members' recovery from each Non-Settling Defendant (if any) shall be reduced by the amount(s), if any, for which the Settling Defendants are found liable to such Non-Settling Defendant and shall be further reduced by the amount(s), if any, for which the Settling Defendants are found liable to the Third Parties under subparagraph 13(c), above;
- (h) the ParkLane Defendants' recovery from a Third Party in the ParkLane Third Party Claims shall be reduced by the amount(s), if any, for which the Settling Defendants are found liable to that Third Party under subparagraph 13(c), above; and
- (i) in determining the liability (if any) of the Settling Defendants to any of the Non-Settling Defendants, and to the Third Parties as referenced in subparagraph 13(c), above, the Plaintiff may assert any defences which would have been available to the Settling Defendants had they remained parties to the Class Action.

- (j) notwithstanding any of the provisions in this Order, nothing shall bar or limit the rights, if any, of the Non-Settling Defendants or Third Parties to claim or recover contribution or indemnity from the Settling Defendants in respect of any claim by a person who would be a member of the Class but has validly opted out.
14. **THIS COURT DECLARES** that for greater certainty, the Settling Defendants shall have no responsibility to pay to any person or party any amount in excess of the amounts payable to the Settlement Class Members under the terms of the Settlement Agreement, except with respect to any liability addressed in paragraph 13(j).
15. **THIS COURT ORDERS** that to the extent that the Settling Defendants are found in any proceeding to have any liability of any nature whatsoever:
- (a) to any of the Non-Settling Defendants for damages, interest and costs arising from or related to amounts for which the Non-Settling Defendants are found liable to the Settlement Class Members, the Settlement Class Members' recovery from such Non-Settling Defendant shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants; and
 - (b) to any of the Third Parties for damages, interest and costs arising from or related to amounts for which the Third Parties are found liable to the ParkLane Defendants, the Settlement Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Third Parties.
16. **THIS COURT ORDERS** that the Non-Settling Defendants shall be specifically barred, prohibited and enjoined from attempting to recover from the Settling Defendants in any manner whatsoever the balance of the amount that the Non-Settling Defendants are held to be liable to the Settlement Class Members after said liability is reduced by the amount(s) (including damages, interest and costs) for which the Settling Defendants are found liable to the Non-Settling Defendants and reduced by the amount(s) (including

damages, interest and costs) for which the Settling Defendants are found liable to the Third Parties.

17. **THIS COURT ORDERS** that the Third Parties shall be specifically barred, prohibited and enjoined from attempting to recover from the Settling Defendants in any manner whatsoever the balance of the amount that the Third Parties are held to be liable to the ParkLane Defendants after said liability is reduced by the amount(s) (including damages, interest and costs) for which the Settling Defendants are found liable to the Third Parties.

18. **THIS COURT ORDERS** that after the Effective Date, a Non-Settling Defendant or any person who has filed a defence to the Class Action may, on motion to the Court determined as if the Settling Defendants still remained parties to the Class Action, and on at least ten days notice to Defence Counsel and Class Counsel, seek orders to conduct discovery of the Settling Defendants according to the Ontario Rules of Civil Procedure, RRO 1990, Reg 194 (the "Rules") and to read in the transcript of such discovery at trial (assuming adversity). The Settling Defendants retain all rights to oppose such motions or seek the costs of compliance, including any such motion brought at trial seeking an order requiring any of the Settling Defendants to produce a representative to testify at trial. On any motion brought pursuant to this paragraph, the Court may make such orders as to costs and other terms that it considers appropriate. *or any person who has filed a defence to the Class Action*

19. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 18 above on the Settling Defendants by service on counsel of record for the Settling Defendants in this action. *(SP) approved*

20. **THIS COURT ORDERS** that the Settling Defendants shall produce the documents required to be produced to Class Counsel pursuant to the Settlement Agreement within the timelines, if any, contemplated by the Settlement Agreement.

21. **THIS COURT ORDERS** that any document or information produced to Class Counsel pursuant to the Settlement Agreement shall be, and is, subject to the implied and/or deemed undertaking rules including Rule 30.1 of the Rules.

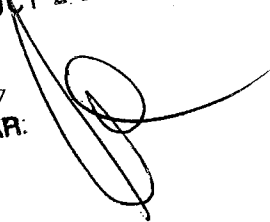
22. **THE COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants in this action.
23. **THIS COURT ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
24. **THIS COURT ORDERS** that Class Counsel transfer the Settlement Amount including the interest accrued in the Account to the Claims Administrator to be held in trust for the benefit of the Settlement Class, pending distribution to the Settlement Class Members in accordance with the Distribution Protocol, which is hereby approved.
25. **THIS COURT ORDERS** that the form of Notice of Settlement Approval and Claims Procedure is hereby approved substantially in the form attached hereto as Schedule "2".
26. **THIS COURT ORDERS AND ADJUDGES** that this action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.
27. **THIS COURT ORDERS AND ADJUDGES** that the Third Party Claims as against the Distributor Class Members and those Distributors who have not made contributions or donations to the Gift Program, and all within counterclaims, be and is hereby dismissed without costs and with prejudice.
28. **THIS COURT ORDERS AND ADJUDGES** that the third party claim which the Settling Defendants commenced against BDO Dunwoody LLP and Ralph Neville, and all within counterclaims, bearing Court File No. CV-08-362807-CPA1, be and is hereby dismissed without costs and with prejudice.

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ON / BOOK NO:
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PER / PAR:



E. Belobaba J.

SCHEDULE A

**DONATIONS FOR CANADA GIFT PROGRAM CLASS ACTION
AMENDED NATIONAL SETTLEMENT AGREEMENT**

Made as of October 11, 2013

MICHAEL CANNON

(the "Plaintiff")

and

**EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as
PATTERSON PALMER LAW, PATTERSON KITZ (Halifax),
PATTERSON KITZ (Truro) and McINNES COOPER**

(the "Settling Defendants")

**DONATIONS FOR CANADA GIFT PROGRAM CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

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**DONATIONS FOR CANADA GIFT PROGRAM CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Plaintiff commenced the Class Action in the Court by issuing a statement of claim on September 18, 2008;
- B. WHEREAS the Settling Defendants were, among others, all named as Defendants in the Class Action;
- C. WHEREAS the Class Action advances claims in relation to the Gift Program;
- D. WHEREAS the Class Action advances claims on behalf of the Class;
- E. WHEREAS the Class Action advances certain allegations against the Settling Defendants in relation to the structuring and marketing of the Gift Program;
- F. WHEREAS the Settling Defendants have commenced the Third Party Claim;
- G. WHEREAS the Class Action was certified by the Certification Order, with motions seeking leave to appeal from the Certification Order being dismissed by Justice Sanderson on October 29, 2012;
- H. WHEREAS the Certification Order appointed the Plaintiff as the representative plaintiff;
- I. WHEREAS the Plaintiff is duly authorized as the representative plaintiff to enter into this agreement, which, if approved by the Court, is binding on all Settlement Class Members, pursuant to section 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- J. WHEREAS, despite their belief that the allegations made by the Plaintiff in the Class Action are unfounded and that they have good and reasonable defences, the Settling Defendants have agreed to enter into this Settlement Agreement in order to achieve a final and nation-wide resolution of all of the Released Claims and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- K. WHEREAS the Settling Defendants do not admit through the execution of this Settlement Agreement, or otherwise, any unlawful conduct, liability, wrongdoing or blame of any kind on their behalf or on behalf of their successors or predecessors, either as alleged or at all;
- L. 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 against the Settling Defendants, and having regard to the burdens and expense in prosecuting the Class Action, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

- M. WHEREAS the Plaintiff, Class Counsel, and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Settling Defendants, or evidence of the truth of any of the Plaintiff's allegations against the Settling Defendants, which the Settling Defendants expressly deny; and
- N. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, the Class Action and all of the claims, allegations or demands that were, or could have been, advanced therein, as against the Settling Defendants;

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 Class Action be settled and dismissed on the merits with prejudice as against the Settling Defendants, without costs to the Plaintiff (other than contingency fees which may be awarded out of the Settlement Amount to Class Counsel), the Class, or the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

ARTICLE I **DEFINITIONS**

1.1 Definitions

- (a) *Account* means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel or the Claims Administrator, as the case may be, for the benefit of Settlement Class Members.
- (b) *Administration Expenses* means 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 this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (c) *Base Settlement Amount* means the all-inclusive amount of Twenty-Three Million, One Hundred Thirty Thousand and Seven Hundred Eighty-Nine Canadian Dollars (CDN \$23,130,789.00) which, for the avoidance of doubt, shall be inclusive of all amounts, taxes, disbursements, fees, costs, administration and notice costs, interest and all other amounts owing or potentially owing by the Settling Defendants, other than the Bonus Payment.
- (d) *Bonus Payment* means the all-inclusive amount of Four Million, One Hundred and Twelve Thousand and Fifty-Four Canadian Dollars (CDN \$4,112,054) which, for the avoidance of doubt, shall be inclusive of all amounts, taxes, disbursements, fees, costs, administration and notice costs, interest and all other amounts owing or potentially owing by the Settling Defendants, other than the Base Settlement Amount. This amount represents the aggregate amount of cash donations to the Gift Program by Distributor Class Members.

- (e) *Bonus Payment List* means the list of donations made to the Gift Program by Distributors who, as of June 7, 2013, had not opted out of the Class Action. The Bonus Payment List is attached hereto as Schedule "A".
- (f) *Certification Order* means the order of Justice Strathy of the Court which certified the Class Action on January 18, 2012.
- (g) *Claims Administrator* means the person appointed by the Court to administer this Settlement Agreement and the Distribution Protocol as approved by the Court, and any employees of such firm.
- (h) *Class* means the individuals who participated in the Gift Program while resident in Canada, except Excluded Persons.
- (i) *Class Action* means the class proceeding commenced by the Plaintiff in the Court, bearing Court File No. CV-08-362807-00CP.
- (j) *Class Counsel* means the law firms representing the Plaintiff and the Class, namely Paliare Roland Rosenberg Rothstein LLP and Landy Marr Kats LLP.
- (k) *Class Counsel Fees* include the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel in the prosecution of the Class Action.
- (l) *Court* means the Ontario Superior Court of Justice.
- (m) *Defence Counsel* means the law firms retained to defend the Settling Defendants, namely Bennett Jones LLP and Lax O'Sullivan Scott Lisus LLP.
- (n) *Defendant* means the individuals and entities named as defendants in the Class Action and against whom the Class Action has not been dismissed, namely: Funds For Canada Foundation; ParkLane Financial Group Limited; Trafalgar Associates Limited; Trafalgar Trading Limited; Appleby Services (Bermuda) Ltd. as trustee for the Bermuda Longtail Trust; Edwin C. Harris Q.C.; Patterson Palmer also known as Patterson Palmer Law; Patterson Kitz (Halifax); Patterson Kitz (Truro); McInnes Cooper; Gleeson Management Associates Inc.; Mary-Lou Gleeson; and Matt Gleeson.
- (o) *Distribution Protocol* means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and approved by the Court.
- (p) *Distributor Class Members* means Distributors who are also Class members, against whom the Settling Defendants commenced the Third Party Claim and who, as of November 20, 2013, do not opt out of the Class Action.

- (q) *Distributors* means the financial, tax and/or legal advisors who marketed and promoted the Gift Program to the Plaintiff and the Class and any sub-distributors, that is, distributors who worked in association with of for the Distributors.
- (r) *Effective Date* means (i) the date upon which the ability to appeal from the Second Order has expired without any appeal being taken, namely, thirty (30) days after the issuance of the Second Order; or (ii) if any appeal has been taken from the Second Order the date upon which any such appeal is concluded by way of a Final order or judgment; but an appeal shall not include any appeal that concerns only the issue of either Class Counsel's fees or disbursements or the Distribution Protocol.
- (s) *Escrow Fund* means the interest bearing account in which Bennett Jones LLP will hold the Bonus Payment.
- (t) *Excluded Persons* means Edward Furtak, Wayne Robertson, the Defendants, their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the families of the Individual Defendants, Wayne Robertson, and Edward Furtak, and any entity in which any of the foregoing persons or entities has a legal or de facto controlling interest.
- (u) *Final* when used in relation to a court order or judgment, means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order or judgment.
- (v) *First Order* means the Final order issued by the Court granting the following relief: (1) the Court's approval of the Notice of Settlement Hearing; (2) the appointment of the Claims Administrator for the purpose of this Settlement Agreement; and (3) the Opt-Out Termination.
- (w) *Gift Program* means the Donations for Canada charitable donation tax program, Federal Tax Shelter Identification #TS070623, Quebec Tax Shelter Identification #QAF-05-0109, which was offered or otherwise available between 2005 and 2009 and which is the subject of the Class Action.
- (x) *Net Bonus Payment* means the Bonus Payment, minus the aggregate amount of cash donations made by Distributor Class Members who choose to opt out of the Class Action after June 7, 2013, with the quantum of which shall be determined by reference to the Bonus Payment List at Schedule "A".
- (y) *Non-Settling Defendants* means a Defendant that is not a Settling Defendant under this Settlement Agreement.
- (z) *Notice of Settlement Hearing* means the form of notice as approved by the Court to inform the Class of (1) the dates and location of the hearing to approve this

Settlement Agreement; (2) the principal elements of this Settlement Agreement; and, if so ordered by the Court, (3) the Opt-Out Termination Order.

- (aa) *Notice of Settlement Approval and Claims Procedure* means the form of notice as approved by the Court to inform the Settlement Class Members of (1) the approval of this Settlement Agreement; and (2) the process by which the Settlement Class Members may apply to obtain compensation from the Settlement Amount.
- (bb) *Opt-Out Termination* means a term in the First Order that, if so ordered by the Court, shall terminate the opt out period for the Distributor Class Members with such termination being effective thirty (30) days after the Notice of Settlement Hearing is first published, or such other date set by the Court.
- (cc) *Other Actions* means actions or proceedings against all or any of the Settling Defendants, other than the Class Action, to the extent that such actions or proceedings relate to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (dd) *ParkLane Defendants* has the meaning ascribed to it in article 7.1(b) of the Settlement Agreement.
- (ee) *ParkLane Third Parties* has the meaning ascribed to it in article 7.1(c)(iii) of the Settlement Agreement.
- (ff) *ParkLane Third Party Claims* has the meaning ascribed to it in article 7.1(c)(iii) of the Settlement Agreement.
- (gg) *Parties* means the Plaintiff, Settlement Class Members and the Settling Defendants.
- (hh) *Released Claims* means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind whenever incurred, 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 Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, in respect of the Gift Program, or relating to any conduct alleged (or which could have been alleged) in the Class Action or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, whether in Canada or elsewhere, against the Releasees as a result of or in connection with the Gift Program, including, without limitation, any claims or allegations of consequential, subsequent or follow-on harm that

arises after the date hereof in respect of any agreement or conduct that occurred anytime prior to the date hereof.

- (ii) *Releasees* means, jointly and severally, the Settling Defendants and their respective predecessors, successors, affiliates, parent, subsidiaries, partners, assigns, devisees or representatives of any kind.
- (jj) *Releasors* means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective successors, heirs, executors, administrators, assigns, devisees or representatives of any kind.
- (kk) *Second Order* means the Final order issued by the Court to approve and implement this Settlement Agreement.
- (ll) *Settlement Agreement* means this agreement, including the recitals and schedules.
- (mm) *Settlement Amount* means the aggregate total of the Base Settlement Amount and the Net Bonus Payment.
- (nn) *Settlement Class Members* means a member of the Class who has not opted out of the Class Action in accordance with orders of the Court.
- (oo) *Third Party Claim* means the third party proceedings commenced by the Settling Defendants against the Distributors in the Court, bearing Court File No. CV-08-362807-00 CPA2.

ARTICLE II

SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete approval and implementation of the settlement, and the final dismissal with prejudice of the Class Action as against the Settling Defendants, and the Third Party Claim as against the Distributor Class Members.

2.2 Motion for Approval of Notice of Settlement Hearing, and Termination of the Distributors' Opt Out Period

At a time mutually agreed to by Class Counsel and Defence Counsel after the Settlement Agreement is executed, the Plaintiff shall bring a motion before the Court for the First Order, seeking to obtain the following relief:

- (a) the Court's approval of the Notice of Settlement Hearing;
- (b) the appointment of the Claims Administrator; and
- (c) the Opt-Out Termination.

The First Order shall be substantially in the form attached hereto as Schedule "B".

2.3 Motion for Approval of the Settlement Agreement

- (a) As soon as practicable after the First Order is issued and becomes Final, the Plaintiff shall bring a motion before the Court to obtain the Second Order, substantially in the form attached hereto as Schedule "C".
- (b) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality of Settlement Agreement

The Parties shall keep the terms of the Settlement Agreement confidential until the time that they are required to disclose such terms to the Court, but nothing herein shall prevent the Parties from disclosing the fact of a settlement having been reached between the Parties.

ARTICLE III SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (a) Within thirty (30) business days of execution of this Settlement Agreement, the Settling Defendants shall pay the Base Settlement Amount to Class Counsel in trust, for the benefit of the Settlement Class Members.
- (b) Within thirty (30) business days of the execution of this Settlement Agreement, the Settling Defendants shall pay to Defence Counsel the Bonus Payment. Defence Counsel will hold the Bonus Payment in the Escrow Fund.
- (c) Upon the termination of the opt out period for the Distributor Class Members, occurring either:
 - (i) in accordance with the Opt-Out Termination; or
 - (ii) if the Court does not grant the First Order and/or the Opt-Out Termination, at any other time when the opt out period for the Distributors expires,

Defence Counsel shall pay the Net Bonus Payment, plus any accrued interest in respect of the Net Bonus Payment, to Class Counsel in trust, for the benefit of the Settlement Class Members.

- (d) Any balance remaining in the Escrow Fund following payment of the Net Bonus Payment, inclusive of accrued interest, shall be released from the Escrow Fund by Defence Counsel and repaid to the Settling Defendants.
- (e) The Settling Defendants' payment of the Settlement Amount to the Settlement Class Members will be in full satisfaction of the Released Claims against the Releasees.

- (f) Neither the Settling Defendants nor Defence Counsel shall have any obligation to pay to the Plaintiff or to the Settlement Class Members any amount in addition to the Settlement Amount for any reason, pursuant to or in furtherance of this Settlement Agreement.
- (g) Class Counsel shall hold the Settlement Amount in trust and maintain the Account as provided for in this Settlement Agreement, and shall:
 - (i) transfer the Base Settlement Amount plus accrued interest to the Claims Administrator within ten (10) business days after the Court grants the First Order appointing the Claims Administrator; and
 - (ii) transfer the Net Bonus Payment to Claims Administrator within ten (10) business days after receiving this payment from Defence Counsel.
- (h) Class Counsel shall not pay out all or part of the monies in the Account, except in accordance with this Settlement Agreement or in accordance with an order of the Court obtained on notice to the Settling Defendants.

3.2 Taxes and Interest

- (a) Except where otherwise provided in this Settlement Agreement, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Account.
- (b) Subject to Article 3.2(c), all Canadian taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount shall be the sole responsibility of the Settlement Class Members. 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 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 Account.
- (c) The Settling Defendants shall have no responsibility to make any filings relating to the 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 Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

3.3 Litigation Compliance

- (a) The Settling Defendants shall, as part of the resolution of the Class Action as against them, comply with any unfulfilled obligations to the Plaintiff under the *Rules of Civil Procedure* related to the continued prosecution of the Class Action as against the Non-Settling Defendants, as though the Settling Defendants remained a party to the Class Action. In particular, the Settling Defendants shall:

- (i) provide to Class Counsel, within thirty (30) days of execution of the Settlement Agreement, any non-privileged relevant documents in the possession of the Settling Defendants that have not yet been disclosed, which shall be coded and produced in electronic format, where available;
 - (ii) produce a list akin to Schedule B to an affidavit of documents that lists all documents in the possession, power or control of the Settling Defendants over which a claim of privilege is asserted;
 - (iii) facilitate the attendance by Edwin C. Harris, Q.C., if requested by Class Counsel and if available and fit to testify, at an examination for discovery and/or at trial.
- (b) It is understood and agreed that all documents and information provided by the Settling Defendants to any party as specifically provided for under this Settlement Agreement shall be used only in connection with the prosecution of the Class Action, and shall not be used directly or indirectly for any other purpose. In particular, the Plaintiff and Class Counsel specifically agree they will not publicize, circulate or disclose any documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Class Action or as otherwise required by law.
- (c) If any documents protected by any privilege and/or any privacy law or other order, regulatory directive, rule or law are accidentally or inadvertently produced, upon request from the Settling Defendants, 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 or protection attached to such documents.
- (d) Any obligations of the Settling Defendants to comply with any unfilled obligations under the *Rules of Civil Procedure* related to the continued prosecution of the Class Action as against the Non-Settling Defendants shall cease at the date of final judgment in the Class Action against all Defendants.

ARTICLE IV

OPT OUT DEADLINE AND DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

4.1 Opt Out Deadline

- (a) The procedure for opting out of the Class Action was set out in the Certification Order. The opt out deadline for members of the Class who are not Distributors expired on February 22, 2013.
- (b) Pursuant to the Order of Justice Belobaba, dated February 20, 2013, the opt out period for Distributor Class Members will expire 60 days after the final

disposition of any motions brought that deal with the status or stay of the Third Party Claim, subject to any further order of the Court. These motions are currently scheduled for October 17 and 18, 2013.

- (c) In the motion referred to in Article 2.2, the Plaintiff will seek the Opt-Out Termination which, if granted, will modify the opt out period described in Article 4.1(b). The Opt-Out Termination will terminate the opt out period for Distributor Class Members effective thirty (30) days from the first publication of the Notice of Settlement Hearing, or such other date as may be set by the Court. If the Opt-Out Termination is not granted, the opt out period for Distributors will be determined in accordance with Article 4.1(b).

4.2 Distribution Protocol

At a time wholly within the discretion of Class Counsel, which may be at the time of the motion for settlement approval or thereafter, but on notice to the Settling Defendants, Class Counsel will bring a motion to seek an order from the Court for approval of the Distribution Protocol.

4.3 No responsibility for Administration or Fees

Neither the Settling Defendants nor Defence Counsel shall have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, Administration Expenses and Class Counsel Fees.

ARTICLE V **TERMINATION OF SETTLEMENT AGREEMENT**

5.1 Right of Termination

- (a) The Settling Defendants shall, in their sole discretion, have the option to terminate the Settlement Agreement within thirty days of any of the following events:
 - (i) the Court declines to issue the Second Order, or approve of any material part of the Settlement Agreement which includes but is not limited to approval of the Base Settlement Amount, the Bonus Payment, the Net Bonus Payment, or the terms of release contemplated in the Settlement Agreement;
 - (ii) the Court issues the Second Order but approves the Settlement Agreement, or any material part thereof, in a materially modified form other than as amended and agreed to by the Plaintiff and the Settling Defendants;
 - (iii) the Court issues the Second Order, but the Second Order does not become Final; or

- (iv) the Court refuses or declines to grant a bar order that is in accordance with the provisions of Article 7.1 hereof, or if the aspect of the Second Order that pertains to the bar order is in any way altered on appeal.
- (b) In addition to Article 5.1(a), the Plaintiff shall, in his sole discretion, have the option to terminate the Settlement Agreement in the event of non-payment of the Base Settlement Amount or the Net Bonus Payment.
- (c) If the Settling Defendants elect to terminate the Settlement Agreement pursuant to Article 5.1(a), or the Plaintiff elects to terminate the Settlement Agreement pursuant to Article 5.1(b), a written notice of termination shall be provided. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in Article 5.4, 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.
- (d) Any order, ruling or determination made by any Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not constitute any basis for the termination of this Settlement Agreement.

5.2 If Settlement Agreement is Terminated or Set Aside

If this Settlement Agreement is terminated:

- (a) any step taken by the Settling Defendants in the Class Action in relation to this Settlement Agreement shall be without prejudice to any position that any of the Settling Defendants may later take in respect of any procedural or substantive issues in the Class Action or any proceedings in Canada, or in respect of the jurisdiction of the Court or any other court in Canada over such defendants or their deeds or other conduct; and
- (b) any order made by the Court pursuant to this Settlement Agreement shall be set aside or vacated on the consent of the Parties.

5.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated, Class Counsel or the Claims Administrator, as the case may be, shall return to the Settling Defendants all monies in the Account including accrued interest, but less the amount of any income taxes paid in respect of any interest earned on monies in the Account within thirty (30) business days of the relevant termination event in Article 5.1, and less any costs and expenses that have been actually incurred as at the date of termination in relation to providing notice as required pursuant to the Settlement Agreement.

5.4 Survival of Provisions After Termination

- (a) If this Settlement Agreement is terminated, the provisions of Articles 2.4, 3.1(b), 3.2(c), 3.3(b), 3.3(c), 4.1, 5.1(c), 5.2, 5.3, 5.4, 7.2, 8.1, 8.2, 8.3(b), 9.4, 11.2 and 12.6 (and any additional provisions governing confidentiality) and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Articles 2.4, 3.1(b), 3.2(c), 3.3(b), 3.3(c), 4.1, 5.1(c), 5.2, 5.3, 5.4, 7.2, 8.1, 8.2, , 8.3(b), 9.4, 11.2 and 12.6 (and any additional provisions governing confidentiality) 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.
- (b) The Plaintiff and Class Counsel expressly acknowledge that they will not, in any way whatsoever, use the fact or existence of this Settlement Agreement as any form of admission, whether of liability, wrongdoing, or otherwise, of the Settling Defendants.

ARTICLE VI RELEASES AND DISMISSALS

6.1 Release of Releasees

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

6.2 Covenant Not to Sue

Notwithstanding Article 6.1, 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 sue 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.

6.3 No Further Claims

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 any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Class Action against the Non-Settling Defendants.

6.4 Dismissal of the Class Action

Upon the Effective Date, the Class Action shall be dismissed with prejudice and without costs as against the Settling Defendants.

6.5 Dismissal of the Settling Defendants' third party claims

Upon the Effective Date:

- (a) the Third Party Claim as against the Distributor Class Members, and all within counterclaims, shall be dismissed with prejudice and without costs; and
- (b) the third party claim which the Settling Defendants commenced against BDO Dunwoody LLP and Ralph Neville, and all within counterclaims, bearing Court File No. CV-08-362807-CPA1 shall be dismissed with prejudice and without costs.

ARTICLE VII **BAR ORDER AND OTHER CLAIMS**

7.1 Bar Order

The Plaintiff and the Settling Defendants agree that the Second Order shall contain a bar order which shall include the following provisions:

- (a) all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Gift Program which were or could have been brought in the Class Action or in a separate proceeding by any Non-Settling Defendant or any other person or party against any of the Releasees, or by the Releasees against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Article;
- (b) all claims of any person of any nature whatsoever arising out of or relating in any way to the Gift Program including, not to limit the generality of the foregoing, all claims of any person of any nature whatsoever arising out of or relating in any way to any professional services relating to the Gift Program provided by the Settling Defendants, including those provided to the defendants ParkLane Financial Services Limited, Trafalgar Associates Limited or Trafalgar Trading Limited (the "ParkLane Defendants"), which claims could have been brought in the Class Action or in a separate proceeding brought against the Settling Defendants are barred, prohibited and enjoined (unless such a claim is made by a member of the Class who has validly opted out);
- (c) in the absence of Articles 7.1(a) and 7.1(b), if a Non-Settling Defendant or any other person or party could have brought a claim of any nature whatsoever arising out of or relating in any way to the Gift Program including, not to limit the generality of the foregoing, if a Non-Settling Defendant or any other person or

party could have brought a claim of any nature whatsoever arising out of or relating in any way to any professional services relating to the Gift Program provided by the Settling Defendants, including those provided to the ParkLane Defendants, against any of the Settling Defendants whether in the Class Action or in a separate proceeding (and whether or not such a claim has been brought as of the date of the granting of this order), then:

- (i) if in the Class Action the Court ultimately determines that there is a right of contribution and/or indemnity between any or all of the Defendants in respect of any of the causes of action asserted by the Plaintiff, the Plaintiff and/or the Settlement Class Members shall restrict their claims against the Non-Settling Defendants in respect of those causes of action so that the Plaintiff and the Settlement Class Members shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis, only that portion of any damages, costs or interest awarded that is allocable to the Non-Settling Defendants' proportionate share of liability, and exclusive of any proportion of liability allocated by the Court to the Settling Defendants;
- (ii) at the trial or other disposition of the Class Action, for those causes of action which the Court ultimately determines that there is a right of contribution and/or indemnity between any or all of the Defendants, the Court shall have the full authority to determine the proportionate liability of the Settling Defendants to the Class as if the Settling Defendants were parties to the action and any such finding by the Court in respect of the proportionate liability shall only apply in the Class Action, and shall not be binding upon the Settling Defendants in any other proceedings;
- (iii) at the trial or other disposition in the Class Action, the Court shall have the full authority to determine the liability of any nature whatsoever (if any) of the Settling Defendants to:
 - (A) the Non-Settling Defendants, and
 - (B) the parties against whom the ParkLane Defendants have asserted a third party claim for contribution and indemnity in the Class Action (the "**Third Parties**") in the action bearing Court File Nos. CV-08-362807-CPA3 and CV-08-362807-CPA4 (the "**ParkLane Third Party Claims**"),

arising out of or relating in any way to the Gift Program including, not to limit the generality of the foregoing, any professional services relating to the Gift Program provided by the Settling Defendants, including those provided to the ParkLane Defendants, as if the Settling Defendants remained parties to the Class Action, and any such finding by the Court in respect of this liability (including damages, interest and costs) shall only be used for the purposes of determining the total quantum of damages

payable (if any) by the Non-Settling Defendants to the Settlement Class Members in the Class Action, and by the Third Parties to the ParkLane Defendants, and shall not be binding upon the Settling Defendants in any other proceedings;

- (iv) for greater certainty:
 - (A) the Settlement Class Members' recovery from the Non-Settling Defendants (if any) shall be reduced by the amount(s), if any, for which the Settling Defendants are found liable to the Non-Settling Defendants and shall be further reduced by the amount(s), if any, for which the Settling Defendants are found liable to the Third Parties under subsection (iii), above; and
 - (B) the ParkLane Defendants' recovery from a Third Party in the ParkLane Third Party Claims shall likewise be reduced by the amount(s), if any, for which the Settling Defendants are found liable to that Third Party under subsection (iii), above;
- (v) in determining the liability (if any) of the Settling Defendants to the Non-Settling Defendants, and to the Third Parties as referenced in (iii), above, the Plaintiff may assert any defences which would have been available to the Settling Defendants had they remained parties to the Class Action;
- (d) after the Effective Date, a Non-Settling Defendant or any person who has filed a defence to the Class Action may, on motion to the Court determined as if the Settling Defendants still remained parties to the Class Action, and on at least ten days notice to Defence Counsel and the Plaintiff, seek orders to conduct discovery of the Settling Defendants according to the Ontario *Rules of Civil Procedure*. The Settling Defendants retain all rights to oppose such motions or seek the costs of compliance, including any such motion brought at trial seeking an order requiring any of the Settling Defendants to produce a representative to testify at trial. On any motion brought pursuant to this paragraph, the Court may make such orders as to costs and other terms that it considers appropriate;
- (e) on any motion brought pursuant to Article 7.1(d), the 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 or any person who has filed a defence to the Class Action, a copy of all discovery provided, whether oral or documentary in nature, shall be provided in a timely manner by the Settling Defendants to Class Counsel;
- (g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for these purposes only; and

- (h) a Non-Settling Defendant or any person who has filed a defence to the Class Action may effect service of the motion(s) referred to in Article 7.1(d) on the Settling Defendants by service on Defence Counsel.

7.2 Reduction on Recovery

For greater certainty, to the extent that the Settling Defendants are found in any proceeding (including under this Article 7) to have any liability of any nature whatsoever:

- (a) to any of the Non-Settling Defendants for damages, interest and costs arising from or related to amounts for which the Non-Settling Defendants are found liable to the Settlement Class Members, the Settlement Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants;
- (b) to any of the Third Parties for damages, interest and costs arising from or related to amounts for which the Third Parties are found liable to the ParkLane Defendants, the Settlement Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Third Parties.

Without limiting the generality of section 7.1(b) but for further and greater certainty:

- (a) the Non-Settling Defendants shall be specifically barred, prohibited and enjoined from attempting to recover from the Settling Defendants in any manner whatsoever the balance of the amount that the Non-Settling Defendants are held to be liable to the Settlement Class Members after said liability is reduced by the amount(s) (including damages, interest and costs) for which the Settling Defendants are found liable to the Non-Settling Defendants and reduced by the amount(s) (including damages, interest and costs) for which the Settling Defendants are found liable to the Third Parties as described herein; and
- (b) the Third Parties shall be specifically barred, prohibited and enjoined from attempting to recover from the Settling Defendants in any manner whatsoever the balance of the amount that the Third Parties are held to be liable to the ParkLane Defendants after said liability is reduced by the amount(s) (including damages, interest and costs) for which the Settling Defendants are found liable to the Third Parties as described herein.

7.3 Claims Against Other Entities Reserved

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.

ARTICLE VIII
EFFECT OF SETTLEMENT

8.1 No Admission of Liability

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

8.2 Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

8.3 No Further Litigation

- (a) Neither the Plaintiff nor Class Counsel, nor anyone currently or hereafter employed by, associated with, 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 or arises from the Released Claims, except in relation to the continued prosecution of the Class Action against any Non-Settling Defendant or other co-conspirators who are not Releasees.
- (b) Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Class Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court in Canada.

ARTICLE IX
NOTICE TO CLASS

9.1 Notice Required

- (a) The Plaintiff and the Class shall be given the following notices: (1) Notice of Settlement Hearing; (2) Notice of Settlement Approval and Claims Procedure; and (3) termination of this Settlement Agreement if it is properly terminated under Article 5.1 of this Settlement Agreement, or as otherwise ordered by the Court, the costs of which shall be paid from the Account.

9.2 Form of Notices

The notices required under Article 9.1 shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

9.3 Method of Disseminating Notices

The notices required under Article 9.1 shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated in a manner ordered by the Court.

9.4 Settling Defendants or Defence Counsel Not Responsible for the Costs of Notice

For greater clarity, neither the Settling Defendants nor Defence Counsel have any responsibility for any costs and expenses relating to providing notices as required by this Article or otherwise, except for the costs of the Notice of Settlement Hearing, if this Settlement Agreement is terminated after that Notice has been disseminated, as provided for in Article 5.3.

ARTICLE X

ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

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

ARTICLE XI

CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

11.1 Counsel Fees

- (a) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Administration Expenses from the Settlement Amount contemporaneous with seeking approval of this Settlement Agreement.
- (b) Except as provided in Articles 3.2, 5.3, 9.1, 11.1, and 12.11 Class Counsel Fees and Administration Expenses may only be paid out of the Account after the Effective Date.

11.2 Administration Expenses

Subject to Article 5.3, the Settling Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of: Class Counsel, the Plaintiff or the Settlement Class Members.

ARTICLE XII
MISCELLANEOUS

12.1 Motions for Directions

- (a) Class Counsel, Defence Counsel or the Claims Administrator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol.
- (b) All motions contemplated by this Settlement Agreement shall be on notice to the Parties to this Settlement Agreement. For certainty, notice need not be provided to Settlement Class Members in the event of a motion unless so required by the Court.

12.2 Releasees Have No Liability for Administration

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

12.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into articles 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 article or other portion of this Settlement Agreement.

12.4 Computation of Time

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, the act may be done on the next day that is not a holiday.

12.5 Governing Law

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

12.6 Entire Agreement

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 or agreement 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.

12.7 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and the Settling Defendants.

12.8 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of the Plaintiff, the Settlement Class Members, the Settling Defendants, the Releasers, and the Releasees.

12.9 Counterparts

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

12.10 Negotiated Agreement

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.

12.11 Language

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, a French translation of the Notices shall be prepared, the cost of which shall be paid for from the Settlement Amount. The Parties agree that such translation is for convenience of French speaking Class members, only.

12.12 Recitals

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

12.13 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

12.14 Acknowledgements

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 with respect to the first Party's decision to execute this Settlement Agreement.

12.15 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.16 Notice

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 Plaintiff and for Class Counsel:

**PALIARE ROLAND ROSENBERG
ROTHSTEIN LLP**

Barristers
155 Wellington St. W., 35th Floor,
Toronto, ON M5V 3H1

Margaret Waddell

Telephone: 416.646.4329
Facsimile: 416.646.4301
Email: marg.waddell@paliareroland.com

LANDY MARR KATS LLP

2 Sheppard Avenue East
Suite 900
(Sheppard Centre)
Toronto, ON M2N 5Y7

Samuel S. Marr

Telephone: 416.221.9343
Facsimile: 416.221.8928
Email: smarr@lmklawyers.com

For the Settling Defendants and Defence Counsel:

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto ON M5X 1A4

John F. Rook Q.C.

Telephone: 416.863.1200
Facsimile: 416.863.1716
Email: rookj@bennettjones.com

LAX O'SULLIVAN SCOTT LISUS LLP

145 King Street West
Suite 2750
Toronto ON M5H 1J8

Eric R. Hoaken

Telephone: 416.645.5075
Facsimile: 416.598.3730
Email: ehoaken@counsel-toronto.com

12.17 Date of Execution

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

MICHAEL CANNON
by his counsel

Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:



Paliare Roland Rosenberg Rothstein LLP
Class Counsel

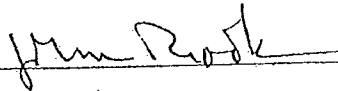
Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:



Landy Marr Kats LLP
Class Counsel

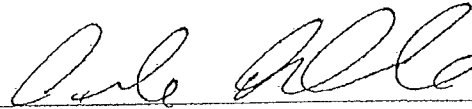
EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as
PATTERSON PALMER LAW, PATTERSON KITZ (Halifax),
PATTERSON KITZ (Truro) and McINNES COOPER
by their counsel

Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:



JOHN F. ROOK
Bennett Jones LLP
Defence Counsel

Signature of
Authorized Signatory: _____
Name of Authorized
Signatory:



ERIC R. HOAKEN
Lax O'Sullivan Scott Lisus LLP
Defence Counsel

SCHEDULE "A" – BONUS PAYMENT LIST

FIRST NAME	LAST NAME	TOTAL
David	Abbott	\$ 19,500.00
Serge	Ah-Hee	\$ 32,700.00
Shirley	Alexander	\$ 414,025.00
Jacques	Allard	\$ 2,600.00
Perlita	Ancheta	\$ 10,000.00
Bill	Anderson	\$ 48,700.00
Richerd G.	Andrusiak	\$ 32,650.00
Rod	Baker	\$ 3,900.00
Robert (Bob)	Ballard	\$ 14,012.50
Jean	Baril	\$ 13,850.00
Priya	Batchelor	\$ 5,250.00
Ken	Bateman	\$ 2,500.00
Keith	Bates	\$ 5,000.00
Maureen	Baulne	\$ 2,500.00
Larry	Beaton	\$ 70,000.00
Marcel	Beaulieu	\$ 6,350.00
Stephen D.	Beaumont	\$ 12,700.00
Susan	Blakey	\$ 5,125.00
Dave	Blanchard	\$ 2,525.00
Jules	Bosse	\$ 18,750.00
Adrian	Boyko	\$ 5,000.00
Kathleen	Brennen	\$ 15,325.00
Gilles	Brine	\$ 17,700.00
David	Brodigan	\$ 66,500.00
Richard B.	Brouillard	\$ 15,150.00
Albert	Brule	\$ 2,500.00
Charmaine	Bucknor	\$ 2,500.00
Belinda	Butler	\$ 32,500.00
Phillip	Butler	\$ 59,875.00
Frank	Cambridge	\$ 57,987.50
Tracey	Cambridge	\$ 107,275.00
Lawrence	Chang	\$ 7,500.00
Jamie	Chappell	\$ 60,000.00
Richard	Chartrand	\$ 5,150.00
Eric	Clark	\$ 10,075.00
Beverley	Currie	\$ 7,500.00
Doug	Currie	\$ 30,000.00
James (Jim)	Cyr	\$ 2,525.00

FIRST NAME	LAST NAME	TOTAL
Mike	Cyr	\$ 15,125.00
Terry	Dempsey	\$ 6,250.00
Roland	Desaulniers	\$ 10,000.00
Frank	Di Marco	\$ 17,850.00
Gregory James	Doiron	\$ 50,175.00
Francis	Dolar-Angue	\$ 13,750.00
Armel	Drapeau	\$ 10,300.00
David	Dyck	\$ 10,000.00
Joanne	Edwards	\$ 22,500.00
Michael	Edwards	\$ 15,000.00
Pierre	Emond	\$ 95,600.00
Eduardo	Fagioli	\$ 11,250.00
Eugenio Jay	Falcone	\$ 74,275.00
Alan	Farey	\$ 5,175.00
Nestor	Fostey	\$ 15,200.00
W	Francis	\$ 2,600.00
Rocco	Frangione	\$ 7,500.00
Mervyn	Fried	\$ 15,000.00
David	Fudge	\$ 6,300.00
Ted	Gacich	\$ 32,500.00
George	Gadula	\$ 11,475.00
Paul	Gagne	\$ 12,650.00
Francois-Simon	Gauthier	\$ 3,750.00
Michel	Gauthier	\$ 5,100.00
Helene	Gendron	\$ 2,500.00
Normand	Giguere	\$ 2,525.00
Raymond	Giguere	\$ 2,500.00
Charles	Goguen	\$ 13,962.00
Rick	Gozdek	\$ 50,000.00
Kevin	Gray	\$ 7,550.00
Ryan	Gray	\$ 2,500.00
Trevor	Gray	\$ 10,050.00
Clair	Green	\$ 356,250.00
Aime	Grenier	\$ 7,800.00
Joe	Hanrahan	\$ 5,225.00
Ryan	Hansen	\$ 13,050.00
Brent	Harker	\$ 2,500.00
Allan	Harper	\$ 2,500.00
N. Charles	Henriques	\$ 5,000.00

FIRST NAME	LAST NAME	TOTAL
Lenn	Herritt	\$ 30,225.00
Wade	Hoffman	\$ 14,000.00
John A.	Horne	\$ 32,750.00
Trevor	Hughes	\$ 9,012.50
Paul	Iannicca	\$ 10,000.00
Gloria	Joaquin	\$ 2,500.00
Richard	Julien	\$ 58,800.00
Douglas	King	\$ 7,500.00
Jim	Kinnell	\$ 5,000.00
Tim	Klein	\$ 15,150.00
Michael	Kron	\$ 2,500.00
Philip	Kung	\$ 10,000.00
Shy	Kurtz	\$ 8,750.00
Ian	Laliberte	\$ 5,100.00
Karl J.	Larson	\$ 2,500.00
Philip	Lassman	\$ 2,500.00
Guy	Lavigne	\$ 36,250.00
Rachel	Lavigne	\$ 8,750.00
Bernise	Leblanc	\$ 6,250.00
Michel B.	Leblanc	\$ 28,937.50
Rejean	Lessard	\$ 56,925.00
Ross	Libbey	\$ 21,362.50
Bob	Lloyd	\$ 5,200.00
Paul	Lula	\$ 5,100.00
Bobby	MacKay	\$ 12,600.00
David	MacKenzie	\$ 10,000.00
Braden	MacKinnon	\$ 27,500.00
Doug	MacLean	\$ 24,487.50
Marcel	Mah	\$ 41,250.00
Wayne	Mallett	\$ 321,250.00
Paul	Mancuso	\$ 10,000.00
Paul	Mangion	\$ 3,750.00
Narinder S.	Mann	\$ 25,150.00
Anne-Marie	McGrath	\$ 15,000.00
Kirk	McIntyre	\$ 67,300.00
Paul J.	McKinley	\$ 34,600.00
John	McLellan	\$ 5,000.00
Kevin	Meier	\$ 20,287.50
Peter J.	Minott	\$ 15,150.00

FIRST NAME	LAST NAME	TOTAL
Evan W.	Morrison	\$ 5,075.00
Pauline	Murphy	\$ 7,525.00
Denis	Nadeau	\$ 17,500.00
Michel	Nazair	\$ 19,250.00
Hari S.	Nesathurai	\$ 5,200.00
Robert	Nicholson	\$ 2,500.00
Terri	Noble	\$ 2,500.00
Charles	Olivier	\$ 2,600.00
Aleksandra	Ochocinska	\$ 10,180.00
Barb	Papin	\$ 2,550.00
Rene	Papin	\$ 5,100.00
David	Parish	\$ 5,100.00
Colin M.	Payne	\$ 8,787.50
Jean-Philippe	Peretti	\$ 18,850.00
James	Peters	\$ 2,600.00
Brett	Pitblado	\$ 15,000.00
Kurt	Pitblado	\$ 15,200.00
Jean-Lou	Pitre	\$ 15,200.00
Marc-Andre	Pouliot	\$ 12,500.00
Jim	Power	\$ 5,000.00
Nigel	Purai	\$ 5,000.00
John	Reath	\$ 28,075.00
James	Redekop	\$ 10,000.00
Henry	Reinelt	\$ 15,100.00
Keith	Rendall	\$ 63,125.00
Albert	Resnick	\$ 15,300.00
Francois	Rioux	\$ 13,837.50
David	Rounthwaite	\$ 25,000.00
Scott	Ryan	\$ 13,750.00
Francis	Sabourin	\$ 40,000.00
Aline	Saintonge	\$ 20,000.00
Robert W.	Saintonge	\$ 50,000.00
Samuel	Saintonge	\$ 2,500.00
W.J.	Samaroden	\$ 12,875.00
Garry	Schultz	\$ 12,525.00
Lorraine	Schultz	\$ 5,025.00
Bert	Senechal	\$ 56,900.00
Gerard	Senechal	\$ 37,500.00
George	Shields	\$ 23,025.00

FIRST NAME	LAST NAME	TOTAL
Wes	Simons	\$ 10,150.00
Tim	Small	\$ 2,500.00
Richard	Smith	\$ 42,750.00
Rich	Sobkowich	\$ 20,125.00
Jean-Guy	St Pierre	\$ 22,500.00
George	Stephens	\$ 10,000.00
Randy	Stevens	\$ 5,000.00
Alvarez	St-Gelais	\$ 10,000.00
Luella R.	Stuart	\$ 10,100.00
Rick	Tone	\$ 20,600.00
Belal	Uddin	\$ 12,500.00
Charles	Vander Griendt	\$ 31,812.50
Jane M.	Waldron	\$ 15,600.00
Gary	Ward	\$ 7,500.00
Nadine	Wellwood	\$ 2,600.00
Gerard	White	\$ 19,287.50
Doug	Williamson	\$ 35,550.00
James	Woloshen	\$ 3,900.00
Seija	Young	\$ 2,500.00
	TOTAL	\$ 4,112,054.50

SCHEDULE "B" – FIRST ORDER

Court File No. CV-08-362807-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE BELOBABA) _____, the _____ day
of _____ 2013

BETWEEN:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, MATT GLEESON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the BERMUDA LONG TAIL TRUST, EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as PATTERSON PALMER LAW, PATTERSON KITZ (Halifax), PATTERSON KITZ (Truro), McINNES COOPER, SAM ALBANESE, KEN FORD, RIYAD MOHAMMED, DAVID RABY and GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order terminating the opt out period for Distributor Class Members, and approving the Notice of Hearing for Settlement Approval and the method of dissemination of that notice was heard this day at •, Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement between the Plaintiff and the Settling Defendants, and on hearing the submissions of Class Counsel and the Lawyers for the Defendants and Third Parties,

1. **THIS COURT ORDERS** that the Notice of Hearing for Settlement Approval is approved substantially in the form attached hereto as Schedules "1".
 2. **THIS COURT ORDERS** that the plan of dissemination of the Notice of Hearing for Settlement Approval (the "Notice Plan") is hereby approved in the form attached hereto as Schedule "2" and that the Notice of Hearing for Settlement Approval shall be disseminated in accordance with the Notice Plan.
 3. **THIS COURT ORDERS** that the opt out deadline for members of the class who are named as Third Parties in the Third Party Claim in this proceeding shall be thirty (30) days after the first date of publication of the Notice of Hearing for Settlement Approval.
 4. **THIS COURT ORDERS** that • is appointed as the Claims Administrator to administer the Settlement Agreement.
 5. **THIS COURT ORDERS** that the Settlement Approval Hearing shall take place on _____, 2013, at • Toronto, Ontario.
-

SCHEDULE "1"

See Attached.

SCHEDULE "2"

See Attached.

SCHEDULE "C" – SECOND ORDER

Court File No. CV-08-362807-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
)
JUSTICE BELOBABA) of _____, the _____ day
) of _____ 2013

BETWEEN:

MICHAEL CANNON

Plaintiff

- and -

FUNDS FOR CANADA FOUNDATION, MATT GLEESON and SARAH STANBRIDGE as trustees for the DONATIONS CANADA FINANCIAL TRUST, PARKLANE FINANCIAL GROUP LIMITED, TRAFALGAR ASSOCIATES LIMITED, TRAFALGAR TRADING LIMITED, APPLEBY SERVICES BERMUDA LTD. as trustee for the BERMUDA LONG TAIL TRUST, EDWIN C. HARRIS Q.C., PATTERSON PALMER also known as PATTERSON PALMER LAW, PATTERSON KITZ (Halifax), PATTERSON KITZ (Truro), McINNES COOPER, SAM ALBANESE, KEN FORD, RIYAD MOHAMMED, DAVID RABY and GREG WADE, GLEESON MANAGEMENT ASSOCIATES INC., MARY-LOU GLEESON, MATT GLEESON and MARTIN P. GLEESON

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an order approving the Settlement Agreement entered into with the defendants Edwin C. Harris Q.C., Patterson Palmer also known as Patterson Palmer Law, Patterson Kitz (Halifax), Patterson Kitz (Truro) and McInnes Cooper (the "Settling Defendants") was heard this day at Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule "1" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants and Third Parties:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the Plaintiff and all Settlement Class Members in this proceeding.
5. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon the Plaintiff and each Settlement Class Member who has not validly opted-out of this action 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 this action.
6. **THIS COURT ORDERS AND DECLARES** that any Other Action commenced in Ontario by any Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.

7. **THIS COURT ORDERS AND DECLARES** that each Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that each Releasor who has not validly opted-out of this action 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 any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Class Action against the Non-Settling Defendants or name or unnamed co-conspirators that are not Releasees.
9. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
10. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall not make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
11. **THIS COURT ORDERS** that all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Gift Program which were or could have been brought in the Class Action or in a separate proceeding by any non-settling defendant or any other person or party against any of the Releasees, or by the Releasees against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such a claim is made in respect of a claim by a person who has validly opted out).

12. **THIS COURT ORDERS** that all claims of any nature whatsoever relating to the professional services rendered by the Settling Defendants to ParkLane Financial Services Limited, Trafalgar Associates Limited or Trafalgar Trading Limited relating to or arising from the Gift Program which could have been brought in the Class Action or in a separate proceeding are barred, prohibited and enjoined.
13. **THIS COURT ORDERS** that if, in the absence of paragraphs 11 and 12, a Non-Settling Defendant or any other person or party would have the right to make a claim of any kind against any of the Settling Defendants:
 - (a) The Plaintiff and/or the Settlement Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Settling Defendants proven at trial or otherwise; and
 - (b) the Court shall have full authority to determine the proportionate liability at the trial or other disposition of the Class Action as if the Settling Defendants were parties to the action and any such finding by the Court in respect of the proportionate liability shall only apply in the Class Action and shall not be binding upon the Settling Defendants in any other proceedings.
14. **THIS COURT ORDERS** that to the extent that the Settling Defendants are found in any proceeding to have any liability to any of the Non-Settling Defendants for damages or losses arising from or related to amounts for which the Non-Settling Defendants are found liable to the Settlement Class Members, the Settlement Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants.
15. **THIS COURT ORDERS** that after the Effective Date, a Non-Settling Defendant may, on motion to the Court determined as if the Settling Defendants still remained parties to the Class Action, and on at least ten days notice to Defence Counsel and Class Counsel, seek orders to conduct discovery of the Settling Defendants according to the Ontario

Rules of Civil Procedure, RRO 1990, Reg 194 (the "**Rules**"). The Settling Defendants retain all rights to oppose such motions or seek the costs of compliance, including any such motion brought at trial seeking an order requiring any of the Settling Defendants to produce a representative to testify at trial. On any motion brought pursuant to this paragraph, the Court may make such orders as to costs and other terms that it considers appropriate.

16. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 14 above on the Settling Defendants by service on counsel of record for the Settling Defendants in this action.
17. **THIS COURT ORDERS** that the Settling Defendants shall produce the documents required to be produced to Class Counsel pursuant to the Settlement Agreement within the timelines, if any, contemplated by the Settlement Agreement.
18. **THIS COURT ORDERS** that any document or information produced to Class Counsel pursuant to the Settlement Agreement shall be, and is, subject to the implied and/or deemed undertaking rules including Rule 30.1 of the *Rules*.
19. **THE 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 against the Non-Settling Defendants in this action.
20. **THIS COURT ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
21. **THIS COURT ORDERS** that Class Counsel transfer the Settlement Amount including the interest accrued in the Account to the Claims Administrator to be held in trust for the benefit of the Settlement Class, pending distribution to the Settlement Class Members in accordance with the Distribution Protocol, which is hereby approved.

22. **THIS COURT ORDERS** that the form of Notice of Settlement Approval and Claims Procedure is hereby approved substantially in the form attached hereto as Schedule "2".
23. **THIS COURT ORDERS AND ADJUDGES** that this action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.
24. **THIS COURT ORDERS AND ADJUDGES** that the Third Party Claim be and is hereby dismissed without costs and with prejudice against the Distributor Class Members who have not opted out, as set forth in Schedule "3" hereto.

E. Belobaba J.

SCHEDULE "1" – SETTLEMENT AGREEMENT

See attached.

**SCHEDULE "2" – NOTICE OF SETTLEMENT APPROVAL AND CLAIMS
PROCEDURE**

See attached.

-and-

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

PROCEEDING COMMENCED AT TORONTO

ORDER

Landy Marr Kats LLP
Lawyers
2 Sheppard Avenue East, Suite 900
Toronto, ON M2N 5Y7
Tel: (416) 221-9343
Fax: (416) 221-8928
Samuel S. Marr (LSUC #28544M)
Email: smarr@lmklawyers.com
Keith M. Landy (LSUC #16906F)
Email: klandy@lmklawyers.com
David Fogel (LSUC #58572A)
Email: dfogel@lmklawyers.com

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West
35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301
Margaret L. Waddell (LSUC# 29860U)
Tel: 416.646.4329
Email: margaret.waddell@paliaroland.com
Andrew C. Lewis (LSUC# 39149E)
Tel: 416.646.4310
Email: andrew.lewis@paliaroland.com

Lawyers for the Plaintiff

