Federal Court Cour fédérale

Date: 20240209

Docket: T-1664-19

Citation: 2024 FC 225

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Montréal, Quebec, February 9, 2024

PRESENT: Mr. Justice Gascon

PROPOSED CLASS PROCEEDING

BETWEEN:

IRENE BRECKON and GREGORY SILLS

Plaintiffs

and

CERMAQ CANADA LTD., CERMAQ GROUP AS, CERMAQ NORWAY AS, CERMAQ US LLC, GRIEG SEAFOOD ASA, GRIEG SEAFOOD B.C. LTD., LERØY SEAFOOD GROUP ASA, LERØY SEAFOOD USA, INC., MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, NOVA SEA AS, OCEAN QUALITY AS, OCEAN QUALITY NORTH AMERICA INCORPORATED, OCEAN QUALITY PREMIUM BRANDS, INC., OCEAN QUALITY USA INC., and SALMAR ASA

Defendants

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ORDER AND REASONS

I. Overview

[1] The plaintiffs, Mr. Gregory Sills and Ms. Irene Breckon [Plaintiffs], bring two separate motions under sections 334.29 and 334.4 of the *Federal Courts Rules*, SOR/98-106 [Rules]. The first motion seeks the judicial approval of a class action settlement [Settlement Agreement] while the second one asks the Court to approve the payment of three related expenses, namely: i) the legal fees and disbursements sought by class counsel Koskie Minsky LLP, Sotos LLP, and Siskinds LLP [Class Counsel Fees]; ii) the commission of a litigation funder [Commission] under a Litigation Advance Agreement [LAA]; and iii) an honorarium to each of the two representative Plaintiffs [Honorarium].

[2] The Settlement Agreement, a copy of which is attached as Annex "A" to this Order, was executed on September 22, 2023, between the Plaintiffs and the defendants, Cermaq Canada Ltd., Cermaq Group AS, Cermaq Norway AS, Cermaq US LLC, Grieg Seafood ASA, Grieg Seafood BC Ltd., Grieg Seafood Sales North America Incorporated (formerly known as Ocean Quality North America Inc.), Grieg Seafood Sales Premium Brands, Inc. (formerly known as Ocean Quality Premium Brands Inc.), and Grieg Seafood Sales USA Inc. (formerly known as Ocean Quality USA Inc.), Lerøy Seafood AS, Lerøy Seafood USA Inc., Marine Harvest Atlantic Canada Inc., Mowi ASA, Mowi Canada West Inc., Mowi Ducktrap, LLC, Mowi USA, LLC, Nova Sea AS, SalMar ASA, and Sjór AS (formerly known as Ocean Quality AS) [together, the Defendants]. The proposed settlement was reached in the context of a class action proceeding [Class Action] filed by the Plaintiffs in relation to an alleged conspiracy between the Defendants

to fix, maintain, increase, or control the price of farmed Atlantic salmon, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 [Competition Act].

[3] For the reasons that follow, I will approve the Settlement Agreement, I will approve in part the proposed Class Counsel Fees, and I will decline to approve the LAA and the Honorarium.

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II. Background

A. *Procedural context*

[4] The Class Action was initiated by a statement of claim filed on October 11, 2019, in Court file no. T-1664-19 [Statement of Claim]. A second statement of claim was filed on January 3, 2020, in file no. T-8-20. The two claims were subsequently consolidated on April 26, 2021, by order of this Court, under file no. T-1664-19.

[5] The Statement of Claim arises from allegations of price-fixing in the market for farmed Atlantic salmon. In essence, the Plaintiffs allege that the Defendants conspired to increase the spot market for farmed Atlantic salmon in Oslo, Norway with the intention of increasing prices in North America and elsewhere. They maintain that the Defendants' unlawful conspiracy constitutes offences under Part VI of the Competition Act, in particular sections 45 and 46, and they seek damages pursuant to subsection 36(1) of the Competition Act.

[6] In the consolidated Statement of Claim, the class is defined as follows: "[a]ll persons in Canada who purchased [farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased or sold in Canada] from April 10, 2013 to [February 20, 2019]"

[Class]. The Class therefore includes both direct and indirect purchasers of farmed Atlantic salmon.

[7] The Class Action was commenced following an investigation into the pricing of farmed Atlantic salmon by the European Commission. In February 2019, the European Commission announced in a press release that it had carried out unannounced inspections at the premises of several salmon companies, which were unnamed, based on concerns that the inspected companies may have violated the European Union [EU] competition rules prohibiting cartels and restrictive business practices. A few months later, in November 2019, the Antitrust Division of the United States Department of Justice [US DOJ] opened its own criminal investigation into allegations of collusion between the Defendants. The Defendants Mowi ASA, SalMar ASA, Lerøy Seafood Group ASA, and Grieg Seafood ASA each filed notices with the Oslo Børs — the Oslo Stock Exchange — disclosing that they or their subsidiaries had received, or were advised they would receive, subpoenas from the US DOJ.

[8] In addition to this Class Action, parallel class action proceedings have been commenced in British Columbia and Quebec in relation to the same alleged conspiracy. Counsel in the three Canadian class actions are working on a coordinated basis, with this Class Action being the "lead action." These parallel proceedings are *Chin v Cermaq Canada Ltd et al* (Supreme Court of British Columbia Vancouver, Registry No. 211995) [BC Action] and *Langis et al v Grieg Seafood ASA et al* (Cour Supérieure du Québec, District de Québec No. 200-06-000245-202) [Quebec Action].

[9] Similar class proceedings have also been commenced in the United States in the following matters: *In Re: Farm-Raised Salmon and Salmon Products Antitrust Litigation* (United

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States District Court Southern District of Florida Miami Division, File No. 19-21551-CV-Altonaga) [US Direct Purchaser Action] and *Wood Mountain Fish LLC et al v Mowi et al,* (United States District Court Southern District of Florida Fort Lauderdale Division, File No. 19-22128-CIV-Smith/Louis) [US Indirect Purchaser Action].

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[10] The US Direct Purchaser Action was settled in May 2022 for USD$85 million and was approved by the US courts in September 2022. The US Indirect Purchaser Action was also settled a few months later, in December 2022, for an amount of USD$33 million, and was approved by the US courts at the end of February 2023.

[11] On October 6, 2023, this Court rendered an order certifying the Class Action for settlement purposes only [October 6 Order]. The October 6 Order further approved the Notice of Certification and Settlement Approval Hearing [Notice] as well as the plan to disseminate the Notice [Notice Plan] to the members of the Class [Class Members].

[12] The motions for approval of the Settlement Agreement and for the approval of related payments were heard together by the Court on November 20, 2023.

B. *Overview of the Settlement Agreement*

[13] The parties entered into the Settlement Agreement on September 22, 2023, subject to this Court's approval. The Plaintiffs' legal counsel, Koskie Minsky LLP, Sotos LLP, and Siskinds LLP [together, Class Counsel], have concluded that the Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the Class Members.

[14] The material terms of the Settlement Agreement include the following:

- The settlement is valued at $5,250,000 [Settlement Amount], which will be paid into a settlement fund [Settlement Fund]. Class Counsel have prepared a protocol for the distribution of the Settlement Fund, after deducting administration expenses, Class Counsel Fees, disbursements, and amounts owing to the litigation funder under the LAA [Funding Fees].
- The Settlement Agreement defines the class for the purposes of the settlement [Settlement Class] as follows: "all Persons in Canada who purchased farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased or sold in Canada from April 10, 2013 to the date of this Order, except the Excluded Persons and any Opt-Out" [Settlement Class Members]. This Settlement Class definition is nearly identical to the definition of the Class in the Statement of Claim.
- The Settlement Fund will be distributed to eligible Settlement Class Members with purchases totaling at least $1 million of farmed Atlantic salmon between April 10, 2013 (the start of the class period), and February 28, 2019 (the date of the European Commission's raids on the Defendants' premises) [Qualifying Settlement Class Members].
- To account for consumer and other claims that will not qualify for the $1 million threshold, the distribution protocol proposes a *cy-près* payment in the amount of $250,000 to Food Banks Canada [*Cy-près* Payment]. For the Quebec portion, the *Cy-près* Payment shall be lowered by any amounts payable to the Fonds d'aide aux actions collectives [Fonds d'aide], pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR, c F-3.2.0.1.1 and calculated in accordance with Article 1.

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(2°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, RSQ, c F-3.2.0.1.1, r 2. For the purposes of calculating the amount payable to the Fonds d'aide, 23% of the *Cy-près* Payment will be notionally allocated to Quebec.

- The direct settlement benefits will be distributed to Qualifying Settlement Class Members on a *pro rata* basis (i.e., proportionally), based on the volume of the Qualifying Settlement Class Member's salmon purchases as against the total volume of all Qualifying Settlement Class Members' salmon purchases. The amount of Qualifying Settlement Class Members' salmon purchases will be finally determined by Class Counsel, with no right of appeal or review, based on purchase information submitted by the Qualifying Settlement Class Member, or where available, sales data provided by the Defendants pursuant to the terms of the Settlement Agreement.
- The Settlement Agreement is an all-party settlement agreement and would resolve the litigation in its entirety. This includes the discontinuance of the BC Action and the Quebec Action.

[15] With respect to Class Counsel Fees, Section 11.1 of the Settlement Agreement provides that Class Counsel may seek approval of the Court for the payment of Class Counsel Fees contemporaneously with seeking approval of the Settlement Agreement. In June 2020, Class Counsel had entered into a fee agreement with the Plaintiffs, which provides for a contingency fee not exceeding 33% of the total amounts recovered by the Class, plus any amounts awarded by the Court in respect of costs, as well as disbursements and applicable taxes [Retainer Agreement].

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[16] Class Counsel have prepared a protocol for the distribution of the “net” settlement funds that will remain in the Settlement Fund after deducting administration expenses, Class Counsel Fees, disbursements, and Funding Fees.

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[17] Class Counsel estimates that, subject to this Court’s approval, after deductions of $1,483,125 for Class Counsel Fees representing 25% of the Settlement Fund plus applicable taxes, $144,231.64 (inclusive of taxes) for disbursements, $1,000 for Honorarium payments, and $1,250,000 for the Funding Fees, there would be approximately $2,362,643 left for distribution. Once the *Cy-près* Payment in the amount of $250,000 is made to Food Banks Canada, there will be $2,112,643 left in the Settlement Fund, which will be distributed to Qualifying Settlement Class Members proportionally.

[18] Furthermore, Food Banks Canada has proposed to share the *cy-près* funds proportionally with their provincial associations for the purchase of food for food banks in their communities. In the event the net Settlement Fund is not paid out completely, either due to uncashed cheques, residual interest or other reasons, a further donation will be made to Food Banks Canada if the amount is less than $20,000. In the event the residual amount is greater than $20,000, further direction will be sought from the Court.

[19] As far as the Honorarium is concerned, the Settlement Agreement provides that Class Counsel may ask the Court for the approval of an Honorarium of $500 to each of Mr. Sills and Ms. Breckon, totalling $1,000.

[20] I pause to observe that, in section 3.1, the Settlement Agreement provides that the “Settlement Amount represents the full amount to be paid pursuant to this Settlement Agreement

and shall be all-inclusive of all amounts, including without limitation, Class Counsel Fees, Class Counsel Disbursements, any honoraria for the Plaintiffs, any distributed amounts to the Settlement Class, any cy pres donations, and Administration Expenses," and thus contains no direct reference to the Funding Fees or to the LAA. It is only in the draft Notice attached as a schedule to the Settlement Agreement that the litigation funder and the LAA are specifically mentioned.

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[21] The Defendants do not oppose the terms of the Settlement Agreement relating to Class Counsel Fees nor the request made for an honorarium to the Plaintiffs. They have also agreed to pay the Class Counsel Fees, the Honorarium, and applicable taxes that are approved by the Court. As indicated above, all of these amounts will be deducted from the Settlement Amount.

C. *Notices to Class Members*

[22] On October 18, 2023, in accordance with the Notice Plan and the October 6 Order, Class Counsel commenced the distribution of notices via social media (Facebook and Instagram). As of November 16, 2023 (one day prior to the end of the two-month social media campaign), the number of impressions received from the social media notices was 2,827,272.

[23] Furthermore, in accordance with the Notice Plan and the October 6 Order, Class Counsel emailed the Notice to the direct purchaser customers of the Defendants based on the mailing list provided by them to Class Counsel. While most of the Defendants provided a list of emails, one did not. For that Defendant, Class Counsel mailed copies of the Notice to all of its customers. Subsequently, Class Counsel received emails for that Defendant's customers. Emails were then sent. A number of email bounce backs were received. Class Counsel conducted searches to try to

find updated contacts for those customers, failing which it followed up with defence counsel. They advised that some clients may be past clients, given the class period. The implication is that some may no longer be in business. Ultimately, there were only four customers with email bounce backs that could not be contacted through alternative backup emails. For those customers, letters attaching the Notice were mailed on October 25, 2023.

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[24] Additionally, in accordance with the Notice Plan and the October 6 Order, Class Counsel mailed out the Notice to the 1,067 companies identified in the mailing list from Data Axle. Class Counsel also emailed the Notice to their respective mailing lists of individuals who have registered with Class Counsel to receive updates on the status of the litigation and to the following industry associations, requesting distribution to their membership: Canadian Federation of Independent Grocers, Food, Health and Consumer Products of Canada, Restaurants Canada, and Food Processors of Canada.

[25] Finally, the press release jointly drafted and agreed to by the parties was distributed to media outlets and publications through publication on Canadian Newswire on October 30, 2023.

III. Analysis

[26] The motions are seeking the Court's approval for the Settlement Agreement, Class Counsel Fees, the LAA, and the Plaintiffs' Honorarium. Each of these requests will be dealt with in turn. In conducting its assessment, the Court must first determine whether the Settlement Agreement should be approved. In the affirmative, the Court must then determine whether to approve the Class Counsel Fees, the LAA, and the Honorarium.

A. *The Settlement Agreement*

(1) The test for the approval of class action settlements

[27] Rule 334.29 provides that a class proceeding settlement must be approved by the Court. The legal test to be applied is whether the proposed settlement is “fair, reasonable and in the best interests of the class as a whole” (*Lin v Airbnb, Inc*, 2021 FC 1260 at para 21 [*Lin*]; *Bernlohr v Former Employees of Aveos Fleet Performance Inc*, 2021 FC 113 at para 12 [*Bernlohr*]; *Wenham v Canada (Attorney General)*, 2020 FC 588 at para 48 [*Wenham*]; *McLean v Canada*, 2019 FC 1075 at paras 64–65 [*McLean*]).

[28] The factors to be considered in the analysis have been reiterated by the Court on several occasions (*Moushoom v Canada (Attorney General)*, 2023 FC 1739 at para 83 [*Moushoom*]; *Lin* at para 22; *Bernlohr* at para 13; *Wenham* at para 50; *McLean* at paras 64–66; *Condon v Canada*, 2018 FC 522 at para 19 [*Condon*]). They are similar to the factors retained by the courts across Canada. These factors are non-exhaustive, and their weight will vary according to the circumstances and to the factual matrix of each proceeding. They can be summarized as follows:

1. The terms and conditions of the settlement;
2. The likelihood of recovery or success;
3. The expressions of support, and the number and nature of objections;
4. The degree and nature of communications between class counsel and class members;
5. The amount and nature of pre-trial activities including investigation, assessment of evidence, and discovery;
6. The future expense and likely duration of litigation;

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7. The presence of arm's length bargaining between the parties and the absence of collusion during negotiations;
8. The recommendation and experience of class counsel; and,
9. Any other relevant factor or circumstance.

[29] A proposed settlement must be considered as a whole and in context. Settlements require trade-offs on both sides and are rarely perfect, but they must nevertheless fall within a "zone or range of reasonableness" (*Lin* at para 23; *Bernlohr* at para 14; *McLean* at para 76; *Condon* at para 18). Reasonableness allows for a spectrum of possible resolutions and is an objective standard that can vary depending upon the subject matter of the litigation and the nature of the damages for which the settlement is to provide compensation to class members. However, not every disposition of a proposed settlement agreement must be reasonable, and it is not open to the Court to rewrite the substantive terms of a proposed agreement (*Wenham* at para 51). The function of the Court in reviewing a proposed class action settlement is not to reopen and enter into negotiations with litigants in the hope of improving the terms of the agreement (*Condon* at para 44). In the end, the proposed settlement is a "take it or leave it" proposition (*Moushoom* at para 57; *McLean v Canada (Attorney General)*, 2023 FC 1093 at para 37; *Lin* at para 23).

[30] In mandating that both the class action settlements and the payment of class counsel fees be subject to the Court's approval (i.e., Rules 334.29 and 334.4), the Rules place an onerous responsibility on the Court to ensure that the class members' interests are not being sacrificed to the interests of class counsel, who have typically taken on a substantial risk and who have a great deal to gain not only in removing that risk but in recovering a significant reward from their contingency fee arrangement (*Lin* at para 24, citing *Shah v LG Chem, Ltd*, 2021 ONSC 396 at

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para 40 [*Shah*]). The incentives and the interests of class counsel may not always align with the best interests of the class members. It thus falls on the Court to scrutinize both the proposed settlement agreement and the proposed class counsel fees and administrative expenses, as they will typically be interrelated (*Lin* at para 24). I pause to observe that the Court has a similar responsibility with respect to litigation funding agreements entered into by the plaintiffs in relation to proposed class proceedings (*Ingarra et al v Dye & Durham Limited et al*, 2024 FC 152 at para 23 [*Ingarra*]; *Difederico v Amazon.com Inc*, 2021 FC 311 at para 29 [*Difederico*]).

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[31] This is especially important where, as is the case here, the net amount that will remain in the Settlement Fund for Qualifying Settlement Class Members is markedly lower than the Settlement Amount after deduction of the Class Counsel Fees and other expenses such as the Funding Fees.

(2) Application to this case

(a) *Terms and conditions of the settlement*

[32] Under the terms and conditions of the Settlement Agreement, the question to be determined is whether the proposed Settlement Agreement, when considered in its overall context, provides significant advantages to the Class Members, compared to what would have been an expected result of litigation on the merits (*Lin* at para 25).

[33] The key terms of the Settlement Agreement, as seen by the parties, revolve around a Settlement Amount valued at $5,250,000, which includes payment of the following elements: compensation to Qualifying Settlement Class Members; the *Cy-près* Payment of $250,000; Class Counsel Fees and disbursements; Funding Fees; administration expenses; and the Honorarium

payments. Furthermore, the Settlement Agreement's release clause [Release Clause] provides that the Defendants will be forever and absolutely released from any claims in relation to the present action or to any claims related in any way to the released claims, and that the release shall remain in effect notwithstanding the discovery or existence of additional or different facts and evidence. The Release Clause applies to all Class Members, and not only to the Qualifying Settlement Class Members.

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[34] As discussed at the hearing before the Court, three major issues arise in relation to the terms and conditions of the Settlement Agreement. First, the scope and extent of the Release Clause, which requires all Class Members to waive their rights — despite the limited benefits provided by the settlement — and indemnifies the Defendants for any future claims regardless of what new evidence or information might be discovered. Second, the fact that the Settlement Agreement, when considered in its overall context, provides minimal advantages to the Class Members as a whole — especially the indirect purchasers —, compared to a reasonably expected result of following through with the litigation on the merits. Third, the consideration of the *Cy-près* Payment as a benefit to the Class Members other than the Qualifying Settlement Class Members.

(i) The Release Clause

[35] Pursuant to the Release Clause, the Defendants will receive a full and final release in relation to the subject matter of the Class Action, namely, allegations of price-fixing amongst the Defendants resulting in purchasers of farmed Atlantic salmon allegedly paying supra-competitive prices.

[36] The Release Clause raises some concerns for numerous reasons. First, based on the wording of the Release Clause, any future actions “related in any way to Released Claims” are barred from being raised. Given that the Class definition includes every Canadian consumer, this Release Clause will bar all future action from anyone who purchased farmed Atlantic salmon from the Defendants for any possible similar future case. As such, the scope of the Release Clause is very broad.

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[37] Indeed, upon encountering a similar release clause in *2038724 Ontario Ltd v Quizno’s Canada Restaurant Corporation*, 2014 ONSC 5812 [*Quizno’s*], Justice Perell highlighted the following problems with such a clause, at paragraphs 55 and 56 of his decision:

> [55] The scope of the release is too broad. In my opinion, it is fair to have Class Members release their existing claims against the Defendants. And it would have been fair to bar claims that are a continuation of the particular existing claims. However, in my opinion, it is unfair to categorically bar all future claims of the types identified in the Statement of Claim, which is a possible interpretation of the proposed release.
>
> [56] Interpreting how the release would apply in the future is, of course, speculative at best because the factual nexus for the application of release is unknown. However, by way of analogy, if the Plaintiffs’ current claim against the Defendants was a nuisance claim, it would be fair to bar future claims based on the existing nuisance or it might be fair to bar future claims based on a continuation of the existing nuisance, but, in my opinion, it would not be fair or reasonable to bar all future claims based on presently unknown new nuisances perpetrated by the Defendants in the future.

[38] Given that the Release Clause in this case explicitly requires the Class Members to “agree and covenant not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Releasees related in any way to

Released Claims" [emphasis added], it would appear that the Release Clause is overly broad in the same sense as the release clause in *Quizno's*.

[39] Second, the Release Clause requires all Class Members to waive their rights of action, despite the fact that the consumer members of the Class will only receive the indirect benefit of a *cy-près* donation from the Settlement Fund, and no direct individual benefit.

[40] In *Quizno's*, Justice Perell singled out this problem as well, in the following terms: "[i]t is one thing for Class Members to not have gained anything by a class action, it is another thing to give up rights as the price for settling the Class Action, and such a settlement would not be in the Class Members' best interests" (*Quizno's* at para 61, citing *Waldman v Thomson Reuters Canada Limited*, 2014 ONSC 1288 [*Waldman*]). Indeed, in *Waldman*, the court was seized of a situation similar to the case at bar, where a *cy-près* trust would be established in lieu of the class members receiving an individual benefit. In that case, Justice Perell concluded that, "I, however, do not find that the Settlement Agreement is substantively, circumstantially, or institutionally fair to Class Members. In this regard, I agree with the general sentiment of the objectors to the Settlement that the Settlement Agreement brings the administration of justice and class actions into disrepute because: (a) the Settlement is more beneficial to Class Counsel than it is to the Class Members; and (b) in its practical effect, the Settlement expropriates the Class Members' property rights in exchange for a charitable donation from Thomson" [emphasis added] (*Waldman* at para 95). Ultimately, Justice Perell's decision in *Waldman* was overturned by the Divisional Court for mischaracterizing the licenses as an expropriation of a property right (*Waldman v Thomson Reuters Canada Limited*, 2016 ONSC 2622 (Div Ct) at para 18).

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[41] In their supplementary submissions filed after the hearing at the request of the Court, the Plaintiffs emphasized that the Release Clause is appropriately circumscribed and remains limited to the allegations raised in the Statement of Claim, and that the language used was modelled on similar releases approved by various Canadian courts in “auto parts” price-fixing class actions. In addition, the Plaintiffs claimed that the *Quizno’s* precedent could be distinguished on the basis that the release clause in that case sought to release all future claims in relation to conduct that was not a continuation of the conduct covered by the underlying claim (*Quizno’s* at para 55). The concerns with future problems with the Release Clause do not arise in this case, say the Plaintiffs.

[42] The Plaintiffs also pointed to other court decisions where settlement agreements were approved with release clauses even in cases where the class members only received indirect benefits provided through a proposed *cy-près* distribution (*Loewenthal v Sirius XM Holdings, Inc*, 2021 ONSC 4482 at para 39 [*Loewenthal*]). In approving the proposed settlement in that case, the Ontario court explicitly addressed a concern raised by an objector, who argued that the release in the settlement was too broad given that the class was being asked to give up something of value in exchange for indirect benefits provided through the proposed *cy-près* distribution. The court reviewed the terms of the release and was satisfied that the release was not overbroad, and ultimately noted that settlements are a compromise (*Loewenthal* at para 39).

[43] The Release Clause contained in the Settlement Agreement certainly raises some concerns, as it is broadly drafted and could be interpreted to bar future claims against any form of anticompetitive conduct committed by the Defendants, even though it does not purport to release claims involving negligence, personal injury, failure to deliver goods, damaged or

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delayed goods, product defects, securities, or other similar claims. That said, after carefully considering the arguments raised by the Plaintiffs and the authorities they cited, I am ready to accept that the Release Clause does not fit among those release clauses that the Court should be reluctant to approve, and I am satisfied that the Defendants do not unfairly obtain an overbroad release in the circumstances.

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(ii) Benefits to Class Members

[44] Turning to the benefits provided by the Settlement Agreement, one cannot help but note that the Statement of Claim in this case alleged damages of up to $1 billion. Therefore, the Settlement Amount represents a tiny fraction — merely 0.525% — of that claim, and can certainly be qualified as extremely modest. While litigation conditions can change and parties can settle at varying amounts based on the strength of their claims, the Settlement Amount in this case is a far cry from the initially alleged damages, to the point where one might question the acceptability of such a marginal recovery. This is particularly true given the present context, where the Settlement Amount is so low that the vast majority of Class Members (who likely would have anticipated receiving something from the settlement) will not receive anything from the settlement, apart from the moral satisfaction of making the *Cy-près* Payment to Food Banks Canada.

[45] Indeed, based solely on the Class definition, which describes the class as <u>all persons in Canada</u> who purchased farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased or sold in Canada from April 10, 2013 to February 20, 2019, it would be fair to assume that all Class Members, particularly the indirect consumer purchasers, were

intended to participate in a possible settlement. The two Plaintiffs are themselves regular consumers and indirect purchasers of farmed Atlantic salmon from the Defendants.

[46] However, the Settlement Agreement does not offer any benefit for its consumer members, outside of the *cy-près* contribution. This raises concerns, given the fact that the consumer Class Members are likely the smaller purchasers of farmed Atlantic salmon and thus arguably those who are most reliant on the class action procedural vehicle to advance their claims. Conversely, the Qualifying Settlement Class Members — being large direct purchasers with more than $1 million in annual salmon purchases — arguably possess the requisite resources to lodge their own individual claims against the Defendants, whereas this is likely the only reasonable option for the consumer Class Members to advance their claims.

[47] In short, it appears that, further to the Settlement Agreement, it is the consumer Class Members who are being deprived of access to the Settlement Fund, while the Qualifying Settlement Class Members will divide up the benefits that remain after deductions. In other words, when considered in its overall context, the Settlement Agreement provides extremely timid advantages to the Class Members as a whole — especially the indirect purchasers, compared to a potential reasonably expected result of following through with the litigation on the merits.

[48] In their supplementary submissions, the Plaintiffs indicated that many precedents exist where settlement agreements in the class action context result in differentiated treatment of class members at the distribution stage. Furthermore, they observed that, while the proposed Settlement Agreement is certainly modest, there is no realistic alternative for a satisfactory resolution of the Class Action for the Class Members. I acknowledge these points, but the fact

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remains that the limited actual benefits to the Class Members are a negative factor undermining the approval of the Settlement Agreement.

(iii) *Cy-près* distribution

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[49] A key term of the Settlement Agreement is the *Cy-près* Payment, as it represents the sole benefit of the agreement for indirect purchasers. The Plaintiffs contend that Class Members who do not qualify for direct compensation will receive indirect benefits, through this *cy-près* donation to Food Banks Canada in the amount of $250,000. They submit that in *Sun-Rype Products Ltd v Archer Daniels Midland Company*, 2013 SCC 58 [*Sun-Rype*], the Supreme Court of Canada held that "the precedent for *cy-près* distribution is well established" and is "a method the courts have used in indirect purchaser price-fixing cases" (*Sun-Rype* at paras 25–26).

[50] It is worth noting that the Supreme Court itself highlighted that a *cy-près* distribution by "its very name, meaning 'as near as possible', implie[s] that it is not the ideal mode of distribution, [but] it allows the court to distribute the money to an appropriate substitute for the class members themselves" [emphasis added] (*Sun-Rype* at para 26).

[51] I recognize that *Sun-Rype* is a helpful precedent in the current matter. However, in *Sun-Rype*, the Supreme Court was contemplating the compensation of an unidentifiable class of indirect purchasers for a claim arising under British Columbia's *Class Proceedings Act*, RSBC 1996, c 50 [CPA]. These facts do not entirely align with the facts in the present matter. First, this Class Action is not subject to British Columbia's CPA, where subsection 34(1) expressly contemplates the possibility of *cy-près* distributions. Moreover, Class Counsel have identified no cases from this Court having specifically considered *cy-près* payments. It is also worth noting

that *Sun-Rype* was a case dealing with class certification, not with the approval of a settlement agreement.

[52] The *Waldman* case discussed above dealt with the approval of a settlement agreement and a *cy-près* distribution, and it determined that the *cy-près* distribution did not justify the approval of the proposed settlement agreement (*Waldman* at para 100). Indeed, according to *Waldman*, which was rendered after the Supreme Court had issued its judgment in *Sun-Rype* (*Waldman* at paras 100–101):

> [100] The cy-près trust fund is a public good, but it does not justify approving the Settlement Agreement. Many, but not necessarily all, Class Members as members of the legal profession may be pleased to see the establishment of a trust to support public interest litigation and the training of law students, but the purpose of class actions is not to fund worthy projects but to provide procedural and substantive access to justice to Class Members.
>
> [101] In my opinion, in the case at bar, there is no access to substantive justice for the claims of Class Members and no meaningful behaviour modification for Thomson.
>
> [Emphasis added.]

[53] However, as pointed out by the Plaintiffs, it is well accepted that, in some cases, receiving indirect *cy-près* compensation instead of direct monetary compensation can nevertheless meet the objectives of class proceedings, namely, access to justice and behaviour modification (*Harper v American Medical Systems Canada Inc*, 2019 ONSC 5723 at para 47; *Sorenson v easyhome Ltd*, 2013 ONSC 4017 at para 28). In other words, in circumstances where an aggregate settlement recovery cannot be economically distributed to individual class members, the Court can approve a *cy-près* distribution to credible organizations or institutions that will indirectly benefit class members. In their supplementary submissions, the Plaintiffs

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referred the Court to several class action proceedings where courts have approved settlements involving *cy-près* distributions for certain class members or all class members who would not receive direct compensation (see, for example, *Emond v Google LLC*, 2021 ONSC 302 at para 37 and *Alfresh Beverages Canada Corp v Hoechst AG*, [2002] OTC 19, [2002] OJ No 79 (QL) (SC) at para 16).

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[54] Here, further to my analysis and after consideration of the Plaintiffs' submissions and materials, I am satisfied that, while not being ideal, the *cy-près* distribution is appropriate given the small magnitude of the Settlement Amount and the practical and economic difficulties to provide direct compensation to all Class Members. It certainly does not alleviate the fact that the Settlement Agreement offers strictly no financial gains for the vast majority of Class Members, but it is not enough to justify refusing the approval of the Settlement Agreement.

(iv) Conclusion on the terms and conditions

[55] In light of the foregoing, I am satisfied that, when considered in their overall context and taking the agreement as a whole, the terms and conditions of the Settlement Agreement can be considered fair, reasonable, and in the best interests of the Class Members. I accept, with some reserve, that they provide advantages to the Class Members, which might not have been achieved with the continued litigation, and are a positive factor supporting the approval of the Settlement Agreement.

(b) *The likelihood of recovery or success*

[56] The next factor to consider is the likelihood of recovery or success. This factor refers to the likelihood of success of the Plaintiffs' Class Action if it were to proceed on the merits. It

must be assessed at the time when the parties choose between proceeding with the litigation and settling the matter. Under this factor, the Court must determine whether the proposed Settlement Agreement is an attractive viable alternative to continued litigation (*Lin* at para 39).

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[57] Here, the Plaintiffs put forward many risk factors related to proceeding with the litigation that, in their view, limit the likelihood of recovery or success altogether. Notably, the Plaintiffs identify the risk that this Court might determine that the pleadings do not disclose a "sufficient description of the formation of an unlawful conspiracy" and therefore do not disclose a reasonable cause of action. Indeed, citing *Jensen v Samsung Electronics Co Ltd*, 2021 FC 1185 [*Jensen*], conf'd 2023 FCA 89, leave to appeal to the Supreme Court dismissed, *Chelsea Jensen, et al v Samsung Electronics Co Ltd, et al*, 2024 CanLII 543 (SCC)), the Plaintiffs indicate that, because of this recent development in the jurisprudence, there is now a much higher risk that the Court might find no basis for the alleged conspiracy. They also note that the discontinuance of the US DOJ's investigation and the subsequent absence of guilty pleas render the contested prosecution of this Class Action more difficult from a pragmatic standpoint. Moreover, the Plaintiffs submit that the Defendants asserted that the expert economic evidence they put forward does not provide a workable methodology for establishing harm on a class-wide basis. The Court has not yet tested the expert evidence and there is no way of knowing how a trier of fact would weigh this evidence. Finally, as was the case in *Lin*, the Plaintiffs also identify the risk with having to enforce a judgment against non-Canadian defendants, as is the case for many of the Defendants (*Lin* at para 44).

[58] I accept that there are increased risks with proceeding with litigation at a merits trial, and that there does not appear to be a high likelihood of success in this case. All of these

observations reflect the fact that the Plaintiffs' likelihood of success at the common issues trial, or even at certification, remains uncertain and difficult to predict. I am therefore satisfied that the Settlement Agreement is a reasonable and attractive viable alternative to litigation for the Plaintiffs and the Class, because litigating the Class Action could have led to unforeseen conclusions.

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[59] In sum, when the parties decided to conclude the Settlement Agreement, it was uncertain and questionable whether the Plaintiffs' Class Action could be litigated successfully on the merits, given the state of the law, the expert evidence, and the recent jurisprudence of the Court. These factors are still relevant today. This is a positive factor supporting the approval of the Settlement Agreement.

(c) *The expressions of support, and the number and nature of objections*

[60] The deadline for opting out of the Class Action was November 30, 2023. As of November 23, 2023, 12 requests to opt out have been received, all on behalf of individual consumers. Additionally, only one objection was received by the deadline of November 20, 2023. The objector is a direct purchaser customer of several of the Defendants [Objector]. The Objector confirmed purchases of several million dollars from the Defendants, and is therefore a Qualifying Settlement Class Member.

[61] The Objector objected to the quantum of the settlement, suggesting that the overcharge should be 5% of the Defendants' net sales to Canada. They attached an analysis of sales reported by the Defendants to conclude that a 5% overcharge should result in total damages of over $50

million. Moreover, the Objector referred to having records that detailed the existence of a cartel and its practices.

[62] In response, Class Counsel advised the Objector that they agreed the proposed settlement was not ideal or perfect, and that the settlement proceeds were modest, compared to what Class Counsel hoped to achieve when the case was started. Class Counsel further advised the Objector that the 5% overcharge he suggested was not unreasonable. However, Class Counsel advised that the difficulty did not lie in estimating an overcharge; the difficulty was in proving the existence of a conspiracy, and the risk that the EU investigation — now some four years old — would result in no charges, or charges that would not be contrary to Canadian competition laws. As a result, rather than obtaining nothing, a modest settlement was reached with the Defendants, which Class Counsel states is approximately 6.2% of the settlement in the US Direct Purchaser Action, ignoring currency conversion issues.

[63] After discussing the issues with the Objector for approximately 30 minutes, the Objector explained that they now better understood the rationale for the Settlement Agreement and asked that their objection be withdrawn. The Objector was concerned, since they were the only objector to the Settlement Agreement, that the Defendants would treat them unfairly in the future, as the Objector continues to purchase millions of dollars' worth of farmed Atlantic salmon from them. The Objector agreed to a compromise, whereby their concerns and the subsequent discussions would be shared with the Court, without identifying the Objector in any manner whatsoever.

[64] Concerning the opt-outs, the number of opt-outs in this case is small compared to the size of the Class. However, it is noteworthy that the only opt-outs received were all on behalf of

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individual consumers. This seems to indicate that, as was mentioned above, the Settlement Agreement provides limited benefits to the consumer Class Members.

[65] Turning to the objections, there is technically none, given the withdrawal of the sole objection voiced by the Objector. However, it remains important to consider that one of the Qualifying Settlement Class Members disagreed with the quantum of the Settlement Agreement.

[66] Here, the few opt-outs and lack of formal objections support a finding that the Settlement Agreement should be approved (*Lin* at para 48). It must be underlined that the Class Members were given an opportunity to voice their concerns and object to the Settlement Agreement, and very few did so. Having considered the objection received — and its withdrawal —, I am of the view that this is not sufficient to conclude that the Settlement Agreement should not be approved. The fact that a settlement is less than ideal for any particular class member is not a bar to approval for the Class as a whole (*Condon* at para 69).

(d) *The degree and nature of communications between Class Counsel and Class Members*

[67] The degree and nature of communications between Class Counsel and Class Members is another important factor to consider for the approval of the Settlement Agreement.

[68] In this case, there is no doubt that Class Counsel and the Plaintiffs have communicated well. With regard to the communications between Class Counsel and Class Members more generally, since the commencement of this Class Action, Class Counsel has maintained and updated a website to publish basic information regarding the case, including a mailing list that allows interested individuals to subscribe for updates.

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[69] Turning to the Notice and the Notice Plan, the Notice was materially improved in the October 6 Order, further to the Court's comments regarding the contents of the Notice. The Notice Plan of the Settlement Agreement was robust and comprised two separate phases: direct notice and indirect notice. In the context of the direct notice phase, Class Counsel sent individual notices either through email or direct mail to the following stakeholders:

- the direct purchaser customers of the Defendants, to the extent such information was provided to Class Counsel in accordance with the terms of the Settlement Agreement;
- anyone who had registered with Class Counsel to receive updates on the status of the litigation; and,
- 1,067 companies located in Canada and identified by Data Axle as having corporate locations with 50 or more employees and/or individual locations with 100 or more employees and operating in the following business sectors: fish smoking & curing (manufacturers), fish packers (manufacturers), food-canned (manufacturers), canned & cured fish & seafoods (manufacturers), seafood packers (manufacturers), seafood – wholesale, fish and seafood brokers (wholesalers), food service distributors (wholesalers), foods – carryout, restaurants, caterers, restaurant management, and grocers (retail), but excluding irrelevant categories such as pizza chains, bars or pubs, fast food chains, etc.

[70] Class Counsel subsequently endeavoured to track any returned undeliverable emails or mail and promptly re-mail with a forwarded address.

[71] In the context of the indirect notice, the parties jointly drafted publications sent to nationwide media outlets through publication on Canada Newswire and IntraFish. Class Counsel

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also published the Notice on their respective websites and social media, and provided a copy to the following industry associations for distribution to their membership: Canadian Federation of Independent Grocers, Food, Health and Consumer Products of Canada, Restaurants Canada, and Food Processors of Canada. As noted above, as of November 16, 2023 (one day prior to the end of the two-month social media campaign), the number of impressions received from the social media notices was 2,827,272.

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[72] Furthermore, unlike in *Lin*, where various important elements had not been disclosed in the notice to class members, such as the quantum of the total settlement amount, the precise list of deductions from the total settlement amount (including class counsel fees or administration expenses) when these impacted the net settlement amount to be received by the class members, the quantum of these various deductions (including the quantum of the class counsel fees), and the percentage of the total settlement amount to be received by class counsel as legal fees, these elements were all disclosed and explained in the Notice approved by the Court in the October 6 Order (*Lin* at para 55).

[73] Consequently, the degree and nature of communications between Class Counsel and Class Members is a positive factor supporting the approval of the Settlement Agreement.

(e) *Amount and nature of pre-trial activities including investigation, assessment of evidence, and discovery*

[74] At the time the Settlement Agreement was executed, very limited investigation, discovery, evidence gathering, and pre-hearing work had been completed by the parties. In fact, as the Plaintiffs noted in their submissions, there has been no assessment of evidence nor discovery whatsoever and they have no knowledge of the merits of the alleged conspiracy claim.

In addition, limited progress was made on the certification motion itself, in light of the settlement discussions between the parties. Consequently, the amount and nature of pre-trial activities necessary to take the case to trial remains high. Furthermore, the Plaintiffs themselves note that, because the US class action cases have fully resolved, this Class Action could not obtain the fruits of the US plaintiffs' investigatory work, which would have involved reviewing and translating hundreds of thousands of foreign-language documents. This is but a small part of the activities that would be required if the trial were to continue until its completion.

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[75] Therefore, an important amount of necessary pre-trial work still has to be completed, and the evidence indicates that the parties had a good sense of the extent of this significant remaining pre-trial work. In the circumstances, the parties were properly positioned to understand the amount and nature of pre-trial activities linked to continued litigation at the time of choosing to settle. This factor thus supports the approval of the Settlement Agreement.

(f) *Future expense and likely duration of litigation*

[76] Courts have recognized that an immediate payment to class members through a settlement agreement is a factor in support of a proposed settlement. In this case, if there is no settlement now, counsel for the parties anticipate that a long time will be needed for a trial on the merits and for potential appeals, with the need for expert evidence.

[77] Given that the proposed Class Action is in its early stages, this factor militates in favour of settlement approval. The proposed Settlement Agreement provides for compensation now, as opposed to years down the road.

[78] Furthermore, the Plaintiffs submit that continuing the litigation would result in substantial delays, prolonging the time before Class Members might receive any compensation, if at all. Assuming the proposed Class Action is certified — a possibility that remains uncertain —, the earliest start date for the common issues trial, based on their estimations, would be August 2026.

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[79] I am satisfied that this is another factor militating in favour of finding that the proposed Settlement Agreement is fair and reasonable and in the best interests of the Class, and should be approved.

(g) *Arm's length bargaining between the parties and the absence of collusion during negotiations*

[80] There is a strong presumption of fairness when a proposed class action settlement, which was negotiated at arm's length by experienced counsel for the class, is presented for Court approval (*Lin* at para 60).

[81] The Plaintiffs argue that this Settlement Agreement was the culmination of nearly a year of arm's length discussions between Class Counsel and counsel for the Defendants. Throughout this period, despite being engaged in settlement talks, both parties prepared for the certification motion, thereby maintaining the pressure to resolve the dispute, with both parties facing risks at certification. This Court has held that arm's length settlements negotiated in good faith should "not be too readily rejected" as the parties are best placed to assess the risks and costs associated with complex class litigation, and the rejection of a settlement carries the risk that the process of negotiation will unravel and the spirit of compromise will be lost (*Manuge v Canada*, 2013 FC 341 at para 6 [*Manuge*]).

[82] In sum, I am satisfied that the negotiations leading to the Settlement Agreement were arm's length and adversarial in nature between Class Counsel and counsel for the Defendants, spanning almost a year. This, again, supports the approval of the Settlement Agreement.

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(h) *Recommendation and experience of Class Counsel*

[83] Finally, Class Counsel are of the view that the proposed Settlement Agreement is fair, reasonable, and in the best interests of the Class Members. They recommend approval by the Court.

[84] Class Counsel and their firms are experienced, well-regarded plaintiffs' class action counsel. They have a wealth of experience in a substantial number of class actions to draw upon. Class counsel's recommendations are significant and are given substantial weight in the process of approving a class action settlement (*Lin* at para 62; *Condon* at para 76). This is the case here.

(3) Conclusion on the Settlement Agreement

[85] In light of the foregoing, and despite the fact that the proposed Settlement Agreement is far from ideal and provides very limited benefits to the Class Members, several of the factors recognized by the courts militate towards approving the Settlement Agreement.

[86] Ultimately, it is the role of the Court to protect the interests of the Class Members. Here, it is true that the Settlement Agreement does not bear all the hallmarks of an acceptable Settlement Agreement. In fact, it bears some marked resemblance to other settlement agreements that have been rejected by some Canadian courts. Seized with similar terms in settlement agreements, the Ontario Superior Court of Justice in *Quizno's* and *Waldman* determined that the

respective settlement agreements were not fair, reasonable, or in the best interests of the class members.

[87] There are certainly some important flaws in this Settlement Agreement that raise issues regarding the reasonableness of the proposed Settlement Agreement for the Class Members — and particularly the consumer Class Members who represent, numbers wise, the vast majority of the Class Members. Furthermore, the quantum of the Settlement Agreement is not even remotely reflective of the Statement of Claim. It is somehow ironic that the proposed Settlement Agreement in this matter ends up only rewarding, in monetary terms, the subset of Class Members that, arguably, is less likely to require the class action procedural vehicle to access justice and defend their rights. In other words, the only Class Members who stand to directly benefit from the Settlement Agreement will be the largest purchasers of farmed Atlantic salmon, along with Class Counsel and the litigation funder, who have taken on a risk and have a great deal to gain not only in removing that risk but in recovering a significant reward from their contingency fee arrangement (*Lin* at para 24; *Shah* at para 40).

[88] But the fact that a settlement is less than ideal for any particular class member is not a bar to approval for the Class as a whole (*Condon* at para 69). In the end, I am satisfied that I was presented with sufficient evidence to allow me to make an objective, impartial, and independent assessment of the fairness and reasonableness of the proposed Settlement Agreement (*Condon* at para 38). A settlement is never perfect, and the Court needs to keep in mind that a settlement is always the result of a compromise, but that it puts an end to the dispute between the parties and provides certainty and finality. Taking a holistic view of the matter, I am therefore satisfied that, in the context of the entirety of the factors, this Settlement Agreement ought to be

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approved, as it represents a fair and reasonable settlement that, in the circumstances, is in the best interests of the Class as a whole.

B. *Class Counsel Fees and other payments*

[89] I now turn to the Class Counsel Fees and other payments sought by the Plaintiffs in their second motion.

[90] Pursuant to the terms of the Retainer Agreement, Class Counsel are entitled to fees equal to 33% of the Settlement Amount. However, partly because of the LAA and the Commission to be paid to the litigation funder, Class Counsel is only requesting a fee of 25% of the Settlement Amount and the reimbursement of its disbursements. This would amount to an award of $1,312,500 for Class Counsel Fees, plus applicable taxes and disbursements, to be paid from the Settlement Amount. Furthermore, there will be no separate fee approval applications in the BC or the Quebec Actions. Counsel in those actions will be paid from the fees awarded in this case.

[91] In light of the impact of the LAA on the fees sought by Class Counsel, I first need to deal with the Plaintiffs' request for approval of the LAA and the payment of the Funding Fees, before addressing the Class Counsel Fees.

(1) The LAA and the Funding Fees

[92] Under the auspices of requesting the Court to approve Class Counsel Fees, the Plaintiffs also request that the Court approve the LAA in relation to the prosecution of this Class Action and order that the amounts due to the litigation funder be paid out of the Settlement Amount. At the outset, I underline that it seems somewhat counterintuitive to request the approval of the

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LAA *ex post facto* the conclusion of a Settlement Agreement and at a point where Class Counsel has already entered into the agreement and has effectively drawn funds from the LAA.

[93] More specifically, Class Counsel request the Court's approval to deduct from the Settlement Amount the $500,000 in disbursements already advanced by Claims Funding Australia Pty Ltd [Funder] under the LAA as well as an additional $750,000 for the Commission payable to the Funder. Although the Funder would be entitled to a Commission of $812,500 under the LAA, the Funder has agreed to reduce the amount payable to $750,000.

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(a) *The test for the approval of litigation funding agreements*

[94] In *Difederico*, Chief Justice Crampton outlined the general test for the approval of litigation funding agreements, drawing from pan-Canadian jurisprudence as well as case law from this Court in laying out this framework. The crux of the test stems from the principle that a litigation funding agreement "should not be champertous or illegal and […] must be a fair and reasonable agreement that facilitates access to justice while protecting the interests of the defendants" (*Difederico* at para 34, citing *Houle v St Jude Medical Inc*, 2017 ONSC 5129 at para 71 [*Houle*]).

[95] Accordingly, Chief Justice Crampton enumerates the following factors that must be considered by the Court in approving a litigation funding agreement (*Difederico* at para 36, citing *Jensen v Samsung*, (Court file no. T-809-18, February 7, 2019) at para 6; *Houle* at paras 73–88; *Flying E Ranche Ltd v Canada (Attorney General)*, 2020 ONSC 8076 at paras 28–34; *JB & M Walker Ltd v TDL Group Corp*, 2019 ONSC 999 at para 6; *Drynan v Bausch Health Companies Inc*, 2020 ONSC 4379 at para 17; *Dugal v Manulife Financial Corporation*, 2011

ONSC 1785 at para 33; *Stanway v Wyeth Canada Inc*, 2013 BCSC 1585 at para 15; *David v Loblaw*, 2018 ONSC 6469 at para 12):

1. Have the basic procedural and evidentiary requirements for the Court's consideration of the litigation funding agreement been satisfied?
2. Is third party funding necessary to facilitate meaningful access to justice?
3. Is the litigation funding agreement champertous?
4. Is the litigation funding agreement fair and reasonable to current and prospective class members as a group?
5. Will the litigation funding agreement make a meaningful contribution to deterring wrongdoing?
6. Does the litigation funding agreement interfere with the solicitor-client relationship, counsel's duty to the class members, or the carriage of the proceeding?
7. Does the litigation funding agreement protect relevant legal privileges and the confidentiality of the parties' information?
8. Does the litigation funding agreement protect the legitimate interests of the defendants?

[96] A negative response to any of the questions above can be fatal to the approval of a litigation funding agreement (*Difederico* at para 37; *Eaton v Teva Canada Limited*, 2021 FC 968 at para 21 [*Eaton*]). As such, each criteria must be assessed independently. At the end of the day, the Court must be satisfied that "it is in the best interest of justice to approve the [litigation funding agreement]" (*Difederico* at para 35).

[97] As Chief Justice Crampton also pointed out, and at the risk of repeating myself, it is important to underline that the Court is vested with a general supervisory role in class

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proceedings that requires it to be mindful of the best interests of class members as a whole (*Difederico* at para 29, citing *Frame v Riddle*, 2018 FCA 204 at para 24 and *Ottawa v McLean*, 2019 FCA 309 at para 13). This includes the best interests of prospective class members, whose interests may not be entirely aligned with those of the representative plaintiffs, class counsel, or third parties who are prepared to fund all or part of the proceeding (*Houle v St Jude Medical Inc*, 2018 ONSC 6352 at paras 22, 41). Accordingly, litigation funding agreements entered into in relation to proposed class proceedings before the Court must be approved by the Court, even when they have been executed by the representative plaintiffs after having received the advice of independent legal counsel (*Difederico* at para 29; *Houle* at paras 63–70).

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(b) *Application to this case*

[98] Turning to the case at bar, I find that the LAA fails to meet two crucial components of the test articulated in *Difederico*. I accept that the LAA satisfies the requirements of some factors listed above. This is the case for the following: 1) the fact that the LAA does not interfere with the solicitor-client relationship, Class Counsel’s duty to the Class Members, or the carriage of the proceeding; 2) the protection of relevant legal privileges and of the confidentiality of the parties’ information; and 3) the protection of the legitimate interests of the Defendants.

[99] However, I conclude that the LAA fails to meet the basic procedural requirements for its approval by the Court, and that it is neither fair nor reasonable to current and prospective Class Members since it offers highly disproportionate benefits to the Funder. This is amply sufficient to deny the approval of the LAA and to refuse that amounts owed to the Funder be deducted from the Settlement Amount.

(i) The basic procedural and evidentiary requirements for the Court's consideration of the LAA are not satisfied

[100] The basic procedural and evidentiary requirements for the approval of a litigation funding agreement require that: a) the plaintiffs have received independent legal advice prior to entering into the funding agreement; b) the retainer and the funding agreement have been disclosed to the Court; c) a prompt request for approval of the funding agreement has been made to the Court; d) reasonable notice has been provided to the parties; e) the retainer and funding agreement have been disclosed to the Defendants with appropriate redactions; and f) evidence of the relevant background circumstances has been proffered (*Difederico* at para 38; *Houle* at para 74).

[101] Here, the LAA misses the mark on most of those fronts. With respect to a), a typical litigation funding agreement is made between a representative plaintiff and the litigation funder. By contrast, this LAA was concluded between Class Counsel and the Funder. Therefore, no independent legal advice was obtained.

[102] With respect to b) and c), it is clear that the LAA was not promptly disclosed to the Court. Class Counsel erroneously believed that because the contract was between the Funder and Class Counsel, Court approval was not required in the same way that Court approval would not be required if Class Counsel obtained a bank loan or line of credit to fund the case. However, Class Counsel acknowledge that the Court's approval is now required, since Class Counsel seek to deduct the amounts owing pursuant to the LAA from the proposed Settlement Amount.

[103] Regarding the promptness of the disclosure of the LAA, one cannot help but remark that the approval of this LAA — from which Class Counsel has already drawn funds — has come to

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the Court at the eleventh hour. Many words could describe this timeline; however, “prompt” is certainly not one of them.

[104] In their submissions, Class Counsel referred to Justice Perell’s qualification of “prompt disclosure” in *Fehr v Sun Life Assurance Company of Canada*, 2012 ONSC 2715 [*Fehr*], where it was stated that “the court’s jurisdiction over the management and administration of proposed and certified class actions entails that a third party funding agreement must be promptly disclosed to the court and the agreement cannot come into force without court approval. Third party funding of a class proceeding must be transparent and it must be reviewed in order to ensure that there are no abuses or interference with the administration of justice” [emphasis added] (*Fehr* at para 89). Here, it is undisputed that the LAA has not only come into force without the Court’s approval, but the Court’s approval is only being sought at the very last moment possible.

[105] In sum, the first step of the test set out in *Difederico* for the approval of litigation funding agreements is clearly not met. Class Counsel have not satisfied the basic procedural and evidentiary requirements for the Court’s consideration of the LAA. The failure to satisfy the first step of the test is a strong factor weighing against approving the LAA, and is likely fatal, in and of itself, to its approval.

(ii) The LAA is unfair and unreasonable to current and prospective Class Members

[106] But there is much more. In my view, the commission regime found in the LAA and agreed to by Class Counsel is unfair and unreasonable when juxtaposed with the Settlement Amount, the standard profit sharing regime found in the Ontario Class Proceedings Fund

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[Ontario CP Fund] — which caps the return on advanced funds to 10% of total proceeds —, and legal precedents having approved litigation funding agreements. Furthermore, the terms and conditions contained in the LAA yield disproportionate returns to the Funder.

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[107] The Plaintiffs submit that, while Class Counsel may be faulted for not having sought pre-approval of the LAA, an unintended benefit is that Class Counsel are able to make modifications to their fee arrangement, knowing the actual amount of settlement proceeds, with a view to blunting the impact of the Funder's Commission on the Class Members. In this respect, Class Counsel submit that they have reduced their requested fees by $420,000 (from 33% to 25% of the Settlement Amount), and are assuming responsibility for administering the distribution of the Settlement Funds, rather than incurring the expense of a third party administrator, involving estimated fees of approximately $100,000. According to the Plaintiffs, taking into account these $520,000 "offsets" results in a total net commission to the Funder of approximately $230,000, which represents approximately 4.3% of the total Settlement Amount.

[108] I am not convinced by the Plaintiffs' arguments.

[109] In order to determine whether the Court can approve the LAA, the agreement has to be assessed as it reads, before the indirect adjustment made to it by Class Counsel through the reduction of Class Counsel Fees. The determination of what is a fair and reasonable litigation funding agreement is highly contextual (*Ingarra* at para 31; *Difederico* at para 57, citing *Houle* at para 81), and the LAA presented to the Court by the Plaintiffs fails to meet any of the benchmarks laid out in the jurisprudence.

[110] Leaving aside the “offsets” referred to above, at the end of the day, the Funder stands to receive 14.3% of the Settlement Amount for its contemplated Commission of $750,000, and nearly a quarter of the Settlement Amount for the combination of the reimbursement of its advanced funds and its Commission. These percentages are high when contrasted with percentages approved in other litigation funding agreement cases. For example, the Ontario CP Fund proceeds distribution matrix provides for 10% of the recovery to be given to the litigation funder in most scenarios. In fact, in *Difederico* and *Eaton*, the Ontario CP Fund was considered for benchmarking purposes. In *Difederico*, the litigation funder would not receive more than the 10% levy generally obtained by the Ontario CP Fund in 90% of possible scenarios going from a complete victory for the plaintiffs (in that case, a recovery of $12 billion) to a complete failure of the class proceeding (i.e., a zero recovery) (*Difederico* at para 61). Similarly, in *Eaton*, the funding fees in that case were equal to 10% of the claim proceeds and were indeed within the range of similar fees that have been approved by Canadian courts (*Eaton* at para 30). The funding fees were well below 10% of total proceeds for more than 80% of potential outcomes in that proposed class proceeding, ranging between complete success (a recovery of $2.75 billion) and complete failure (a zero recovery).

[111] In the current case, the situation is materially different. This is not a case where the terms of the LAA are more favourable to the Class Members than the terms that would be applicable should the proceeding be funded by the Ontario CP Fund (*Eaton* at para 41). It is the reverse. Given that the Funder’s recovery in this case exceeds what has been considered fair and reasonable in *Difederico* and *Eaton*, this factors negatively towards the approval of the LAA.

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[112] The LAA also raises major concerns from two other perspectives. The jurisprudence has established a "presumptive range of validity" of 30% to 35% of the recovery proceeds, for a combined return to the litigation funder and class counsel (*Ingarra* at para 41; *Difederico* at para 65; *Eaton* at para 44). In both *Difederico* and *Eaton*, the proposed litigation funding agreement indeed fell well within that presumptive range of validity. In the current case, at $2,062,500 (namely, $1,312,500 for the reduced Class Counsel Fees and $750,000 for the Funder's Commission), the contemplated combined return of the Funder and Class Counsel would exceed 39% of the Settlement Amount, over the upper limit of this presumptive range of validity. This again defies the rules of fairness and reasonableness to the Class Members.

[113] Finally, another metric to be considered is the actual return to the Funder for its financing support. The contemplated $750,000 Commission for the Funder on its funding of $500,000 for disbursements would translate into a return on investment of 150% over a maximum period of about two years (based on the information on the record, it would appear that the $500,000 was not advanced before the second half of 2021 by the Funder, to cover expert fees incurred by the Plaintiffs).

[114] This, in my view, would grant an unreasonable, exorbitant, and highly questionable rate of return to the Funder. I pause to underscore that, contrary to typical litigation funding agreements, this LAA does not modulate the rate of return to the Funder in relation to the actual proceeds resulting from the Class Action. It instead provides for a Commission expressed as a multiplier of the amounts advanced, which increases with the duration of the loan. This reflects the pure financing nature of the LAA. In other words, the consideration to be paid to the Funder for providing disbursements funding is a rate of return entirely independent from the actual

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results of the Class Action. Ironically, in their submissions to the Court, Class Counsel stated that they erroneously believed that the LAA was not subject to the Court's approval in the same way that Court approval would not be required if Class Counsel obtained a bank loan or line of credit to fund the case. In light of the rate of return to be received by the Funder (namely, an annual rate of some 75%), had the LAA funding arrangement been a financing vehicle offered in the form of a bank loan with interest, it could have been considered an illegal rate of interest under the *Criminal Code*, RSC 1985, c C-46, which prohibits annual rates of interest exceeding 60%. Put differently, the terms of the LAA, which the Plaintiffs ask the Court to approve, bear many attributes of what could otherwise be qualified as a predatory lending practice or a loan shark agreement. The Court cannot accept that.

[115] For all forms of financing or investment, the rate of return sought by an investor or a lender is a reflection of the expected level of risk and the ability of the borrowers to meet their financial obligations in time and in full. It may be that, for a litigation funder, the risk undertaken in financing certain class action disbursements is so high and the risk of default so great that it requires exorbitant or predatory rates of return to justify advancing the money. But, if the risk of a contemplated class action not being successful is so high that litigation funding can only be available at a cost bordering extortion, approving such litigation funding agreements certainly does not serve the interests of justice.

[116] In light of the foregoing, I conclude that the LAA cannot be considered fair nor reasonable to current and prospective Class Members and that the Funder would be significantly overcompensated for assuming the risk of financing the proposed class proceeding. In sum, no

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matter what metric is used to satisfy the fair and reasonable test, the proposed LAA does not meet any.

(iii) The LAA is champertous

[117] In light of the foregoing, I also must conclude that the LAA is champertous.

[118] In *Difederico*, the Court determined that the assessment of this factor should address two considerations. The first is whether there is any evidence of any actual improper motive, as opposed to one that may be deemed to be improper based on the quantum of the return contemplated by the litigation funding agreement. The second consideration is whether the fees set forth in the litigation funding agreement exceed the outer limit of what might possibly be considered reasonable, fair, or proportionate (*Difederico* at paras 54–55; *Eaton* at paras 29–30). Accordingly, this second consideration overlaps with the requirement that the LAA be fair and reasonable to current and prospective Class Members.

[119] I acknowledge that there is no evidence of any improper motive by the Funder in this case. The LAA appears to be purely of a financial nature. The mere fact that a funder may unreasonably profit from a funding agreement is not sufficient, in and of itself, to support a finding of improper motive or officious meddling (*McIntyre Estate v Ontario (Attorney General)* (2002), 61 OR (3d) 257 (Ont CA) at paras 26–28).

[120] However, the same cannot be said about the reasonableness, fairness, and proportionality of the profits to be received by the Funder in the overall distribution of proceeds from the Settlement Agreement. As discussed in the previous section, there is no doubt that the LAA in the present matter is therefore champertous.

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(iv) The LAA is not necessary to facilitate meaningful access to justice and makes no meaningful contribution to deterring wrongdoing

[121] I do not dispute that, in certain circumstances, litigation funding agreements can facilitate access to justice or assist in deterring wrongdoing by allowing plaintiffs to advance their claims against alleged wrongdoers. For example, the Court noted in *Difederico* that, to the extent that class actions are successful, either by obtaining a favourable judgment or award or by reaching a settlement that reflects a sound claim, other firms could likely be deterred from engaging in behaviour similar to the alleged anticompetitive conduct (*Difederico* at para 79).

[122] However, in this case, I find no evidence that the LAA was necessary to give access to justice to the Plaintiffs nor that the actual Settlement Agreement contains any indication of a deterrent effect on the Defendants. Consequently, I am not persuaded that these two elements support the approval of the LAA.

(c) *Conclusion on the LAA*

[123] The LAA has failed to satisfy the basic procedural and evidentiary requirements for the Court’s consideration. Notably, the LAA should have been brought to the Court’s attention at the earliest conjecture, rather than at the last minute, after the agreement with the Funder has been concluded, and after Class Counsel has already drawn funds from the LAA. The LAA is also manifestly unfair and unreasonable to current and prospective Class Members, due to the Funder’s recovery being significantly more than what has been deemed reasonable by this Court for litigation funding agreements, and largely exceeding any acceptable rate of return.

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[124] I must once again underline that Class Counsel are asking the Court not only to approve the LAA but also to deduct the Funder Fees from the Settlement Amount ultimately available to the Class Members. It would be unfair and unreasonable to ask the Class Members to bear the burden of such an unreasonable funding agreement. I would further add that, in the Retainer Agreement, no mention was made of fees or commission to be paid to a litigation funder in the fee calculation example used to illustrate the effect of the contingency fee payment on the proceeds actually left to the Class Members. True, there was a provision in the Retainer Agreement (section 8) alluding to the possibility of a third-party litigation funder who “might be entitled to a percentage of recovery obtained on behalf of the Class, and/or a payment of interest calculated on the basis on the amount of funds advanced,” with no more details. There was also, in the Notice approved in the October 6 Order, a reference to the actual monetary amount to be paid to the Funder. But nowhere was it explained to the Class Members that they were paying to the Funder a rate of return of about 150% over two years for its funding of disbursements, regardless of the outcome of the Class Action.

[125] For those reasons, I will not approve the LAA nor order that amounts owed to the Funder under that agreement be paid out of the Settlement Amount. This refusal will be a factor to take into account in the assessment of the Class Counsel Fees, which I will now discuss.

(2) Class Counsel Fees

(a) *The test for the approval of class counsel fees*

[126] Rule 334.4 provides that all payments to counsel flowing from a class proceeding must be approved by the Court. The overarching test applicable to class counsel fees is that they have

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to be "fair and reasonable in all of the circumstances" (*Lin* at para 70; *Condon* at para 81; *Manuge* at para 28).

[127] The Court has established a non-exhaustive list of factors to assist in the determination of whether the class counsel fees are fair and reasonable (*Moushoom* at para 83; *Lin* at para 71; *Wenham v Canada (Attorney General)*, 2020 FC 590 [*Wenham 2*] at para 33; *McLean v Canada*, 2019 FC 1077 [*McLean 2*] at para 25; *McCrea v Canada*, 2019 FC 122 at para 98; *Condon* at para 82; *Manuge* at para 28). Again, these factors are similar to the factors retained by the courts across Canada. They include the following elements:

1. The risk undertaken by class counsel;
2. The results achieved;
3. The time and effort expended by class counsel;
4. The complexity and difficulty of the matter;
5. The degree of responsibility assumed by class counsel;
6. The fees in similar cases;
7. The expectations of the class;
8. The experience and expertise of class counsel;
9. The ability of the class to pay; and
10. The importance of the litigation to the plaintiff.

[128] In situations where, as is the case here, class counsel benefit from litigation funding support, such funding is an additional element that, in my view, the Court needs to consider in determining whether the class counsel fees are fair and reasonable, as such litigation funding

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support obviously alleviates the risk undertaken by class counsel, and typically impacts the residual amount available to class members.

[129] As is the case for the factors governing the approval of settlement agreements, these factors are non-exhaustive, and their weight will vary according to the particular circumstances of each class action (*Lin* at para 72). However, the risk that class counsel undertook in conducting the litigation and the degree of success or results achieved for the class members through the proposed settlement remain the two critical factors in assessing the fairness and reasonableness of a contingency fee request by class counsel (*Moushoom* at para 84; *Condon* at para 83). The risk undertaken by class counsel includes the risk of non-payment but also the risk of facing a contentious case and a difficult opposing party (*Wenham 2* at para 34).

[130] It has long been recognized by the courts that, for class proceedings legislation to achieve its policy goals, class counsel must be well rewarded for their efforts, and the contingency agreements they negotiate with plaintiffs should generally be respected. The percentage-based fee contained in a retainer agreement is presumed to be fair and should only be rebutted or reduced "in clear cases based on principled reasons" (*Condon* at para 85, citing *Cannon v Funds for Canada Foundation*, 2013 ONSC 7686 at para 8).

[131] That being said, it is important to underline, once again, the Court's role to protect the class, and there may be circumstances where the Court has to substitute its view for that of class counsel, in the interest of the class. The Court must consider all the relevant factors and then ask, as a matter of judgment, whether the class counsel fees fixed by the proposed agreement or asked by counsel are fair and reasonable and maintain the integrity of the profession (*Shah* at para 46). This is especially true where, as in this case, the amount of class counsel fees comes out of the

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global settlement amount available to class members. Here, it is clear that the net settlement funds available for distribution to Class Members represents the difference between the Settlement Amount and the sum of Administration Expenses, Class Counsel Fees, Funder Fees, Honorarium, and applicable taxes.

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[132] In the same vein, where the fee arrangement with class counsel is part of the settlement agreement, the Court must decide on the fairness and reasonableness of the proposed fee arrangements in light of what class counsel has actually accomplished for the benefit of the class members. The class counsel fees must not leave the impression or bring about conditions of settlement that appear to be in the interests of the lawyers, but not in the best interests of the class members as a whole. Stated differently, there has to be some proportionality between the fees awarded to class counsel and the degree of success obtained for the class members (*Lin* at para 75).

(b) *Application to this case*

(i) Risk undertaken by Class Counsel

[133] The risk factor refers to the risk undertaken by class counsel when the class proceeding is commenced. It is measured from the commencement of the action, not with the benefit of hindsight when the result looks inevitable. This risk includes all of the risks facing class counsel, such as the liability risk, recovery risk, and the risk that the action will not be certified as a class action or will not succeed on the merits (*Condon* at para 83). The litigation risk assumed by class counsel is a function of the probability of success, the complexity of the proceedings, and the time and resources expended to pursue the litigation (*Lin* at para 77).

[134] These risks were addressed above in the likelihood of recovery subsection when dealing with the approval of the Settlement Agreement. Notably, there were risks involved with whether or not the case would be certified in light of the *Jensen* decision. Furthermore, there were risks arising from the termination of the US DOJ’s investigation.

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[135] Unlike in *Lin*, however, Class Counsel here relied on the LAA to cover some of their disbursements. Therefore, they did not bear the risks entirely themselves. This will be discussed in more detail below. Despite the LAA, there were still significant risks taken in this case, which is a positive factor supporting the approval of the Class Counsel Fees.

(ii) Results achieved

[136] It is worth noting that the success or result achieved in any class action settlement is not an absolute figure but rather a relative one. The assessment of the results achieved asks what was the client’s claim “worth” and what did they get for it; in asking this question, courts must have regard for the complexity and difficulty of the case (*Ainsley v Afexa Life Sciences Inc*, 2010 ONSC 4294 at para 40). In other words, the success or result achieved in any class action settlement needs to be assessed in relation to what the anticipated full recovery of the damages alleged to have been suffered by the class members in the class action was. This is an important element assisting the Court in its effort to measure the fairness and reasonableness of the expected compensation brought about to class counsel by a settlement agreement. Broadly speaking, the Court always needs to know what would have been the estimated full recovery of a class action in order to assess the recovery rate of a proposed settlement and to figure out the relative success achieved by the settlement. In this case, the benchmark available to the Court is the $1 billion in damages referred to by the Plaintiffs in the Statement of Claim. The Settlement

Amount of $5,250,000 thus represents an abysmally low recovery rate for the Class Members, and what is ultimately contemplated for the Class Members themselves (namely, a little more than $2,360,000) is an even lower one.

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[137] The results achieved are therefore more than modest, and lie at the low end of the spectrum for Class Members. In fact, the parties who will benefit the most from the results achieved are Class Counsel, the Funder, and the largest Qualifying Settlement Class Members. The smaller Qualifying Settlement Class Members stand to gain very little from this agreement given the *pro rata* distribution protocol, and the consumer Class Members receive no direct material benefit — with the exception of the negligible *cy-près* contribution of $250,000.

[138] The results achieved are well less than exemplary. Class Counsel acknowledges as much in their submissions, where they state that “the settlement is not ideal or perfect”. However, they submit that “it represents a reasonable compromise to achieve a reasonable level of compensation to direct purchasers, compared to nothing”. This conclusion is questionable. A success in class action proceedings cannot boil down to achieving anything better than nothing.

[139] In light of the foregoing, the results achieved in this Settlement Agreement are nowhere near a level at which they would be a positive factor for the approval of Class Counsel Fees. In fact, the results achieved are quite the contrary, and represent a negative factor militating against the approval of Class Counsel Fees. When the results achieved in a given case are so low, it calls into question whether class counsel should be entitled to a full recovery of their requested legal fees.

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(iii) The impact of litigation funding fees

[140] In my view, it goes without saying that the existence of third-party funding is an additional relevant factor in analyzing the risks incurred and the fees requested by class counsel, and in determining whether the overall amount is fair, reasonable, and proportionate in any given case (*Baroch v Canada Cartage*, 2021 ONSC 7376 at paras 31–32 [*Baroch*]; *MacDonald at al v BMO Trust Company et al*, 2021 ONSC 3726 at paras 43–44 [*BMO Trust*]). In other words, litigation funding and class counsel fees are not separate and independent compartments, since the financial support obtained from litigation funding agreements lowers the degree of risk assumed by class counsel in taking up class actions on a contingency basis and in providing representation.

[141] It is not a question of penalizing class counsel for seeking out the contribution of litigation funders. But third party funding is certainly a factor that comes into the equation when assessing the reasonableness of class counsel fees. More specifically, the courts need to look at the combined impact of both class counsel fees and litigation funding fees, and it is not for class members to absorb those additional financing costs — which contribute to lower the risk faced by class counsel — when the overall amount of counsel fees and funding fees exceed certain limits.

[142] In their further submissions, the Plaintiffs acknowledged that courts in Ontario have determined that “it should be “self-evident … that third-party funding should be a relevant factor in the ‘risks incurred’ analysis’” (*Baroch* at para 31, citing *BMO Trust*). Indeed, as the court noted in that case, the amended *Ontario Class Proceedings Act*, SO 1992, c 6 [OCPA] now

expressly requires the consideration of funding arrangements that affected the degree of risk assumed in providing representation (OCPA at subsection 32(2.2)).

[143] The LAA in this case definitely affected the level of risk undertaken by Class Counsel. However, since I do not approve the LAA, this will not be a negative factor in determining the quantum of Class Counsel Fees.

(iv) Time and effort expended by class counsel

[144] The time expended by class counsel can also be a helpful factor in the approval of class counsel fees, even in cases where the class counsel fees are contingency fees.

[145] Over the years, the courts have expressed a preference for utilizing percentage-based fees in class actions (see, for example, *Mancinelli v Royal Bank of Canada*, 2017 ONSC 2324 at para 52). A percentage-based fee is paid based on a percentage of the amounts recovered and should be awarded at a level that appropriately incentivizes and rewards class counsel (*Condon* at para 84). Contingency fees help to promote access to justice in that they allow class counsel, rather than the plaintiff, to finance the litigation. Contingency fees also promote judicial economy, encourage efficiency in the litigation, discourage unnecessary work that might otherwise be done simply to increase the lawyers' fees based on time incurred, properly emphasize the quality of the representation and the results achieved, ensure that counsel are not penalized for efficiency, and reflect the considerable costs and risks undertaken by class counsel (*Condon* at paras 90–91). This Court and courts across Canada have recognized that the viability of class actions depends on entrepreneurial lawyers who are willing to take on these cases, and that class counsel's compensation consequently must reflect this reality (*Condon* at paras 90–91).

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[146] However, situations where the class counsel fees are not commensurate with the gains of class members or are not aligned with the terms of the underlying retainer agreement with the representative plaintiff qualify as "principled reasons" where the courts may be justified in revisiting a percentage-based contingency fee agreement (*Lin* at para 95). Importantly, the proposed class counsel fees need to be considered in relation to the actual result achieved for the class members, especially when the retainer agreement provides for the possibility of a range or margin of appreciation for the effective percentage-based fees to be paid.

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[147] I pause to make one remark. While the courts have acknowledged the need to recognize entrepreneurial lawyers who are willing to take some risks in class actin proceedings and deserve to be rewarded accordingly, risk-taking has its limits. A distinction needs to be made between situations where taking measured risks reflects an entrepreneurial spirit and others where the chances of success are so low and so remote, and the risks so high, that a proposed class action falls into speculative territory. The class action regime was not created to reward the latter.

[148] Here, the evidence makes it clear that Class Counsel have done extensive work in this matter. According to the affidavits filed, as of November 17, 2023, lawyers, students, and clerks from Class Counsel had collectively devoted 2,296.88 hours to this matter, with a fee value of $1,297,421. Consequently, I am satisfied that the time and effort expended by Class Counsel is a positive factor supporting the approval of Class Counsel Fees.

(v) Complexity and difficulty of the matter

[149] For the reasons discussed above, this Class Action proceeding raised complex and difficult issues surrounding Part VI of the Competition Act that multiple major global

competition law regulators have been investigating. This is a positive factor for the approval of Class Counsel Fees.

(vi) Degree of responsibility assumed by class counsel

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[150] Class Counsel, consisting of three firms, took on a lot of the responsibility for the management of this Class Action, and they are also assuming the responsibility for administering the disbursement protocol. However, unlike in *Lin*, these firms were doing so with the backing of the LAA. Despite the LAA funding, I am satisfied that Class Counsel still did significant work managing the file. As such, this is a positive factor in the assessment of Class Counsel Fees.

(vii) Fees in similar cases

[151] Looking at the issue of fees in comparable cases, the reduced 25% contingency fee seems to fit in to the mid-to-high range of fees sought by class counsel. Indeed, in *Lin*, this Court reified a finding of the British Columbia Supreme Court, that the typical range for contingency fees has been recently described as being “15% to 33% of the award or settlement” in British Columbia (*Lin* at para 102, citing *Kett v Kobe Steel, Ltd*, 2020 BCSC 1977 at para 54 [*Kobe Steel*]). Furthermore, the Court pointed to multiple instances where this Court has determined that a 30% contingency fee was within the “top range” of what might be reasonable (*Lin* at para 102, citing *Condon* at paras 92, 111). I add that, in the settlement of both the US Direct Purchaser Action and the US Indirect Purchaser Action, class counsel received a 30% contingency fee.

[152] The issue to be determined is whether the requested Class Counsel Fees are fair and reasonable in the circumstances (*Lin* at para 103). In this case, the Settlement Agreement brings about a very limited success for the Class Members, and Class Counsel themselves

acknowledged the "modest" outcome when they reduced their contingency from 33% to 25% (taking into account the Funder Fees). Given the quantum is so low that the majority of Class Members will not be able to access the Settlement Fund — save for the *Cy-près* Payment —, it appears difficult to justify a high percentage-based contingency fee which would reside at the high end of the spectrum observed in comparable cases.

[153] Furthermore, based on what is being presented to the Court, once Class Counsel have recuperated their fees and disbursements, and the LAA Funder is paid, there would be less than half of the Settlement Amount left for the Class Members, more specifically 45%. In those circumstances, it does not seem reasonable to award such a large proportion of the Settlement Amount to Class Counsel. Seeking a contingency fee in the mid-to-high range of typical fee awards is therefore a negative factor in assessing the fairness and reasonableness of the Class Counsel Fees.

(viii) Expectations of the class

[154] Another factor to consider is the expectation of the Class Members as to the amount of counsel fees (*Lin* at para 104). As pointed out by the Plaintiffs, the Notice included the precise amount of fees requested by counsel and the amounts due. The Notices were directly distributed by email or letter mail to all eligible direct purchaser Class Members, and indirectly distributed to all indirect Class Members. Class Counsel further note that there were no objections to the fees claimed or to the amounts due to the litigation Funder. In light of the foregoing, this is a positive factor in assessing the Class Counsel Fees.

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[155] As was stated in *Lin*, in situations where the likely or expected recovery to class members is limited and resides at the low end of the spectrum, notices to class members should clearly set out the total amount of the class counsel fees and the percentage that class counsel are seeking to receive from a settlement agreement, so that class members can have a full understanding of the agreement presented to them for approval. Communications between class counsel and class members need to be transparent, so that class members can be in a position to make a well-informed decision on their approval and support of both the proposed settlement agreement and class counsel fees. Especially in situations where, as here, Class Counsel Fees eat up an important portion of the net Settlement Funds available to Class Members. This was the case here and, even though they were well informed of the legal fees to be paid, Class Members did not voice objections to the proposed Class Counsel Fees. This is a positive factor in assessing the fairness and reasonableness of the Class Counsel Fees.

[156] There is, however, one important caveat, again related to the LAA and the Funder Fees. As discussed above, I find no compelling evidence in this case that the Class Members were fully informed of the terms and conditions agreed to by Class Counsel in the LAA and underlying the payment of the Funder Fees. I am therefore not persuaded that, in the circumstances, the Class Members can be deemed to have expected that the Funder Fees and the "payment of interest" referred to in the Retainer Agreement could be of the excessive magnitude agreed to by Class Counsel in the LAA to obtain disbursements funding. This is a negative factor in the determination of the overall fairness and reasonableness of the Class Counsel Fees.

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(ix) Experience and expertise of class counsel

[157] There is no doubt as to Class Counsel's standing in the class action legal community and in the areas of law relevant to this litigation. Evidence was provided that Class Counsel have practised in class actions for many years. They have a breadth of experience in litigating class actions and have collectively negotiated settlements of several class actions. This is, of course, a positive factor favouring the approval of the Class Counsel Fees.

(x) Ability of the class to pay

[158] While it is obvious that the consumer Class Members did not and do not have the ability to pay for the services of Class Counsel, the same may not be as clear for many of the Qualifying Settlement Class Members — who are the only members of the Class that stand to receive any direct financial benefit from the Settlement Agreement. This is therefore a neutral factor in the Court's assessment of the Class Counsel Fees.

(xi) Importance of the litigation to the plaintiff

[159] Finally, as was the case in *Lin*, this Class Action is of limited importance to the Plaintiffs, Mr. Sills and Ms. Breckon, and is therefore a neutral factor in the determination of the fairness and reasonableness of Class Counsel Fees. This case is of no outstanding importance to the Class Members, in the sense that it does not involve human rights violations or personal injury. It has an impact for consumer protection and the deterrence of potential anti-competitive behaviour, but nothing allows the Court to conclude that this matter would qualify as being a "litigation of importance" (*Lin* at para 110).

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(c) *Conclusion on the Class Counsel Fees*

[160] Looking at all the above-mentioned factors cumulatively, I have to determine whether the Class Counsel Fees requested to be approved in this case can be qualified as fair and reasonable in the circumstances. Two important points must be emphasized: the very modest results achieved for the Class Members — particularly the consumer Class Members —, and the substantial portion of the Settlement Amount earmarked for the Funder on top of Class Counsel Fees, leaving very little for the Class Members under the current proposal. Indeed, if the Court were to approve the distribution presented by the Plaintiffs, the Class Members would end up receiving a meagre 45% of the Settlement Amount. Ultimately, with Class Counsel's current proposal, more than half of the Settlement Amount would be gone before any Class Member even has an opportunity to access the Settlement Fund. Put differently, while the success achieved for Class Members is very modest at best, the fees and expenses effectively requested by Class Counsel are anything but modest.

[161] This is unjustifiable. In my view, what is being presented to the Court in terms of counsel fee approval does not fit the definition of being "fair and reasonable in the circumstances". By comparison, in *Lin*, the Court ultimately approved a total amount of expenses deducted from the settlement proceeds that still left 60% of the recovery proceeds for the class members.

[162] As the Court noted in *Lin*, there is no magic formula to determine what should be the appropriate percentage-based fees of class counsel in a class action settlement (*Lin* at para 115). It is a matter of judgment, based on the particular circumstances of any given case and the interests of the class (*Lin* at para 115). Here, Class Counsel did not bear the risk of this Class Action fully, having relied on the LAA. However, Class Counsel entered into an LAA that the

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Court had not approved, and does not approve, and which contains terms and conditions clearly detrimental to the interests of Class Members. Class Counsel took the risk of agreeing to this LAA without the Court's approval. It was a choice made by experienced counsel, and they have to bear the burden of that risk. Furthermore, the results of their work were incredibly modest, with most Class Members not gaining anything from the Settlement Fund. Finally, the 25% to 33% contingency fee contemplated by Class Counsel remains within the mid-to-top range of most retainer fees, despite the fact that Class Counsel did not deliver a mid-to-top range Settlement Agreement.

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[163] These are all important "principled reasons" for revisiting the Class Counsel Fees being claimed. As was explained in *Lin*, at paragraph 116,

> As the British Columbia Supreme Court recently stated in *Kobe Steel*, "[t]he integrity of the profession is a consideration when approving legal fees in the class action context" (*Kobe Steel* at para 58, referring to *Plimmer v Google, Inc*, 2013 BCSC 681 and *Endean v The Canadian Red Cross Society*; *Mitchell v CRCS*, 2000 BCSC 971, aff'd 2000 BCCA 638, leave to appeal dismissed, [2001] SCCA No 27 [QL]). Sometimes, substantial rewards to class counsel can create the wrong impression or perception that the ultimate beneficiaries of class actions are class counsel, rather than the class members. Where, as here, the settlement amount likely or expected to be received by class members is minimal – and in fact abysmal when compared to the legal fees claimed by Class Counsel –, there could be such a perception. In such cases, it is the Court's duty to attempt to rectify this perception and to ensure that counsel do not leave the impression that the class action process serves "to obtain a result in which [class counsel] are the only or major beneficiaries" (*Pro-Sys Consultants Ltd v Microsoft Corporation*, 2018 BCSC 2091 at para 53). As the court reminded in *Kobe Steel*, "<u>[t]he ultimate purpose of the class action vehicle is to benefit the class, not their lawyers</u>"
>
> [Emphasis added.]

[164] That being said, I am also mindful of the fact that, since I do not approve the LAA, Class Counsel will have to pay the amount of $750,000 currently owed to the Funder out of their own pockets. I also note that Class Counsel have incurred actual fees of nearly $1,300,000 in this Class Action, and that they have paid substantial disbursements. Consequently, and taking all these factors into consideration, I am of the view that Class Counsel Fees of $1,575,000 representing 30% of the Settlement Amount, plus applicable taxes, are a fair and reasonable amount to be awarded to Class Counsel in the circumstances. To that must be added disbursements in the total amount of $644,231.64 (representing $144,231.64 plus the $500,000 payment made by the Funder), inclusive of taxes. I also agree to add an amount of $75,000 to Class Counsel Fees to cover in part the fees to be incurred for the distribution of the Settlement Funds that Class Counsel have accepted to absorb. This will mean that a total of approximately $2,741,269 (namely, $5,250,000 minus about $1,864,500 for Class Counsel Fees inclusive of taxes and $644,231.64 for disbursements inclusive of taxes) will be left for distribution to Class Members, representing a more acceptable proportion of 52.2% of the Settlement Amount.

[165] I underline that, at $1,575,000 plus $75,000, the Class Counsel Fees exceed the actual amount of time spent by class counsel in litigating this Class Action so far, based on the evidence presented by the Plaintiffs in their motion materials. This represents a modest multiplier of approximately 1.2, in line with the modesty of the actual settlement. Of course, a non-negligible portion of the total amount granted by the Court for Class Counsel Fees will effectively be reduced for Class Counsel because of the Commission that will have to be paid to the Funder under the LAA. But the decision to enter into this agreement was made by Class Counsel, independently of the Court and of the Class Members, and the Class Members should not have to

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pay the price of what were unacceptable and unreasonable terms and conditions for a financing agreement divorced from the results of this Class Action.

(3) Honorarium

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[166] Finally, Class Counsel request that the Court award a $500 honorarium to each of Mr. Sills and Ms. Breckon, the Plaintiffs, for a total of $1,000. This Honorarium would be paid from the Settlement Amount. The Defendants have indicated that they are prepared to make that payment if ordered by the Court.

[167] According to Class Counsel, both Mr. Sills and Ms. Breckon have meaningfully contributed to the Class Members' pursuit of access to justice by stepping forward to fill the role of representative plaintiffs. In so doing, it is argued, they have also expended substantial amounts of time to become familiar with all aspects of the litigation to effectively instruct Class Counsel and act in the best interests of the Class. Mr. Sills has sacrificed much of his personal time to be involved in the litigation, including taking time out of his workday occasionally to engage with the litigation. In a similar vein, Ms. Breckon has given up her personal time to be involved in the litigation. Both representative Plaintiffs were also instrumental in insisting that the *Cy-près* Payment should be increased to $250,000.

(a) *The test for the approval of an honorarium*

[168] As was noted by the Court in *Lin*, no specific Rule provides for the payment of an honorarium to a representative plaintiff in class actions. However, this Court has the discretion to award honoraria to representative plaintiffs, and it has indeed done so on numerous occasions (see for example, *Lin*; *Wenham*; *McLean 2*; *Condon*; *Manuge*). Furthermore, this Court has

reiterated that honoraria to representative plaintiffs are to be awarded sparingly, "as representative plaintiffs are not to benefit from the class proceeding more than other class members" (*McLean 2* at para 57, referring to *Eidoo v Infineon Technologies AG*, 2015 ONSC 2675 at paras 13–22). To be awarded, it "requires an exceptional contribution that has resulted in success for the class" (*Lin* at para 118). In other words, an honorarium is not to be awarded as a routine matter but is rather "a recognition that the representative plaintiffs meaningfully contributed to the class members' pursuit of access to justice" (*Lin* at para 119, citing *Condon* at para 115).

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[169] In determining whether the circumstances are exceptional, the Court may consider several factors, including: i) active involvement in the initiation of the litigation and retainer of counsel; ii) exposure to a real risk of costs; iii) significant personal hardship or inconvenience in connection with the prosecution of the litigation; iv) time spent and activities undertaken in advancing the litigation; v) communication and interaction with other class members; and vi) participation at various stages in the litigation, including discovery, settlement negotiations and trial (*Shah* at para 50). A review of the case law also indicates that the courts have approved the payment of an honorarium to a representative plaintiff when he or she rendered active and necessary assistance in the preparation or presentation of the case, and such assistance resulted in monetary success for the class. The Court must also ensure that any separate payment to a representative plaintiff must not be disproportionate to the benefit derived by the class members.

(b) *Application to this case*

[170] For the reasons that follow, I am not persuaded that the payment of the requested $500 Honorarium to Mr. Sills and Ms. Breckon is justified in this case.

[171] There are two reasons for that. First, there is no exceptional contribution here. Second, in light of the highly modest benefits provided by the Settlement Agreement, granting an Honorarium would grant an unjustified advantage to the representative plaintiffs.

[172] While the affidavits of Mr. Sills and Ms. Breckon mention they both spent many hours discussing the case with Class Counsel and voicing their opinions to Class Counsel, I am not satisfied that they demonstrate an "exceptional contribution that has resulted in success for the class" (*Lin* at para 118). As was the case in *Lin*, Mr. Sills and Ms. Breckon were not intimately involved in the Class Action. Indeed, like in *Lin*, this case is not a high profile litigation nor a situation where Mr. Sills and Ms. Breckon's names were widely publicized, where they had exposure to the media, or where their privacy was invaded through the recitation of their personal story to advance the case (*Lin* at para 125). There is also no evidence of any community outreach nor of public representations made by Mr. Sills or Ms. Breckon about the case; and, Mr. Sills and Ms. Breckon did not have to prepare for nor attend a cross-examination on their affidavits filed in support of any of the motions in this Class Action.

[173] It is not sufficient for Class Counsel to argue the exceptional work done by the Plaintiffs. There needs to be evidence, from the representative plaintiffs, at a convincing level of particularity, allowing the Court to assess and measure the nature and the involvement of the class representatives. No matter how eloquent arguments from counsel may be, they cannot replace the need for the representative plaintiffs to provide clear, convincing, and non-speculative evidence supporting the extent and exceptional nature of their involvement. I find no such evidence in this case.

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[174] To avoid any misunderstanding, Mr. Sills' and Ms. Breckon's contribution or commitment to the Class Action are not in question, and they both certainly deserve acknowledgement for their role in the conduct of the proceeding. However, representative plaintiffs do not receive additional compensation for simply doing their job as class representatives (*Lin* at para 126).

[175] Furthermore, it bears reminding that "representative plaintiffs are not to benefit from the class proceeding more than other class members" (*McLean 2* at para 57). Mr. Sills and Ms. Breckon are not direct purchasers, and therefore would not themselves be eligible to access the Settlement Fund as Qualifying Settlement Class Members, and would simply have the indirect benefit of the *Cy-Près* Payment. Consequently, if an Honorarium were allowed, Mr. Sills and Ms. Breckon would benefit from the class proceeding more than other similarly placed Class Members.

[176] In this case, as discussed above, the indirect purchaser Class Members will receive no direct financial benefit from the Settlement Agreement, and I see no reason why, through an Honorarium, the representative plaintiffs should be entitled to one. It would be manifestly disproportionate to the lack of financial benefit derived by the vast majority of Class Members.

[177] Finally, I pause to note the recent conclusions of Justice Perell in the matter of *Doucet v The Royal Winnipeg Ballet*, 2022 ONSC 976 [*Doucet*], where the request for an honorarium caused the court to reconsider the matter of the court's extraordinary discretion to pay a litigant a stipend for prosecuting a civil claim. Justice Perell outlines nine reasons culminating in the conclusion that, as a matter of legal principle, honorariums should no longer be granted in class proceedings (*Doucet* at para 58):

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1. Awarding a litigant on a *quantum meruit* basis for active and necessary assistance in the preparation or presentation of a case is contrary to the policy of the administration of justice that represented litigants are not paid for providing legal services. Lawyers not litigants are paid for providing legal services.

2. *A fortiori* awarding a represented litigant on a *quantum meruit* basis for active and necessary assistance in the preparation or presentation of a case is contrary to the policy of the administration of justice that self-represented litigants are not paid for providing legal services. Lawyers not litigants are paid for providing legal services.

3. Awarding a litigant for such matters as being a witness on examinations for discovery or for trial is for obvious reasons contrary to the administration of justice.

4. In a class action regime based on entrepreneurial Class Counsel, the major responsibility of a Representative Plaintiff is to oversee and instruct Class Counsel on such matters as settling the action. The court relies on the Representative Plaintiff to give instructions that are not tainted by the self-interest of the Representative Plaintiff receiving benefits not received by the Class Members he or she represents.

5. Awarding a Representative Plaintiff a portion of the funds that belong to the Class Members creates a conflict of interest. Class Members should have no reason to believe that their representative may be motivated by self-interest and personal gain in giving instructions to Class Counsel to negotiate and reach a settlement.

6. Practically speaking, there is no means to testing the genuineness and the value of the Representative Plaintiff's or Class Member's contribution. Class Counsel have no reason not to ask for the stipend for their client being paid by the class members. The affidavits in support of the request have become *pro forma*. There is no cross-examination. There is no one to test the truth of the praise of the Representative Plaintiff. Class Members may not wish to appear to be ungrateful and ungenerous and it is disturbing and sometimes a revictimization for the court to scrutinize and doubt the evidence of the apparently brave and resolute Representative Plaintiff.

7. The practice of awarding an honourarium for being a Representative Plaintiff in a class action is tawdry. Using the immediate case as an example, awarding Class Counsel $2.25

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> million of the class member's compensation for prosecuting the action, makes repugnant awarding Ms. Doucet $30,000 of the class member's compensation for her contribution to prosecuting the action. The tawdriness of the practice of awarding a honourarium dishonours more than honours the bravery and contribution of the Representative Plaintiff.
>
> 8. As revealed by the unprecedented request made in the immediate case, the practice of awarding a honourarium to a Representative Plaintiff in one case is to create a repugnant competition and grading of the contribution of the Representative Plaintiff in other class actions.
>
> 9. The practice of awarding a honourarium in one case may be an insult to Representative Plaintiffs in other cases where lesser awards were made. For instance, in the immediate case, I cannot rationalize awarding Ms. Doucet $30,000 for her inestimably valuable contribution to this institutional abuse class action with the $10,000 that was awarded to the Representative Plaintiffs who brought access to justice to inmates in federal penitentiaries and who themselves experienced the torture of solitary confinement. I cannot rationalize awarding any honourarium at all when I recall that the Representative Plaintiff in the Indian Residential Schools institutional abuse class action did not ask for a honourarium and he did not even make a personal claim to the settlement fund. Having to put a price tag to be paid by class members on heroism is repugnant.
>
> [*Doucet* at para 61.]

[178] I agree with those comments and with this jurisprudence surrounding the practice of awarding honoraria in class actions. This militates against awarding the Honorarium in this case.

(c) ***Conclusion on the Honorarium***

[179] Considering that representative plaintiffs should not receive additional compensation for simply doing their job as class representatives, that representative plaintiffs are not to benefit from the class proceeding more than other class members, and in light of the conclusions of

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Justice Perell above, the requested Honorarium is unreasonable and unjustified in the circumstances. No Honorarium will therefore be awarded in this Class Action.

IV. **Conclusion**

[180] For the above-mentioned reasons, the Settlement Agreement is approved as I find it fair, reasonable, and in the best interests of the class as a whole.

[181] However, I find that the requested Class Counsel Fees and Funder Fees are not fair and reasonable, that no Funder Fees shall be specifically granted by the Court, and that Class Counsel Fees shall be fixed at a total of $1,650,000 plus applicable taxes (representing 30% of the Settlement Amount plus $75,000), with an additional amount of $644,231.64 for disbursements (inclusive of taxes). Any Commission to be paid by Class Counsel to the Funder pursuant to the LAA shall be made separately by Class Counsel.

[182] With respect to the LAA, considering that it has not been brought to the Court's attention on a timely basis and that it provides for disproportionate returns to the Funder, it is not approved.

[183] Finally, regarding the Honorarium, in light of the jurisprudence and the roles played by Mr. Sills and Ms. Breckon in this Class Action, which do not extend beyond simply doing their job as class representatives, no Honorarium will be awarded.

[184] An order will issue giving effect to these findings and substantially incorporating the language proposed by both parties in the draft orders submitted to the Court as part of the motion materials.

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[185] No costs will be awarded.

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ORDER in T-1664-19

THIS COURT ORDERS that:

A. General Terms

1. In addition to the definitions used elsewhere in these Reasons, for the purposes of this Order, the definitions set out in the Settlement Agreement attached as Annex "A" to this Order apply to and are incorporated into this Order.

2. In the event of a conflict between the terms of this Order and the Settlement Agreement, the terms of this Order shall prevail.

B. Settlement Agreement

3. The Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class.

4. The Settlement Agreement is hereby approved pursuant to Rule 334.29 and shall be implemented and enforced in accordance with its terms.

5. All provisions of the Settlement Agreement (including its Recitals and Definitions) are incorporated by reference into and form part of this Order, and this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class, including those Persons who are minors or mentally incapable, and the requirements of Rule 115 are dispensed with.

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6. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in, nor assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to any provincial or federal negligence acts or similar legislation or at common law or equity, in respect of any Released Claim, and are permanently barred and enjoined from doing so.

7. Upon the Effective Date, each Settlement Class member shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she, or it has commenced, without costs and with prejudice.

8. Upon the Effective Date, each Other Action commenced by any Settlement Class member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

9. Upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

10. Except as provided herein, this Order does not affect any claims nor causes of action that Settlement Class members have or may have against any Person other than the Releasees.

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11. No Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.

12. This Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

13. For purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

14. This Action, as well as the action commenced in Court file no. T-8-20, which has been consolidated with this Action, are hereby dismissed, with prejudice and without costs. Once this Order is signed, a copy shall be entered in this Action, as well as in the action commenced in Court file no. T-8-20.

C. Distribution Protocol

15. The Distribution Protocol is fair, reasonable, and in the best interests of the Settlement Class.

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16. Subject to the terms of this Order, the Distribution Protocol attached to this Order as Annex “B” is hereby approved pursuant to Rule 334.29.

17. Class Counsel is appointed to administer the Distribution Protocol.

18. All information received from Defendants or Settlement Class members collected, used, and retained by the Class Counsel for the purpose of administering the Distribution Protocol, including evaluating the Settlement Class members’ eligibility status under the Distribution Protocol is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5. The information provided by the Settlement Class members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Settlement Class member, except in accordance with the Settlement Agreement, orders of this Court, and/or the Distribution Protocol.

19. The Notice Plan attached to this Order as Annex “C” is hereby approved.

20. The Notice of Settlement Approval attached to this Order as Annex “D” is hereby approved substantially in the form attached thereto (with the required adjustments to the quantum of the amounts to be distributed) and shall be disseminated in accordance with the Notice Plan.

21. The Parties may bring motions to the Court for directions as may be required.

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D. Litigation Advance Agreement

22. The litigation advance agreement between the Funder and Class Counsel executed on August 17, 2020 is not approved.

E. Class Counsel Fees

23. The contingency fee retainer agreement made between Irene Breckon and Gregory Sills, and Class Counsel and executed on June 24, 2020, is fair and reasonable, and is hereby approved pursuant to Rule 334.4, subject to the amount specified hereafter.

24. Legal fees of Class Counsel, in the amount of $1,650,000 plus applicable taxes, as well as disbursements of Class Counsel totalling $644,231.64 inclusive of taxes, are fair and reasonable, and are hereby approved.

25. The legal fees, disbursements, and applicable taxes payable to Class Counsel shall be paid from the Settlement Amount.

26. Any payment to be made by Class Counsel to the Funder pursuant to the August 17, 2020 litigation advance agreement mentioned above shall not be paid from the Settlement Amount.

F. Honorarium

27. No Honorarium is awarded to the Plaintiffs.

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G. Costs

28. No costs are awarded on the motions for settlement approval and fee approval.

"Denis Gascon"
Judge

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ANNEX "A"

SCHEDULE A

FARMED ATLANTIC SALMON CLASS ACTIONS
SETTLEMENT AGREEMENT

Made as of September 22, 2023

(the "**Execution Date**")

Between

IRENE BRECKON, GREGORY SILLS, CLIFFORD CHIN,
GEORGES LANGIS AND GENEVIEVE CHABOT

(the "**Plaintiffs**")

and

CERMAQ CANADA LTD., CERMAQ GROUP AS, CERMAQ NORWAY AS, CERMAQ US LLC, GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., GRIEG SEAFOOD SALES NORTH AMERICA INCORPORATED (FORMERLY KNOWN AS OCEAN QUALITY NORTH AMERICA INC.), GRIEG SEAFOOD SALES PREMIUM BRANDS INC. (FORMERLY KNOWN AS OCEAN QUALITY PREMIUM BRANDS INC.), GRIEG SEAFOOD SALES USA INC. (FORMERLY KNOWN AS OCEAN QUALITY USA INC.), LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, NOVA SEA AS, and SALMAR ASA, and SJÓR AS (FORMERLY KNOWN AS OCEAN QUALITY AS)

(the "**Settling Defendants**")

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**FARMED ATLANTIC SALMON CLASS ACTIONS
SETTLEMENT AGREEMENT**

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FARMED ATLANTIC SALMON CLASS ACTIONS
SETTLEMENT AGREEMENT

RECITALS

A. WHEREAS the Proceedings have been commenced by the Plaintiffs;

B. AND WHEREAS the Proceedings allege (or formerly alleged) that the Defendants and unnamed co-conspirators participated in an unlawful conspiracy to fix, maintain, increase or control the price of Salmon from April 10, 2013 to the date of certification, contrary to Part VI of the *Competition Act* and the common law and/or the civil law;

C. AND WHEREAS the Federal Court Action has been discontinued against the Defendants Bremnes Seashore AS, Scottish Sea Farms Ltd., Nordlaks Holding AS, Nordlaks Oppdrett AS, Leroy Seafood Group ASA, Alsaker AS and Alsaker Fjordbruk AS;

D. AND WHEREAS the BC Action has been discontinued against the Defendants Bremnes Seashore AS, Alsaker AS and Alsaker Fjordbruk AS;

E. AND WHEREAS the Quebec Action has been discontinued against the Defendant Scottish Sea Farms Ltd.;

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

G. AND WHEREAS despite their belief that they are not liable in respect of the claims as alleged or previously alleged in the Proceedings, and have good and reasonable defences in respect of jurisdiction and the merits, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims which have been asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings, and to avoid further expense, inconvenience, the distraction of burdensome and protracted litigation, and the risks associated with trials and appeals;

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

I. AND WHEREAS the Plaintiffs 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 Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class they seek to represent;

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

K. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Releasees;

L. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs;

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

N. AND WHEREAS the Parties consent to certification of the Federal Court Action for the sole purpose of implementing this Settlement Agreement, as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

O. AND WHEREAS as a result of their settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Class the Plaintiffs seek to represent;

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 Federal Court Action be settled and dismissed with prejudice as against the Settling Defendants and Releasees and that the BC Action and Quebec Action be discontinued, all without costs as to the Plaintiffs, the Settlement Class they seek to represent and the Settling Defendants, subject to the approval of the Federal Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the recitals and schedules

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

(2) ***Affiliates***, with respect to a company, includes all other entities which, whether directly or indirectly, (i) are controlled by that company, (ii) are under common control with that company or

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(iii) control that company. The term "control" as used in this definition means the power to individually or jointly with another entity direct or cause the direction of the management and the policies of an entity, whether through the ownership of a majority of the outstanding voting rights or otherwise.

(3) ***Approval Hearing*** means the hearing brought by Class Counsel for the Federal Court's approval of the settlement provided for in this Settlement Agreement.

(4) ***BC Action*** means the proceeding filed in the BC Supreme Court listed in Schedule "A" to this Settlement Agreement.

(5) ***BC Plaintiff*** means Clifford Chin.

(6) ***Claims Administrator*** means the firm proposed by the Plaintiffs and appointed by the Federal Court to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm. Alternatively, if Class Counsel determines that it would be more cost-effective to administer the Settlement Amount themselves, Claims Administrator means Class Counsel.

(7) ***Class Counsel*** means Siskinds LLP, Siskinds Desmeules s.e.n.c.r.l., Sotos LLP and Koskie Minsky LLP.

(8) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.

(9) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class to any other body or Person, in relation to legal fees.

(10) ***Class Period*** means April 10, 2013 to the date of the order certifying the Federal Court Action against the Settling Defendants for settlement purposes.

(11) ***Common Issue*** means: Did the Settling Defendants conspire to fix, maintain, increase or control the price of Salmon directly or indirectly during the Class Period? If so, what damages, if any, did Settlement Class members suffer?

(12) ***Counsel for the Settling Defendants*** means the counsel listed for the Defendants in section 12.17 of the Settlement Agreement.

(13) ***Defendants*** means the entities currently or formerly named as defendants in the Proceedings as set out in Schedule "A" to this Settlement Agreement. For greater certainty, Defendants includes, without limitation, the Settling Defendants, the other Releasees who are named as Defendants, and Defendants in respect of whom one or more of the Proceedings has been discontinued.

(14) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as proposed by Class Counsel and as approved by the Federal Court.

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(15) ***Effective Date*** means the date when the Settlement Approval Order has become a Final Order and the discontinuances have been entered by Class Counsel with the BC Supreme Court in the BC Action and the Quebec Superior Court in the Quebec Action.

(16) ***Execution Date*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(17) ***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.

(18) ***Federal Court Action*** means the two actions commenced in the Federal Court and eventually consolidated in Court File T-1664-19, as listed in Schedule "A" to this Settlement Agreement.

(19) ***Federal Court Plaintiffs*** means Irene Breckon and Gregory Sills.

(20) ***Final Order*** means the Settlement Approval Order that either (i) has not been appealed before the time to appeal such order has expired, if an appeal lies, or (ii) has been affirmed upon a final disposition of all appeals. For further certainty, any order made by the Federal Court approving this Settlement Agreement will not become a Final Order until the time to appeal such an order has expired without any appeal having been taken or until the order has been affirmed upon a final disposition of all appeals.

(21) ***Fonds d'aide*** means the Fonds d'aide aux actions collectives in Quebec which is entitled to receive the value in dollars of a percentage of the share of any cy pres distribution that would otherwise be allocated to the Quebec class members pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives.*

(22) ***Notice of Certification and Settlement Approval Hearing*** means the form of notice attached to the Notice Plan at **Schedule "D"** to this Settlement Agreement and as approved by the Federal Court, to inform the Settlement Class of: (i) certification for settlement purposes of the Federal Court Action; (ii) the process by which Settlement Class members may opt-out of the Settlement Agreement; (iii) the date and location of the Approval Hearing; (iv) the principal elements of the Settlement Agreement; and (v) the process by which Settlement Class members may object to the Settlement Agreement.

(23) ***Notice of Settlement Approval*** means the form of notice agreed to by the Plaintiffs and the Settling Defendants, or such other forms of notice as may be approved by the Federal Court, which informs the Settlement Class of: (i) the approval of this Settlement Agreement; and (ii) the process by which Settlement Class members may apply to obtain compensation from the Settlement Amount.

(24) ***Opt-Out*** means a prospective Settlement Class member who has submitted a valid written election to opt-out of the Settlement Agreement by the Opt-Out Deadline.

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(25) ***Opt-Out Deadline*** means thirty (30) days from the dissemination of the Notice of Certification and Settlement Approval Hearing.

(26) ***Other Actions*** means actions or proceedings, excluding the Proceedings, relating to the Released Claims, commenced by a Settlement Class member either before or after the Effective Date.

(27) ***Party or Parties*** means the Plaintiffs, Settlement Class members (where appropriate) or the Settling Defendants.

(28) ***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.

(29) ***Plaintiffs*** means the BC Plaintiff, Federal Court Plaintiffs and Quebec Plaintiffs.

(30) ***Proceedings*** means the BC Action, Federal Court Action and the Quebec Action.

(31) ***Purchase Price*** means the sale price paid by direct purchaser Settlement Class members for Salmon purchased in Canada during the Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.

(32) ***Quebec Action*** means the proceeding filed in the Quebec Superior Court listed in Schedule "A" to this Settlement Agreement.

(33) ***Quebec Plaintiffs*** means Georges Langis and Geneviève Chabot.

(34) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature (whether or not any Settlement Class member has objected to this Settlement Agreement or makes a claim upon or received a payment from the Settlement Amount, whether directly, representatively, derivatively or in any other capacity), whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) 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 and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasors ever had, now have or hereafter can, shall or may have on account of, or in any way related to the purchase, sale, pricing, discounting, producing, marketing, offering or distributing of Salmon, including all claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement, combination, conspiracy or conduct that occurred prior to the date hereof, including the conduct alleged (or which was previously or could have been alleged) in the Proceedings. However, nothing herein shall be construed to release any claims of direct purchasers involving direct purchases of farmed Atlantic salmon outside Canada, any claims of indirect purchasers involving indirect purchases of farmed Atlantic salmon outside of Canada, or any claims involving negligence, personal injury, failure to deliver goods, damaged or delayed goods, product defect,

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securities, or other similar claim relating to Salmon but not relating to alleged anticompetitive conduct.

(35) ***Releasees*** means, jointly and severally, solidarily, individually and collectively, the Defendants, their Affiliates, and any named or unnamed co-conspirators, and each of their respective past and present, direct and indirect, parents, subsidiaries, partners, insurers, divisions, branches, associates, joint ventures, franchisees, dealers, and all other Persons, partnerships or corporations with whom any of the foregoing have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, insurers, servants and representatives, members and managers, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(36) ***Releasors*** means, jointly and severally, solidarily, individually and collectively, the Plaintiffs and the Settlement Class on behalf of themselves and any Person or entity claiming by or through them including a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, or representative of any kind, other than any Opt-Out.

(37) ***Salmon*** means farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased or sold in Canada during the Class Period.

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

(39) ***Settlement Amount*** means the sum of five million two hundred fifty thousand Canadian dollars (CAD $5,250,000).

(40) ***Settlement Approval Order*** means the form of order approving the Settlement Agreement at **Schedule "C"** to this Settlement Agreement.

(41) ***Settlement Class*** means all persons in Canada who purchased Salmon during the Class Period except the Excluded Persons and any Opt-Out.

(42) ***Settling Defendants*** means Cermaq Canada Ltd., Cermaq Group AS, Cermaq Norway AS, Cermaq US LLC (the "**Cermaq Defendants**"); Grieg Seafood ASA, Grieg Seafood BC Ltd., Grieg Seafood Sales North America Incorporated (formerly known as Ocean Quality North America Inc.), Grieg Seafood Sales Premium Brands, Inc. (formerly known as Ocean Quality Premium Brands Inc.), and Grieg Seafood Sales USA Inc. (formerly known as Ocean Quality USA Inc.) (the "**Grieg Defendants**"), Lerøy Seafood AS, Lerøy Seafood USA Inc. the ("**Lerøy Defendants**"), Marine Harvest Atlantic Canada Inc., Mowi ASA, Mowi Canada West Inc., Mowi Ducktrap, LLC, Mowi USA, LLC (the "**Mowi Defendants**"), Nova Sea AS (the "**Nova Sea Defendant**"), SalMar ASA (the "**SalMar Defendant**"), and Sjór AS (formerly known as Ocean Quality AS) (the "**Sjór Defendant**").

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

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under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class or the Settling Defendants, as provided for in this Settlement Agreement.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to implement this Settlement Agreement, to secure the prompt, complete and final dismissal with prejudice of the Federal Court Action, and to obtain discontinuances in the BC Action and the Quebec Action.

2.2 Motions for Approval

(1) As soon as practical after the Settlement Agreement is executed, the Federal Court Plaintiffs shall file a motion before the Federal Court for an order certifying the Federal Court Action as a class proceeding for settlement purposes and approving the Notice Plan attached as **Schedule "D"** and the Notice of Certification and Settlement Approval Hearing attached to the Notice Plan as Schedule "A1". The order shall be substantially in the form attached as **Schedule "B"**.

(2) The Federal Court Plaintiffs shall file a motion before the Federal Court for an order approving this Settlement Agreement as soon as practicable after:

(a) the order referred to in section 2.2(1) has been granted; and

(b) the Notice of Certification and Settlement Approval Hearing has been published.

The order approving this Settlement Agreement shall be substantially in the form attached as Schedule "C".

(3) As soon as practical after the Execution Date, the Quebec Plaintiffs will move to discontinue the Quebec Action and the BC Plaintiff will file a discontinuance in the BC Action.

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

2.3 Pre-Motion Confidentiality

(1) Until the motion required by section 2.2(1) is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants or Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as otherwise required by law, or as otherwise required to give effect to the terms of this Settlement Agreement.

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SECTION 3 – SETTLEMENT CONSIDERATION

3.1 Payment of Settlement Amount

(1) Within thirty (30) days following the Execution Date, or the date of receipt of the wire transfer information from Class Counsel, whichever is later, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP for deposit into the Trust Account.

(2) The Settling Defendants shall pay the Settlement Amount by wire transfer. Siskinds LLP shall provide the necessary wire transfer information to Counsel for the Settling Defendants in writing within ten (10) days following the Execution Date.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount represents the full amount to be paid pursuant to this Settlement Agreement and shall be all-inclusive of all amounts, including without limitation, Class Counsel Fees, Class Counsel Disbursements, any honoraria for the Plaintiffs, any distributed amounts to the Settlement Class, any cy pres donations, and Administration Expenses.

(5) The Settling Defendants and other Releasees shall have no obligation to pay any amount in addition to the Settlement Amount to be paid by the Settling Defendants, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Proceedings or any Other Actions.

(6) Once a Claims Administrator has been appointed, Class Counsel shall transfer control of the related portion of the Trust Account to the Claims Administrator.

(7) Class Counsel and/or the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement. While in control of the Trust Account, Class Counsel and/or the Claims Administrator shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Federal Court obtained after notice to the Parties.

3.2 Taxes and Interest

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

(2) All taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel and/or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

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(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

SECTION 4 – OPTING OUT

4.1 Procedure

(1) Class Counsel will seek approval from the Federal Court of the following opt-out process as part of the order certifying the Federal Court Action as a class proceeding for settlement purposes:

(a) Persons seeking to opt-out of the Federal Court Action must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, or email to Class Counsel at an address to be identified in the notice described in the Notice Plan at Schedule "D".

(b) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the notice described in the Notice Plan at Schedule "D". Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked seven (7) business days prior to the date that it is received by Class Counsel.

(c) The written election to opt-out must contain the following information in order to be valid:

(A) the Person's full name, current mailing and email address, and telephone number;

(B) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation; and

(C) a statement to the effect that the Person wishes to be excluded from the Federal Court Action.

(d) Any putative Settlement Class member who validly opts-out of the Federal Court Action shall be excluded from the Federal Court Action and the Class and will not have the opportunity to benefit from the Settlement Agreement.

(e) Any putative Settlement Class member who does not validly opt-out of the Federal Court Action in the manner and time prescribed above, shall be deemed to have elected to participate in the Federal Court Action, including this Settlement Agreement.

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(f) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendants a report containing the names of each Person who has validly and timely opted out of the Federal Court Action, the reasons for the opt-out, if known, and a summary of the information delivered by such Persons pursuant to this Section 4.1

(2) The Parties will not, directly or indirectly, encourage or cause any Person to opt out of the Federal Court Action.

SECTION 5 – NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

5.1 Right of Termination

(1) In the event that:

(a) the Federal Court declines to certify the Federal Court Action for settlement purposes as against the Settling Defendants or does so in a materially modified form;

(b) the Federal Court declines to dismiss the Federal Court Action;

(c) the Federal Court declines to approve this Settlement Agreement or any material part hereof;

(d) the Federal Court approves this Settlement Agreement in a materially modified form;

(e) the Federal Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule "C";

(f) the order approving this Settlement Agreement made by the Federal Court does not become a Final Order;

(g) the BC Plaintiff does not obtain a filed discontinuance of the BC Action; and/or

(h) the Quebec Plaintiffs do not obtain a filed order discontinuing the Quebec Action,

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement on the grounds above (except that only the Settling Defendants shall have the right to terminate under subsections (b), (g) and (h)) by delivering a written notice pursuant to section 12.17, within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to section 12.17, within thirty (30) days after such non-payment, or move before the Federal Court to enforce the terms of this Settlement Agreement.

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

5.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

(a) no motion to certify the Federal Court Action as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;

(b) the Parties will cooperate in seeking to have any issued order certifying the Federal Court Action as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party (including the Settlement Class) shall be estopped from asserting otherwise; and

(c) any prior certification of the Federal Court Action as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or Other Actions or other litigation.

(2) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Class Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon, less taxes paid on interest, and less any notice costs already incurred with respect to the notices described in section 9.1(1) and any costs already incurred with respect to translating the Settlement Agreement. The Settling Defendants will allocate the remaining Settlement Amount amongst themselves.

(3) Except as provided for in section 5.3, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

5.3 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2(3), 5.2, 5.3, 7.1, 7.2, 9.1, 10.3(5), and 12.4, and the definitions and schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and schedules shall survive only for the limited purpose of the interpretation of sections 3.2(3), 5.2(3), 5.3, 7.1, 7.2, 9.1, 10.3(5), and 12.4 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement

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Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 6 – RELEASES AND DISMISSALS

6.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasors: (a) shall have forever and absolutely released the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have; (b) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and (c) agree and covenant not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Releasees related in any way to Released Claims.

(2) The Plaintiffs and Settlement Class 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 Proceedings and 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 additional or different facts.

6.2 Release by Releasees

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

6.3 No Further Claims

(1) Upon the Effective Date, each Releasor shall not institute, prosecute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim, suit, complaint or demand against any Releasee or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, whether pursuant to any provincial or federal negligence acts or similar legislation or at common law or equity, in respect of any Released Claim, and are permanently barred and enjoined from doing so. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

6.4 Dismissals and Discontinuances

(1) Upon the Effective Date, the Federal Court Action shall be dismissed with prejudice and without costs as against the Defendants named in that action.

(2) As soon as practical after the Execution Date, the Quebec Plaintiffs will move to discontinue Quebec Action and the BC Plaintiff will file a discontinuance in the BC Action.

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

(4) Upon the Effective Date, all Other Actions commenced by any Settlement Class member shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

6.5 Material Terms

(1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to section 5.1(3)), the releases, covenants, dismissals and discontinuances in this section 6 shall be considered material terms of the Settlement Agreement and the failure of the Federal Court to approve the releases, covenants and dismissals or the failure to obtain discontinuances of the BC Action and the Quebec Action contemplated herein shall give rise to a right of termination pursuant to section 5.1 of the Settlement Agreement.

SECTION 7 – EFFECT OF SETTLEMENT

7.1 No Admission of Liability

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

7.2 Agreement Not Evidence

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

7.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by, or a partner of Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants or the Releasees that relates to or arises from the Released Claims. Moreover, neither Class Counsel, nor

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anyone currently or hereafter employed by, or a partner of Class Counsel, may divulge to anyone for any purpose, or use for any purpose, any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent that such information was, is or becomes otherwise publicly available or unless ordered to do so by a court in Canada.

(2) Section 7.3(1) shall be inoperative to (and only to) the extent that it is inconsistent with Class Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.

SECTION 8 – CERTIFICATION FOR SETTLEMENT ONLY

8.1 Settlement Class and Common Issue

(1) The Parties agree that the Federal Court Action shall be certified as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Federal Court.

(2) The Plaintiffs agree that, in the motion for certification of the Federal Court Action as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is on behalf of the Settlement Class.

SECTION 9 – NOTICE TO CLASS

9.1 Notices Required

(1) The Settlement Class shall be given the following notices: (i) Notice of Certification and Settlement Approval Hearing; (ii) Notice of Settlement Approval; and (iii) notice of termination, if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect; and (iv) such further notice as may be directed by the Federal Court.

9.2 Form and Distribution of Notices

(1) The manner in which the Notice of Certification and Settlement Approval Hearing will be disseminated is described in the Notice Plan in **Schedule "D"** and as approved by the Federal Court.

(2) The Notice of Certification and Settlement Approval Hearing shall be substantially in the form attached to the Notice Plan as Schedule "A1" and as approved by the Federal Court.

(3) The Notice of Settlement Approval and the manner in which the Notice of Settlement Approval will be disseminated shall be agreed to by the Parties and as approved by the Federal Court, of if the Parties cannot agree, then such form or manner as approved by the Federal Court.

(4) The Parties will cooperate in the preparation of any communications to the press in relation to the Settlement Agreement or the Proceedings.

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9.3 Notice Costs

(1) All notice costs shall be paid from the Settlement Amount.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

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

(2) The Releasees 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.

10.2 Distribution Protocol

(1) On notice to the Settling Defendants, Class Counsel will make an application seeking an order from the Federal Court approving the Distribution Protocol. The motion can be brought before the Effective Date, but the order approving the Distribution Protocol shall be conditional on the Effective Date occurring.

(2) The Distribution Protocol will address the timelines and process for making and approving eligible claims, distributing settlement funds to approved claimants, and allocating any undistributed settlement funds, including any required distributions to the Fonds d'aide, a Class Proceedings Fund, and/or a Law Foundation in Canada.

10.3 Information and Assistance

(1) The Settling Defendants will make reasonable efforts to provide Class Counsel with a list of the available names and addresses for their direct purchaser Settlement Class members in Canada from 2014 to 2021, together with information regarding the Purchase Price paid by each such Settlement Class member.

(2) The Settling Defendants shall provide the list of the available names and addresses referenced in 10.3(1) to Class Counsel and/or any Court-appointed notice provider and/or the Claims Administrator within thirty (30) days after the Execution Date. The Settling Defendants shall provide the Purchase Price information referenced in 10.3(1) to Class Counsel and/or any Court-appointed notice provider and/or the Claims Administrator within thirty (30) days after the Effective Date.

(3) The information shall be delivered by the Settling Defendants to Class Counsel and/or any Court-appointed notice provider and/or the Claims Administrator in the form it currently exists via secure file transfer, or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel.

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(4) The available names and contact information referenced in 10.3(1) shall be collected, used and retained pursuant to privacy laws in Canada for the purposes of administering the Settlement Agreement, disseminating the notices required in section 9.1(1), and evaluating eligibility status under the Settlement Agreement.

(5) All information provided pursuant to section 10.3(1) shall be treated as private and confidential by Class Counsel or any Court-appointed notice provider and/or the Claims Administrator and shall not be disclosed except in accordance with the Settlement Agreement, the Distribution Protocol and orders of the Federal Court. If this Settlement Agreement is terminated, all information provided by a Settling Defendant shall be returned to it and no record of the information so provided shall be retained by Class Counsel or any Court-appointed notice provider and/or the Claims Administrator in any form whatsoever.

(6) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to section 10.3(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this section shall not be affected by the release provisions contained in section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this section 10.3 shall cease when all settlement funds have been distributed.

(7) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this section 10.3 and make no representation or admission that the persons listed are Settlement Class members.

SECTION 11 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel may seek the Federal Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.

(2) Class Counsel reserve the right to bring motions to the Federal Court for reimbursement out of the Trust Account for any future Class Counsel Disbursements.

11.2 Responsibility for Fees, Disbursements and Taxes

(1) The Releasees shall not be liable for any Class Counsel Fees, Class Counsel Disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class, any amounts to which a Class Proceedings Fund, Law Foundation or the Fonds d'aide in Quebec may be entitled, or any lien of any Person on any payment to any Settlement Class member from the Settlement Amount.

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11.3 Administration Expenses

(1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(2) Class Counsel shall pay the costs of the notices required by section 9.1(1) and translation costs, if any, from the Trust Account, as they become due. Subject to section 5.2(2), the Releasees shall not have any responsibility for the costs of the notices or administration of the Settlement Agreement.

SECTION 12 – MISCELLANEOUS

12.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the Federal Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

12.2 Headings, etc.

(1) In this Settlement Agreement:

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

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

12.3 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

(a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

(b) only in the case where the time for doing an act expires on a holiday as "holiday" is defined in the *Federal Courts Rules*, the act may be done on the next day that is not a holiday.

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12.4 Ongoing Jurisdiction

(1) The Federal Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class, Settling Defendants, and Releasees named as Defendants attorn to the jurisdiction of the Federal Court for such purposes and no other purpose. Issues related to the administration of the Settlement Agreement, and the Trust Account shall be determined by the Federal Court.

12.5 Governing Law

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

12.6 Entire Agreement

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

12.7 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Federal Court.

12.8 Binding Effect

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

12.9 Counterparts

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

12.10 Negotiated Agreement

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

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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 Transaction

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

12.12 Language

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

12.13 Recitals

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

12.14 Schedules

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

12.15 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 this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;

(c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

(d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms

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

12.16 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, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

12.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

Linda Visser and Bridget Moran
Siskinds LLP
275 Dundas Street, Unit 1
P.O. Box 2520, London ON N6B 3L1

Telephone: 519-660-7700
519-660-7842
Email: linda.visser@siskinds.com
bridget.moran@siskinds.com

Jean Marc Leclerc and Mohsen Seddigh
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416-572-7320
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mseddigh@sotos.ca

James Sayce and Adam Tanel
Koskie Minsky LLP
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Toronto, ON M5H 3R3

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416-595-2072
Email: jsayce@kmlaw.ca
atanel@kmlaw.ca

For the Cermaq Defendants:

Andrew Borrell and Alexandra Mitretodis
Fasken Martineau DuMoulin LLP
2900-550 Burrard Street
Vancouver, BC V6C 0A3

Telephone: 604-631-3195
604-631-3211

For the Grieg Defendants:

Nikiforos Iatrou, Gillian Kerr and Akiva Stern
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto, ON M5K 1E6

2024 FC 225 (CanLII)

Email: aborrell@fasken.com
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Telephone: 416-601-7642
416-601-8226
416-601-8910
Email: niatrou@mccarthy.ca
gkerr@mccarthy.ca
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For the Lerøy Defendants:

Sandra A. Forbes and Alisa McMaster
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Telephone: 416-863-5574
416-367-7466
Email: sforbes@dwpv.com
Amcmaster@dwpv.com

For the Mowi Defendants:

Robert Kwinter, Kevin MacDonald and Joe McGrade
Blake, Cassels & Graydon LLP
199 Bay Street, Suite 400
Toronto, ON M5L 1A9

Telephone: 416-863-3283
416-863-4023
416-863-4182
Email: Robert.kwinter@blakes.com
kevin.macdonald@blakes.com
joe.mcgrade@blakes.com

For the Nova Sea Defendant:

Subrata Bhattacharjee, Caitlin R. Sainsbury and Pierre N. Gemson
Borden Ladner Gervais LLP
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Telephone: 416-367-6371
416-367-6438
416-367-6324
Email: sbhattacharjee@blg.com
csainsbury@blg.com
pgemson@blg.com

For the SalMar Defendant:

Michael Eizenga and Ilan Ishai
Bennett Jones LLP
3400 One First Canadian Place
Toronto, ON M5X 1A4

Telephone: 416-777-4879
604-631-3211
Email: Eizengam@bennettjones.com
ishaii@bennettjones.com

For the Sjór Defendant:

David W. Kent, Samantha Gordon and
Guneev Bhinder
McMillan LLP
Brookfield Place, 181 Bay St., Suite 4400
Toronto, ON M5J 2T3

Telephone: 416-865-7143
416-865-7251
416-307-4067
Email: david.kent@mcmillan.ca
samantha.gordon@mcmillan.ca
guneev.bhinder@mcmillan.ca

2024 FC 225 (CanLII)

12.18 Date of Execution

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

IRENE BRECKON, GREGORY SILLS, CLIFFORD CHIN, GEORGES LANGIS AND GENEVIEVE CHABOT on their own behalf and on behalf of the Class, by Class Counsel:

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory:

Siskinds LLP

Name of Authorized Signatory: Jean-Marc Leclerc

Signature of Authorized Signatory:

Sotos LLP

Name of Authorized Signatory: James Sayce

Signature of Authorized Signatory:

Koskie Minsky LLP

CERMAQ CANADA LTD., CERMAQ GROUP AS, CERMAQ NORWAY AS, CERMAQ US LLC, by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Fasken Martineau DuMoulin LLP

2024 FC 225 (CanLII)

For the Sjór Defendant:

David W. Kent, Samantha Gordon and
Guneev Bhinder
McMillan LLP
Brookfield Place, 181 Bay St., Suite 4400
Toronto, ON M5J 2T3

Telephone: 416-865-7143
416-865-7251
416-307-4067
Email: david.kent@mcmillan.ca
samantha.gordon@mcmillan.ca
guneev.bhinder@mcmillan.ca

12.18 Date of Execution

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

IRENE BRECKON, GREGORY SILLS, CLIFFORD CHIN, GEORGES LANGIS AND GENEVIEVE CHABOT on their own behalf and on behalf of the Class, by Class Counsel:

Name of Authorized Signatory: ____________________

Signature of Authorized Signatory: ____________________
Siskinds LLP

Name of Authorized Signatory: ____________________

Signature of Authorized Signatory: ____________________
Sotos LLP

Name of Authorized Signatory: ____________________

Signature of Authorized Signatory: ____________________
Koskie Minsky LLP

Name of Authorized Signatory: ____________________

Signature of Authorized Signatory: ____________________
Siskinds Desmeules s.e.n.c.r.l.

CERMAQ CANADA LTD., CERMAQ GROUP AS, CERMAQ NORWAY AS, CERMAQ US LLC, by their counsel

Name of Authorized Signatory: Andrew Borrell

Signature of Authorized Signatory: ______________________
Fasken Martineau DuMoulin LLP

2024 FC 225 (CanLII)

GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., GRIEG SEAFOOD SALES NORTH AMERICA INCORPORATED (FORMERLY KNOWN AS OCEAN QUALITY NORTH AMERICA INC.), GRIEG SEAFOOD SALES PREMIUM BRANDS INC. (FORMERLY KNOWN AS OCEAN QUALITY PREMIUM BRANDS INC.), GRIEG SEAFOOD SALES USA INC. (FORMERLY KNOWN AS OCEAN QUALITY USA INC. by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
McCarthy Tétrault LLP

LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Davies Ward Phillips & Vineberg LLP

MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Blake, Cassels & Graydon LLP

NOVA SEA AS, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Borden Ladner Gervais LLP

SALMAR ASA, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Fasken Martineau DuMoulin LLP

GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., GRIEG SEAFOOD SALES NORTH AMERICA INCORPORATED (FORMERLY KNOWN AS OCEAN QUALITY NORTH AMERICA INC.), GRIEG SEAFOOD SALES PREMIUM BRANDS INC. (FORMERLY KNOWN AS OCEAN QUALITY PREMIUM BRANDS INC.), GRIEG SEAFOOD SALES USA INC. (FORMERLY KNOWN AS OCEAN QUALITY USA INC. by their counsel

Name of Authorized Signatory: Akiva Stern

Signature of Authorized Signatory: ______________________
McCarthy Tétrault LLP

LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Davies Ward Phillips & Vineberg LLP

MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Blake, Cassels & Graydon LLP

NOVA SEA AS, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Borden Ladner Gervais LLP

SALMAR ASA, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________

2024 FC 225 (CanLII)

Signature of Authorized Signatory: ______________________
Fasken Martineau DuMoulin LLP

2024 FC 225 (CanLII)

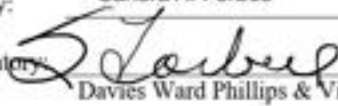
GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., GRIEG SEAFOOD SALES NORTH AMERICA INCORPORATED (FORMERLY KNOWN AS OCEAN QUALITY NORTH AMERICA INC.), GRIEG SEAFOOD SALES PREMIUM BRANDS INC. (FORMERLY KNOWN AS OCEAN QUALITY PREMIUM BRANDS INC.), GRIEG SEAFOOD SALES USA INC. (FORMERLY KNOWN AS OCEAN QUALITY USA INC. by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
McCarthy Tétrault LLP

LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., by their counsel

Name of Authorized Signatory: Sandra A. Forbes

Signature of Authorized Signatory: 
Davies Ward Phillips & Vineberg LLP

MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Blake, Cassels & Graydon LLP

NOVA SEA AS, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Borden Ladner Gervais LLP

SALMAR ASA, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________

2024 FC 225 (CanLII)

Signature of Authorized Signatory: ______________________
Fasken Martineau DuMoulin LLP

GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., GRIEG SEAFOOD SALES NORTH AMERICA INCORPORATED (FORMERLY KNOWN AS OCEAN QUALITY NORTH AMERICA INC.), GRIEG SEAFOOD SALES PREMIUM BRANDS INC. (FORMERLY KNOWN AS OCEAN QUALITY PREMIUM BRANDS INC.), GRIEG SEAFOOD SALES USA INC. (FORMERLY KNOWN AS OCEAN QUALITY USA INC. by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
McCarthy Tétrault LLP

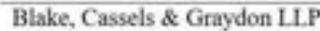
LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Davies Ward Phillips & Vineberg LLP

MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, by their counsel

Name of Authorized Signatory: Kevin MacDonald

Signature of Authorized Signatory: 
Blake, Cassels & Graydon LLP

NOVA SEA AS, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Borden Ladner Gervais LLP

SALMAR ASA, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________

2024 FC 225 (CanLII)

Signature of Authorized Signatory: ______________________
Fasken Martineau DuMoulin LLP

GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., GRIEG SEAFOOD SALES NORTH AMERICA INCORPORATED (FORMERLY KNOWN AS OCEAN QUALITY NORTH AMERICA INC.), GRIEG SEAFOOD SALES PREMIUM BRANDS INC. (FORMERLY KNOWN AS OCEAN QUALITY PREMIUM BRANDS INC.), GRIEG SEAFOOD SALES USA INC. (FORMERLY KNOWN AS OCEAN QUALITY USA INC. by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
McCarthy Tétrault LLP

LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Davies Ward Phillips & Vineberg LLP

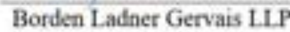
MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Blake, Cassels & Graydon LLP

NOVA SEA AS, by its counsel

Name of Authorized Signatory: Pierre N. Gemson

Signature of Authorized Signatory: 
Borden Ladner Gervais LLP

SALMAR ASA, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________

2024 FC 225 (CanLII)

Signature of Authorized Signatory: ______________________
Fasken Martineau DuMoulin LLP

GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., GRIEG SEAFOOD SALES NORTH AMERICA INCORPORATED (FORMERLY KNOWN AS OCEAN QUALITY NORTH AMERICA INC.), GRIEG SEAFOOD SALES PREMIUM BRANDS INC. (FORMERLY KNOWN AS OCEAN QUALITY PREMIUM BRANDS INC.), GRIEG SEAFOOD SALES USA INC. (FORMERLY KNOWN AS OCEAN QUALITY USA INC. by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
McCarthy Tétrault LLP

LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Davies Ward Phillips & Vineberg LLP

MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, by their counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Blake, Cassels & Graydon LLP

NOVA SEA AS, by its counsel

Name of Authorized Signatory: ______________________

Signature of Authorized Signatory: ______________________
Borden Ladner Gervais LLP

SALMAR ASA, by its counsel

Name of Authorized Signatory: Ilan Ishai

Signature of Authorized Signatory:

Bennett Jones LLP

SJÖR AS (FORMERLY KNOWN AS OCEAN QUALITY AS), by its counsel

Name of Authorized Signatory: Samantha Gordon, McMillan LLP

Signature of Authorized Signatory:

McMillan LLP

2024 FC 225 (CanLII)

SCHEDULE "A"

PROCEEDINGS

Proceeding	Plaintiffs	Defendants (Current and Former)
Federal Court File No. T-1664-19 (Federal Court File No. T-8-20 was consolidated with Federal Court File No. T-1664-19 on January 26, 2021)	Gregory Sills	Mowi ASA (FKA Marine Harvest ASA), Mowi USA, LLC (FKA Marine Harvest USA, LLC), Marine Harvest Canada Inc., Mowi Ducktrap, LLC, Grieg Seafood ASA, Grieg Seafood B.C. Ltd., Bremnes Seashore AS, Ocean Quality AS, Ocean Quality North America Incorporated, Ocean Quality USA Inc., Ocean Quality Premium Brands, Inc., SalMar ASA, Leroy Seafood Group ASA, Leroy Seafood AS, Leroy Seafood USA Inc., Scottish Sea Farms Ltd., Cermaq Group ASA, Cermaq Norway AS, Cermaq Canada Ltd., Nordlaks Holding AS, Nordlaks Oppdrett AS, Nova Sea AS, Alsaker AS and Alsaker Fjordbruk AS
Federal Court File No. T-8-20 (Federal Court File No. T-8-20 was consolidated with Federal Court File No. T-1664-19 on January 26, 2021)	Irene Breckon	Grieg Seafood ASA, Grieg Seafood BC Ltd., Lerøy Seafood Group ASA, Lerøy Seafood AS, Lerøy Seafood USA Inc., Marine Harvest Atlantic Canada Inc., Mowi ASA, Mowi Canada West Inc., Mowi Ducktrap, LLC, Mowi USA LLC, Ocean Quality AS, Ocean Quality North America Incorporated, Ocean Quality Premium Brands, Inc., Ocean Quality USA Inc., SalMar ASA and Scottish Sea Farms Ltd.
Supreme Court of British Columbia Vancouver Registry No. 211995	Clifford Chin	Alsaker AS, Alsaker Fjordbruk AS, Bremnes Seashore AS, Cermaq Canada Ltd., Cermaq Group AS, Cermaq Norway AS, Cermaq US LLC, Greig Seafood ASA, Grieg Seafood BC Ltd., Lerøy Seafood AS, Lerøy Seafood USA Inc., Marine Harvest Atlantic Canada Inc., Mowi ASA, Mowi Canada West Inc., Mowi Ducktrap, LLC, Mowi USA, LLC, Nordlaks Holding AS, Nordlaks Oppdrett AS, Nova Sea AS, Ocean Quality AS, Ocean Quality North America Incorporated, Ocean Quality Premium Brands, Inc., Ocean Quality USA

521325.00001/301446938.2

2024 FC 225 (CanLII)

-29-

Proceeding	Plaintiffs	Defendants (Current and Former)
		Inc., SalMar ASA and Scottish Sea Farms Ltd.
Court Supérieure du Québec District de Québec No: 200-06-000245-202	Georges Langis et Geneviève Chabot	Grieg Seafood ASA, Grieg Seafood BC Ltd., Lerøy Seafood Group ASA, Lerøy Seafood USA, Inc., Marine Harvest Atlantic Canada Inc., Mowi ASA, Mowi Canada West Inc., Mowi Ducktrap, LLC, Mowi USA, LLC, Ocean Quality AS, Ocean Quality North America Incorporated, Ocean Quality Premium Brands Inc., Ocean Quality USA, Inc., SalMar ASA and Scottish Sea Farms, Ltd.

2024 FC 225 (CanLII)

2024 FC 225 (CanLII)

SCHEDULE "B"

FEDERAL COURT

Court File No.: T-1664-19

Toronto, Ontario, [•]

PRESENT: The Honourable Justice Gascon

PROPOSED CLASS PROCEEDING

BETWEEN:

IRENE BRECKON and GREGORY SILLS

Plaintiffs

and

CERMAQ CANADA LTD., CERMAQ GROUP AS, CERMAQ NORWAY AS, CERMAQ US LLC, GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, NORDLAKS HOLDING AS, NORDLAKS OPPDRETT AS, NOVA SEA AS, OCEAN QUALITY AS, OCEAN QUALITY NORTH AMERICA INCORPORATED, OCEAN QUALITY PREMIUM BRANDS, INC., OCEAN QUALITY USA INC., and SALMAR ASA

Defendants

ORDER
Certification and Notice Approval

UPON MOTION made by the Plaintiffs for an Order approving the notices of settlement approval hearing ("**Notice of Certification and Settlement Approval Hearing**"), the plan of dissemination of said notices (the "**Notice Plan**") and certifying this Action as a class proceeding for settlement purposes only was heard by videoconference this day at [•].

AND UPON having reviewed the materials filed, including the settlement agreement dated [•] attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of counsel for the Parties;

AND UPON BEING ADVISED that the Plaintiffs and Settling Defendants (who comprise all of the defendants named in this Action) consent to this Order;

THIS COURT ORDERS that:

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1. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. This Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.

3. The class of "Settlement Class" is certified as follows:

   All Persons in Canada who purchased farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased or sold in Canada from April 10, 2013 to the date of this Order, except the Excluded Persons and any Opt-Out.

4. Irene Breckon and Gregory Sills are appointed as representative plaintiffs for the Settlement Class.

5. The following issue is common to the Settlement Class:

   Did the Settling Defendants conspire to fix, maintain, increase or control the price of Salmon directly or indirectly during the Class Period? If so, what damages, if any, did Settlement Class member suffer?

6. Putative Settlement Class members may opt-out of this Action by sending a written request to opt-out to Class Counsel on or before the Opt-Out Deadline. The written election to opt out must be signed by the Person or the Person's designee and must include the following information:

   (a) the Person's full name, current mailing and email address and telephone number;

   (b) if the Person seeking to opt out is a corporation, the name of the corporation and the position of the Person submitting the request to opt out on behalf of the corporation; and

   (c) a statement to the effect that the Person wishes to be excluded from the Action.

7. Where the postmark is not visible or legible, the request to opt out shall be deemed to have been postmarked seven (7) business days prior to the date that it is received by Class Counsel.

8. Any putative Settlement Class member who validly opts out of this Action shall have no further right to participate in the Action or to share in the distribution of any funds received as a result of the Settlement Agreement.

9. No further right to opt out of this Action will be provided.

10. Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendants a report containing the names of each Person who has validly and timely opted

2024 FC 225 (CanLII)

out of this Action and a summary of the information delivered by such Persons pursuant to paragraph 6 above.

11. This Order and any reasons given by the Court in connection with it and the certification of this Action for settlement purposes are without prejudice to the Settling Defendants' rights to contest certification or jurisdiction and/or to defend on the merits in respect of any other actions or proceedings, whether related or unrelated.

12. The Notice of Certification and Settlement Approval Hearing is hereby approved substantially in the form attached hereto as **Schedule "B"**.

13. The Notice Plan is hereby approved in the form attached hereto as **Schedule "C"**.

14. The Notice of Certification and Settlement Approval Hearing shall be disseminated in accordance with the Notice Plan.

15. This Order shall be set aside, declared null and void and of no force and effect in respect of the Settling Defendants on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

The Honourable Justice Gascon

2024 FC 225 (CanLII)

SCHEDULE "C"

FEDERAL COURT

Court File No.: T-1664-19

Toronto, Ontario, [●]

PRESENT: The Honourable Justice Gascon

PROPOSED CLASS PROCEEDING

BETWEEN:

IRENE BRECKON and GREGORY SILLS

Plaintiffs

and

CERMAQ CANADA LTD., CERMAQ GROUP AS, CERMAQ NORWAY AS, CERMAQ US LLC, GRIEG SEAFOOD ASA, GRIEG SEAFOOD BC LTD., LERØY SEAFOOD AS, LERØY SEAFOOD USA INC., MARINE HARVEST ATLANTIC CANADA INC., MOWI ASA, MOWI CANADA WEST INC., MOWI DUCKTRAP, LLC, MOWI USA, LLC, NORDLAKS HOLDING AS, NORDLAKS OPPDRETT AS, NOVA SEA AS, OCEAN QUALITY AS, OCEAN QUALITY NORTH AMERICA INCORPORATED, OCEAN QUALITY PREMIUM BRANDS, INC., OCEAN QUALITY USA INC., and SALMAR ASA

Defendants

ORDER
Settlement Approval

UPON MOTION made by the Plaintiffs for an Order approving the Settlement Agreement entered into with the Settling Defendants, and dismissing this action was heard this day at [●].

AND UPON being advised that the deadline for opting out of this Action has passed, and that there were [●] opt-outs;

AND UPON being advised that the deadline for objecting to the Settlement Agreement has passed and there have been [●] objections to the Settlement Agreement;

AND UPON being advised that the Parties consent to this Order;

AND UPON having reviewed the materials filed, including the settlement agreement dated [●] attached to this Order as **Schedule "A"** (the "**Settlement Agreement**"), and on hearing the submissions of counsel for the Parties;

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THIS COURT ORDERS that:

16. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

17. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

18. The Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

19. The Settlement Agreement is hereby approved pursuant to the *Federal Court Rules*, SOR/98-106, Rule 334.29 and shall be implemented and enforced in accordance with its terms.

20. This Order, including the Settlement Agreement, is binding upon each Settlement Class member, including those Persons who are minors or mentally incapable.

21. Upon the Effective Date, each Releasor shall not now or hereafter institute, prosecute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim, suit, complaint or demand against any Releasee or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, whether pursuant to any provincial or federal negligence acts or similar legislation or at common law or equity, in respect of any Released Claim, and are permanently barred and enjoined from doing so.

22. Upon the Effective Date, each Settlement Class member shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.

23. Upon the Effective Date, each Other Action commenced by any Settlement Class member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

24. Upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

25. Except as provided herein, this Order does not affect any claims or causes of action that Settlement Class members have or may have against any Person other than the Releasees.

26. No Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.

27. This Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

28. For purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

29. This Action, as well as the action commenced in Federal Court File No. T-8-20, which has been consolidated with this Action, are hereby dismissed, with prejudice and without costs. Once this Order is signed, a copy shall be entered in this Action, as well as in the action commenced in Federal Court File No. T-8-20.

30. The Parties may bring motions to the Federal Court for directions as may be required.

____

The Honourable Justice Gascon

2024 FC 225 (CanLII)

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SCHEDULE "D"

FARMED ATLANTIC SALMON CLASS ACTIONS

CANADIAN NOTICE PLAN – NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

1. For the purposes of this Notice Plan, the definitions set out in the Settlement Agreement apply to and are incorporated into this Notice Plan.

2. The proposed Notice Plan has been designed to provide the best notice practicable.

3. The Notice of Certification and Settlement Approval Hearing is attached as **Schedule "A1"**.

4. There will no other forms of notice other than what is provided for herein, except as agreed to by the Parties or as ordered by the Federal Court.

Direct Notice

4. Class Counsel and/or the Court-appointed notice provider will effectuate direct individual notice to the Persons listed below. Where an email address is available, the notice will be sent by email (in English and French). Where an email address is not available, the notice will be sent by direct mail. Where the address is in Quebec, the notice will be sent in English and French:

   (a) the direct purchaser customers of the Settled Defendants, to the extent such information was provided to Class Counsel and/or the Court-appointed notice provider in accordance with the terms of the Settlement Agreement;

   (b) anyone who has registered with Class Counsel to receive updates on the status of the litigation; and

   (c) 1,067 companies located in Canada and identified by Data Axle[1] as having corporate locations with 50 or more employees and/or individual locations with 100 or more employees and operating in the following business sectors: fish smoking & curing (manufacturers), fish packers (manufacturers), food-canned (manufacturers), canned & cured fish & seafoods (manufacturers), seafood packers (manufacturers), seafood – wholesale, fish and seafood brokers (wholesalers), food service distributors (wholesalers), foods-carryout, restaurants, caterers, restaurant management, and grocers (retail), but excluding irrelevant categories such as pizza chains, bars or pubs, fast food chains, etc.

[1] Data Axle maintains a database of business records in Canada and the United States.

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5. Prior to mailing, Class Counsel and/or the Court-appointed notice provider will update the addresses provided by the Settled Defendants using the Canada Post National Change of Address database.

6. Class Counsel and/or the Court-appointed notice provider Administrator will track any returned undeliverable emails and will promptly send the notice by direct mail (where a mailing address is available).

7. Class Counsel and/or the Court-appointed notice provider Administrator will track any returned undeliverable mail by Canada Post and will promptly re-mail any returned with a forward address.

Indirect Notice

8. A press release will be jointly drafted and agreed to by the Parties and distributed (in English and French) nationwide to media outlets and publications through publication on Canada Newswire. A copy of the press release will also be sent directly to IntraFish. The press release will direct readers to Class Counsel's websites for additional information.

9. Class Counsel and/or the Court-appointed notice provider will provide a copy of the Notice of Certification and Settlement Approval Hearing to the following industry associations, in English and/of French, as appropriate, requesting voluntary distribution to their membership:

   (a) Canadian Federation of Independent Grocers;

   (b) Food, Health and Consumer Products of Canada;

   (c) Restaurants Canada; and

   (d) Food Processors of Canada.

10. Class Counsel will post a copy of the Notice of Certification and Settlement Approval Hearing (in English and French) on their respective websites and share the post through their social media accounts.

11. Online advertisements will be jointly drafted and agreed to by the Parties and posted online (in English and French) through advertisements posted over a two-month period on Facebook and Instagram.

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SCHEDULE "A1"

FARMED ATLANTIC SALMON CLASS ACTIONS

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

Read this Notice carefully, as it may affect your legal rights.

THIS NOTICE IS DIRECTED TO:

All persons in Canada who purchased farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased or sold in Canada from April 10, 2013 to [●] ("Settlement Class").

A. Nature of the Class Action

The plaintiffs commenced a proposed class proceeding in the Federal Court alleging that the Cermaq, Grieg, Lerøy, Mowi, Nova Sea, SalMar and Sjór defendants and unnamed co-conspirators participated in an unlawful conspiracy to fix, maintain, increase or control the price of farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon from April 10, 2013 onwards contrary to the *Competition Act*. The defendants have denied all liability for this conduct and asserted that their conduct was lawful. The Federal Court has not decided who is right. The plaintiffs and defendants have reached a proposed settlement to avoid the uncertainties, risks, and costs of further litigation. The representative plaintiffs and class counsel believe this settlement is in the best interests of the Settlement Class.

The class action was certified on behalf of the Settlement Class by the Federal Court by consent order of the Honourable Justice Gascon on [●], 2023. The certification is conditional on the settlement approval being granted by the Federal Court. Irene Breckon and Gregory Sills have been appointed as representative plaintiffs for the Settlement Class.

The Federal Court still has to decide whether to finally approve the settlement. Payments to eligible Settlement Class members will be made only after the Federal Court approves the Settlement and after any appeals are resolved, and after the Federal Court approves a distribution plan to distribute the settlement funds.

B. Proposed Settlement

A proposed settlement has been reached with all defendants in this action. If the proposed settlement is approved, the defendants will pay a total settlement amount of CAD $5,250,000 into a settlement fund. After deductions for administration expenses, class counsel fees and disbursements, and the amount owing to the Funder (see Section F below), the balance will be distributed to eligible Settlement Class members.

If the proposed settlement is approved, the settlement will resolve the class action for all Settlement Class members as against the defendants and a full release of all claims in the class

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action will be granted to the defendants. The settlement represents a resolution of disputed claims and the defendants do not admit any wrongdoing or liability.

C. Proposed Distribution of Settlement Funds

As part of the settlement approval hearing, the Federal Court will be asked to approve a protocol for the distribution of the settlement funds, plus interest, less Court-approved fees and expenses.

Recognizing that not all Settlement Class members are eligible to submit a claim, the proposed distribution protocol provides that a *cy pres* distribution in the amount of $250,000 will be made to Food Banks Canada.

The remaining settlement funds will be distributed to eligible claimants *pro rata* (proportionally), based on the value of their eligible purchases.

Only Settlement Class members who purchased more than $1 million of Salmon in Canada between April 10, 2013 and February 20, 2019 will be eligible to submit a claim. The value of a Settlement Class member's eligible purchases will be determined based on sales information provided by the defendants pursuant to the terms of the Settlement Agreement and/or information provided by the Settlement Class member as part of the claims process.

See the proposed distribution protocol online at www.siskinds.com/salmon for more information.

After the settlement and distribution protocol are approved, a further notice will be issued that will describe the process and deadline for applying to receive a payment.

D. Settlement Approval Hearing and Objecting to the Settlement

The settlement remains subject to approval by the Federal Court. The application for approval of the settlement will be heard by the Federal Court in the City of Toronto on [•] at [•]. At this hearing, the Federal Court will determine whether the settlement is fair, reasonable and in the best interests of the Settlement Class. The Federal Court will also be asked to determine whether the proposed distribution protocol is fair, reasonable and in the best interests of the Settlement Class.

Settlement Class members who do not oppose the settlement, the proposed distribution protocol and/or Class Counsel fees are not required to appear at the settlement approval hearing or take any other action at this time. Settlement Class members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

At the settlement approval hearing, the Federal Court will consider objections to the Settlement, the proposed distribution protocol and/or Class Counsel fees by individual Settlement Class members if the objections are submitted in writing, by prepaid mail to Siskinds LLP, Attn: Linda Visser 275 Dundas Street, Unit 1, P.O. Box 2520, London ON N6B 3L1 or email to salmon@siskinds.com postmarked **no later than [date - 10 days before the settlement approval hearing]**.

A written objection should include the following information:

a) the objector's name, current mailing address, telephone number, and email address;

b) the reason why the objector believes that they are a Settlement Class member;

c) a brief statement of the nature of and reasons for the objection; and

d) whether the objector intends to appear at the hearing in person or by counsel, and, if by counsel, the name, address, telephone number, and email address of counsel.

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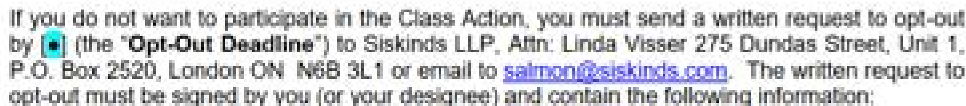
E. Excluding Yourself from the Settlement



If you do not want to participate in the Class Action, you must send a written request to opt-out by [●] (the "**Opt-Out Deadline**") to Siskinds LLP, Attn: Linda Visser 275 Dundas Street, Unit 1, P.O. Box 2520, London ON N6B 3L1 or email to salmon@siskinds.com. The written request to opt-out must be signed by you (or your designee) and contain the following information:

a) your full name, current mailing and email address, and telephone number;

b) if the opt-out is a corporation, the name of the corporation and the position of the person submitting the request to opt-out on behalf of the corporation; and

c) a statement to the effect that you wish to be excluded from the Federal Court Action.

If you opt-out by the Opt-Out Deadline, you may be able to bring your own lawsuit against the defendants, but you will not be entitled to participate in the Settlement.

All Settlement Class members will be bound by the terms of the Settlement, unless they opt-out of this class action.

You can only object to the Settlement if you do not exclude yourself from the Settlement. If you exclude yourself from the Settlement, you have no standing to object because the Settlement no longer affects you.

F. The Lawyers Representing You

The law firms Siskinds LLP, Sotos LLP, Koskie Minsky LLP and Siskinds Desmeules represent the Settlement Class. They can be reached at:

Linda Visser and Bridget Moran
Siskinds LLP, 275 Dundas Street, Unit 1 P.O. Box 2520, London ON N6B 3L1
1-800-461-6166
linda.visser@siskinds.com
bridget.moran@siskinds.com

Jean Marc Leclerc and Mohsen Seddigh
Sotos LLP, 180 Dundas Street West, Suite 1200, Toronto, ON M5G 1Z8
416-977-6857
416-572-7320
jleclerc@sostosllp.com
mseddigh@sotos.ca

James Sayce and Adam Tanel
Koskie Minsky LLP, 20 Queen Street West, Suite 900, Box 52, Toronto, ON M5H 3R3
416-542-6298
416-595-2072
jsayce@kmlaw.ca
atanel@kmlaw.ca

Chloe Fraucher-Lafrance
Siskinds Desmeules s.e.n.c.r.l.
43 Rue Buade, Bur 320
Quebec City, QC G1R 4A2
1 (877) 735-3842
chloe.faucher-lafrance@siskinds.com

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If you wish to remain a Settlement Class member, you do not need to hire your own lawyer because Class Counsel is working on your behalf. You do not have to pay Class Counsel out-of-pocket. Class Counsel will collectively be asking that the Federal Court approve legal fees up to 25% of the settlement funds, plus disbursements and applicable taxes. Any approved legal fees and disbursements will be paid out of the settlement fund.

The Plaintiff and Claims Funding Australia Pty Ltd as trustee for the Claims Funding Australia Discretionary Trust ("Funder") entered an agreement pursuant to which the Funder paid the disbursements in this action. If approved by the Court, the amount owing to the Funder ($1,312,500) will be deducted from the amounts to be distributed to Settlement Class members.

Class Counsel will also be asking that the Federal Court approve an honorarium for the two representative plaintiffs in the amount of $500 each. Any approved honorarium will be paid out of the settlement fund.

If you wish to pursue your own case separate from this one, or if you exclude yourself from the class, these lawyers will no longer represent you. You may need to hire your own lawyer if you wish to pursue your own lawsuit against the defendants.

G. <u>More Information</u>

This notice is given to you on the basis that you may be a Settlement Class member whose rights could be affected by the class action. This notice should not be understood as an expression of any opinion of the Federal Court as to the merits of any claim or defences asserted in the class action. Its sole purpose is to inform you of the class action so that you may decide what steps to take in relation to it.

This notice contains a summary of the class action and the settlement. Further details regarding the class action and the settlement can be found on the following website: [•].

If you have questions that are not answered online, please contact the appropriate class counsel identified above.

This notice contains a summary of some of the terms of the settlement agreement. If there is a conflict between the provisions of this notice and the settlement agreement, including the schedules to the settlement agreement, the terms of the settlement agreement and/or the Court orders shall prevail.

DO NOT CONTACT THE COURT FOR INFORMATION.

THIS NOTICE HAS BEEN APPROVED BY THE FEDERAL COURT OF CANADA

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ANNEX "B"

SCHEDULE B

DISTRIBUTION PROTOCOL
IN THE MATTER OF THE SALMON PRICE FIXING CLASS ACTION

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DEFINITIONS

1. Unless otherwise defined in this distribution process protocol ("Distribution Protocol"), all other capitalized terms used herein shall have the same meaning as in the Settlement Agreement executed between the parties dated _____ ("Settlement Agreement").

2. For the purpose of this Distribution Protocol:

   (a) ***Claim Form*** means the online form that a Settlement Class member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.

   (b) ***Claims Filing Deadline*** means the date by which Claim Forms must be submitted online in order for Settlement Class members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the Notice of Settlement Approval is disseminated.

   (c) ***Direct Settlement Benefits*** means the Net Settlement Amount, after deduction of the *cy-pres* allocation, available for distribution to eligible Settlement Class Members as described in paragraph 9.

   (d) ***Net Settlement Amount*** mean the aggregate of the Settlement Amount recovered pursuant to the Settlement Agreement, plus any accrued interest, less:

      (i) Class Counsel Fees and Class Counsel Disbursements as approved by the Federal Court;

      (ii) Administration Expenses;

      (iii) the entitlements of the litigation funder, Claims Funding Australia Pty Ltd.;

      (iv) all taxes (including interest and penalties) accruable with respect to the income earned by the Settlement Amount; and

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(v) any other deductions approved by the Federal Court.

(e) ***Salmon Purchases*** means the sale price paid by a Settlement Class member for farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased in Canada between April 10, 2013 and February 20, 2019, less any rebates or discounts, delivery or shipping charges, and taxes.

GENERAL PRINCIPLES OF THE ADMINISTRATION

3. The procedures set forth herein are intended to govern the administration of the Settlement Agreement. The procedures are intended to be expeditious, cost effective and "user-friendly", and to minimize Administration Expenses and the burden on Settlement Class members.

4. The administration shall:

   (a) be carried out by Class Counsel acting as the claims administrator;

   (b) implement and conform to the Settlement Agreement, orders of the Courts and this Distribution Protocol;

   (c) employ secure, paperless, web-based systems with electronic filing and record-keeping wherever possible; and

   (d) rely on the sales information provided by the Defendants wherever possible.

5. Settlement Class members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their purchases of Salmon, unless by such proceedings or private out-of-class settlements the Settlement Class member's claim was released in its entirety, in which case the Settlement Class member shall be deemed ineligible for any further compensation.

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DISTRIBUTION OF NET SETTLEMENT FUNDS

***Cy Près* Distribution**

6. Subject to paragraph 7, indirect compensation in the amount of $250,000 will be provided for the benefit of those Settlement Class members who are not eligible for direct payment through a *cy près* payment to Food Banks Canada. The $250,000 *cy près* payment shall be made from the Net Settlement Amount.

7. The *cy pres* payment shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (2°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount payable to the Fonds d'aide aux actions collectives, 23% of the *cy pres* payment will be notionally allocated to Quebec.[1]

8. The *cy près* funds must be used for the purposes disclosed in the proposal submitted to Class Counsel, and Food Banks Canada must report to Class Counsel on how the monies have been used.

Direct Settlement Benefits Available to Settlement Class Members

9. The Direct Settlement Benefits will be distributed to qualifying Settlement Class members *pro rata* (proportionally) based on the volume of the qualifying Settlement Class member's Salmon Purchases as against the total volume of all qualifying Settlement Class members' Salmon Purchases.

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[1] 23% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

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10. The amount of Settlement Class members' Salmon Purchases will be finally determined by Class Counsel, with no right of appeal or review, based on purchase information submitted by the Settlement Class member, or where available, sales data provided by the Defendants pursuant to the terms of the Settlement Agreement.

11. In order to apply for Direct Settlement Benefits, Settlement Class members must prove Salmon Purchases of at least CAD$1,000,000.

12. The value of a Settlement Class Member's Salmon Purchases will be converted from the original currency to CAD, at the average Bank of Canada rate for that currency between April 10, 2013 and February 20, 2019.

Directions from the Federal Court

13. Class Counsel can seek directions from the Federal Court with respect to the distribution of the Net Settlement Funds to ensure a fair and cost-effective distribution of the Net Settlement Funds.

THE CLAIMS PROCESS

Online Claims Portal

14. Class Counsel shall create an online claims process that Settlement Class Members can access in order to file a Claim.

15. The online claims process shall contain a link to the Claim Form, in accordance with paragraph 16 below.

The Claim Form

16. The Claim Form shall require Settlement Class members to provide:

(a) the Settlement Class member's name and contact information;

(b) where the Defendants have provided intelligible purchase information in respect of a Settlement Class member, no further information is required in respect of those purchases;

(c) where the Defendants have not provided intelligible purchase information in respect of a Settlement Class member and/or the Settlement Class member is claiming for additional purchases not disclosed in the Defendants' purchase information, the Settlement Class member must: (1) disclose the value of its Salmon Purchases in Canadian dollars; and (2) provide electronic transactional data between April 10, 2013 to February 20, 2019 that discloses: (i) the date of purchase; (ii) the dollar value of the purchase, excluding any delivery or shipping charges and taxes; (iii) the currency in which the purchase was made; (iv) any rebates or discounts; and (v) product description in sufficient detail to readily identify the product being purchased. If electronic transactional data is not available, the Settlement Class member should contact Class Counsel for alternative forms of proof of purchase;

(d) disclosure about whether the Settlement Class member or any entity related to the Settlement Class member has received compensation through other proceedings or private out-of-class settlements and/or provided a release in respect of any of the Settlement Class member's Salmon Purchases, and provide details of the compensation received and the claims released;

(e) if the Claim is submitted by a related entity (i.e., a parent company claiming on behalf of a subsidiary or affiliate), the related party must provide a signed authorization in the form attached hereto as Schedule "A" from that Settlement Class member at the time the Claim is filed;

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(f) if the Claim is submitted by a third-party on behalf of a Settlement Class member (i.e., a third-party claims services or a lawyer of their own choosing), the third-party must provide a signed authorization in the form attached hereto as Schedule "B" from that Settlement Class member at the time the Claim is filed;

(g) authorization for the Class Counsel to contact the Settlement Class member or its representative, as Class Counsel deems appropriate, for more information; and

(h) a declaration that the information submitted in the Claim Form is true and correct.

17. For the purposes of paragraph 16(b) and (c), Settlement Class Members for whom the Defendants have provided purchase information will receive a letter setting out the Settlement Class member's purchase information and/or indicating that the Defendants have not provided intelligible purchase information with respect to the Settlement Class member. Settlement Class Members will have the option to confirm the purchase information submitted or submit additional information as required by paragraph 16(b).

Assistance in Filing a Claim

18. Settlement Class members can contact Class Counsel, at no charge, with questions about how to complete a Claim Form.

19. Settlement Class members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claim Form. If a Settlement Class member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class member will be responsible for any and all expenses incurred in doing so.

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Deficiencies

20. Where a Claim Form contains minor omissions or errors, Class Counsel shall correct such omissions or error if the information necessary to correct the error or omission is readily available to Class Counsel.

21. Class Counsel may make inquiries of the Settlement Class member or its representative in the event of any concerns, ambiguities, or inconsistencies in the Claim Form, and shall provide the Settlement Class member an opportunity to make such corrections as necessary.

22. Settlement Class members shall have fourteen (14) days from the day upon which Class Counsel notifies the Settlement Class member of concerns, ambiguities or inconsistencies in the Claim Form to make the necessary corrections to their Claim Form.

Adjustments to Claims Process and Extension of the Claims Filing Deadline

23. Class Counsel may extend the Claims Filing Deadline and/or the deadline for responding to deficiencies, or otherwise adjust the claims process. Class Counsel may extend the Claims Filing Deadline and/or the deadline for responding to deficiencies and/or adjust the claims process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Funds and it is in the best interests of the Settlement Class members to do so.

Class Counsel's Decision

24. In respect of each Settlement Class member who has filed a Claim Form in accordance with this Distribution Protocol, Class Counsel shall:

    (a) determine whether the Settlement Class member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the Settlement Agreement, orders of the Federal Court and this Distribution Protocol;

(b) determine the total quantum of the Settlement Class member's Salmon Purchases, based on Settlement Class members' submitted purchase information and sales data received from the Defendants; and

(c) determine the Settlement Class member's *pro rata* entitlement to the Net Settlement Funds.

25. Class Counsel's decision will be final and binding upon the Settlement Class member and shall not be subject to any right of appeal or review.

Payment of Settlement Benefits

26. As soon as practicable after the claims evaluations are completed (and prior to the distribution of the Decision Notices), Class Counsel shall determine the particulars of the proposed distribution to each eligible Settlement Class Member.

27. Class Counsel shall pay approved claims as expeditiously as possible. Payments will be issued by cheque.

28. Along with the cheque, Class Counsel shall send a Decision Notice to the Settlement Class Member. The Decision Notice will advise the Settlement Class Member of Class Counsel's decision on the proposed distribution to that Settlement Class Member. There is no appeal or review of Class Counsel's decision, which is final and binding.

29. To the extent that the full Net Settlement Amounts are not paid out due to uncashed cheques, residual interest or otherwise:

(a) Subject to paragraph 30, if the amount is equal to or less than $20,000, such monies shall be paid *cy pres* to Food Banks Canada.

(b) If the amount is greater than $20,000, further direction of the Federal Court will be sought.

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30. The *cy pres* payment shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (2°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount payable to the Fonds d'aide aux actions collectives, 23% of the *cy pres* payment will be notionally allocated to Quebec.[2]

CLASS COUNSEL'S DUTIES AND RESPONSIBILITIES AS CLAIMS ADMINISTRATOR

Supervisory Powers of the Federal Court

31. Class Counsel shall administer the Settlement Agreement and this Distribution Protocol under the ongoing authority and supervision of the Federal Court.

Investment of Settlement Funds

32. The Settlement Amounts shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution.

Communication, Languages and Translation

33. All communications from Class Counsel to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

Undeliverable Mail

34. Class Counsel shall have no responsibility for locating Settlement Class Members for any mail returned to Class Counsel as undeliverable.

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[2] 23% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

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35. Class Counsel shall have the discretion, but is not required to reissue a payment to a Settlement Class Member that was returned as undeliverable, under such policies and procedures as Class Counsel deems appropriate. Any costs associated with locating current address information for the Settlement Class Member or reissuing payment shall be deducted from that Settlement Class Member's settlement benefits.

Settlement Expenses

36. Class Counsel will be entitled to charge the Settlement Fund expenses associated with administering the Settlement Fund, including but not limited to expenses such as postage and cheque expenses, but not for their time or any staff time spent on administration.

Fraudulent Claims

37. Class Counsel shall take reasonable steps to detect possible fraudulent conduct in respect of claims made under the Settlement Agreement. Class Counsel can reject a claim, in whole or in part, where, in Class Counsel's view, the Settlement Class Member has submitted false information or has otherwise engaged in fraudulent conduct.

Taxes

38. Class Counsel shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds and shall pay any taxes imposed on such monies out of the Net Settlement Funds.

Reporting

39. Class Counsel shall provide any reports regarding the administration of the Settlement requested by the Federal Court.

Preservation and Disposition of Claim Submissions

40. Class Counsel shall preserve, in hard copy or electronic form, as the Class Counsel deems appropriate, Claim Forms, documents relating to the Claim Forms, and documents relating to the claims administration, including customer and sales information provided

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by the Defendants, until three (3) years after all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy such documents by shredding, deleting, or such other means as will render the materials permanently illegible, except to the extent that such documentation is required for tax or regulatory purposes.

Assistance to Class Counsel

41. Class Counsel shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement and this Distribution Protocol, provided that related expenses are approved by the Federal Court in advance.

Confidentiality

42. All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Class Counsel pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreement, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreement. The information provided by the Defendants or Settlement Class Members is strictly private and confidential and will not be disclosed without the express written consent of the Defendant or Settlement Class Member, as the case may be, except in accordance with the Settlement Agreement, orders of the Federal Court and/or this Distribution Protocol.

Schedule "A" – Template Authorization for Claims Filed by Related Entities on behalf of a Settlement Class Member

This Schedule is to be completed only if the Claim is being submitted by a parent company claiming on behalf of a subsidiary or affiliate.

Contact Information for individual completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I ____ [*name of Settlement Class member*] authorize ____ [*name of representative*] to file a claim in the Canadian Farmed Atlantic Salmon Class Action Distribution on my behalf.

I understand that all communications relating to the claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at _________________________________ [*name of city*], in the Province of ____________________, this ____day of ____________________, 2024.

____
Name

____
Signature

I have the authority to bind the corporation

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Schedule "B" - Template Authorization for Claims Filed by a Representative (including a third-party claims service or lawyer of their own choosing) on behalf of a Settlement Class member

Contact Information for individual completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I, ____ [*name of Settlement Class Member*] authorize ____________________________________[*name of representative*] to file a Claim in the Farmed Atlantic Salmon Class Action Distribution on my behalf.

I understand that the claims filing process was designed to enable Settlement Class members to file claims without the assistance of an agent and that the Settlement Class member can contact the Class Counsel at no charge to ask questions about the claims filing process.

I have reviewed the information to be submitted by my representative as part of the claim Form, including the value of my Salmon Purchases. I understand that my representative will be claiming for Salmon Purchases in the amount of $______________________. I can attest based on personal knowledge that the information to be submitted by the representative, including the amount claimed for Salmon Purchases, accurately reflects my business records.

I understand that all communications relating to the claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at _________________________ [*name of city*], in the Province of __________, this _________day of __________________, 2024.

____
Name

____
Signature

I have the authority to bind the corporation

ANNEX "C"

SCHEDULE C

FARMED ATLANTIC SALMON CLASS ACTIONS

NOTICE PLAN – NOTICE OF SETTLEMENT APPROVAL & CLAIMS PROCESS

1. For the purposes of this Notice Plan, the definitions set out in the Settlement Agreement apply to and are incorporated into this Notice Plan.

2. The proposed Notice Plan has been designed to provide the best notice practicable.

3. The Notice of Settlement Approval is attached as **Schedule "A"**.

4. There will no other forms of notice other than what is provided for herein, except as agreed to by the Parties or as ordered by the Federal Court.

Direct Notice

5. Class Counsel will effectuate direct individual notice to the Persons listed below. Where an email address is available, the notice will be sent by email (in English and French). Where an email address is not available, the notice will be sent by direct mail. Where the address is in Quebec, the notice will be sent in English and French:

   (a) the direct purchaser customers of the Settled Defendants, to the extent such information was provided to Class Counsel in accordance with the terms of the Settlement Agreement;

   (b) anyone who has registered with Class Counsel to receive updates on the status of the litigation; and

   (c) 1,067 companies located in Canada and identified by Data Axle[1] as having corporate locations with 50 or more employees and/or individual locations with 100 or more employees and operating in the following business sectors: fish smoking & curing (manufacturers), fish packers (manufacturers), food-canned (manufacturers), canned & cured fish & seafoods (manufacturers), seafood packers (manufacturers), seafood – wholesale, fish and seafood brokers (wholesalers), food service distributors (wholesalers), foods-carryout, restaurants, caterers, restaurant management, and grocers (retail), but excluding irrelevant categories such as pizza chains, bars or pubs, fast food chains, etc.

6. Class Counsel will track any returned undeliverable emails and will promptly send the notice by direct mail (where a mailing address is available).

7. Class Counsel will track any returned undeliverable mail by Canada Post and will promptly re-mail any returned with a forward address.

[1] Data Axle maintains a database of business records in Canada and the United States.

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Indirect Notice

8. A press release will be jointly drafted and agreed to by the Parties and distributed (in English and French) nationwide to media outlets and publications through publication on Canada Newswire. A copy of the press release will also be sent directly to IntraFish. The press release will direct readers to Class Counsel's websites for additional information.

9. Class Counsel will provide a copy of the Notice of Settlement Approval to the following industry associations, in English and/of French, as appropriate, requesting voluntary distribution to their membership:

   (a) Canadian Federation of Independent Grocers;

   (b) Food, Health and Consumer Products of Canada;

   (c) Restaurants Canada; and

   (d) Food Processors of Canada.

10. Class Counsel will post a copy of the Notice of Settlement Approval (in English and French) on their respective websites and share the post through their social media accounts.

ANNEX "D"

SCHEDULE D

FARMED ATLANTIC SALMON CLASS ACTIONS

NOTICE OF SETTLEMENT APPROVAL & CLAIMS PROCESS

Read this Notice carefully, as it may affect your legal rights.

THIS NOTICE IS DIRECTED TO:

All persons in Canada who purchased farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon purchased or sold in Canada from April 10, 2013 to February 20, 2019, except for any persons who has validly opted-out of the class action (the "Settlement Class").

This notice relates to the approval of the Settlement Agreement and the process for applying for settlement funds.

A. SETTLEMENT APPROVAL

A settlement has been reached with all defendants in this action. The action raised allegations that the defendants and unnamed co-conspirators participated in an unlawful conspiracy to fix, maintain, increase or control the price of farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon from April 10, 2013 onwards contrary to the *Competition Act*.

On ● [DATE], the Federal Court of Canada ("Federal Court") approved the Settlement Agreement as being fair, reasonable and in the best interest of class members. The Federal Court also approved payment of Class Counsel fees and disbursements.

The settlement resolves the class action for all Settlement Class members as against the defendants and fully releases the defendants of all claims in the class action. The settlement represents a resolution of disputed claims and the defendants do not admit any wrongdoing or liability.

After deducting Court-approved fees and other expenses, there is approximately CAD $2.36 million will be distributed to eligible Settlement Class members either directly, or indirectly, through a *cy pres* distribution to Food Banks Canada.

B. DISTRIBUTION OF SETTLEMENT FUNDS

As part of the settlement approval hearing, the Federal Court approved the protocol for the distribution of the net settlement fund (i.e., the remaining settlement funds after deductions of the above-mentioned items in Section A).

Only Settlement Class members who purchased more than CAD $1 million of Salmon in Canada between April 10, 2013 and February 20, 2019 will be eligible to submit a claim. The value of a Settlement Class member's eligible purchases will be determined based on sales information provided by the defendants pursuant to the terms of the Settlement Agreement and/or information provided by the Settlement Class member as part of the claims process.

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Recognizing that not all Settlement Class members are eligible to submit a claim, the proposed distribution protocol provides that a *cy-pres* distribution in the amount of CAD $250,000 will be made to Food Banks Canada.

The remaining net settlement funds of approximately CAD $2.11 million will be distributed to eligible claimants *pro rata* (proportionally), based on the value of their eligible purchase.

The compensation amount payable to individual Settlement Class members cannot be reliably estimated at this time because this will depend on the number and value of claims filed. Notices will be sent directly to over 1,000 companies that may qualify for settlement funds.

The distribution protocol is posted online at www.siskinds.com/salmon.

C. SUBMITTING A CLAIM

To be entitled to payment pursuant to the Settlement, Settlement Class members must file a claim on or before the Claims Deadline of • [DATE]. The Claims Form, along with detailed instructions on how to complete the form can be found here: • [LINK TO ONLINE CLAIMS PORTAL].

You may also request a Claim Form by emailing salmonclassaction@kmlaw.ca.

You may also contact Class Counsel at salmonclassaction@kmlaw.ca if you require assistance with completing the claim documentation.

D. WHO REPRESENTS ME

The law firms Siskinds LLP, Sotos LLP, Koskie Minsky LLP and Siskinds Desmeules represent the Settlement Class. They can be reached at:

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418-694-2009
1-877-735-3842

recours@siskinds.com

E. MORE INFORMATION

This notice contains a summary of the class action, the settlement and distribution protocol. Further details can be found on the following websites: https://www.siskinds.com/class-action/salmon/;

https://www.sotosclassactions.com/cases/farmed-atlantic-salmon/ or
https://kmlaw.ca/cases/farmed-atlantic-salmon-price-fixing-class-action/

If there is a conflict between the provisions of this notice and the Settlement Agreement or distribution protocol, the terms of the Settlement Agreement, distribution protocol, and/or the Court orders shall prevail.

DO NOT CONTACT THE COURT FOR INFORMATION.

**THIS NOTICE HAS BEEN APPROVED BY
THE FEDERAL COURT OF CANADA**

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1664-19
STYLE OF CAUSE:	IRENE BRECKON ET AL. v CERMAQ CANADA LTD. ET AL.
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN TORONTO, ONTARIO AND MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 30, 2023
ORDER AND REASONS:	GASCON J.
DATED:	FEBRUARY 9, 2024

APPEARANCES:

Jean-Marc Leclerc Sue Tan Judith Manger	FOR THE PLAINTIFFS
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Akiva Stern Nikiforos Iatrou	FOR THE DEFENDANTS GRIEG SEAFOOD ASA, GRIEG SEAFOOD B.C. LTD., OCEAN QUALITY AS, OCEAN QUALITY USA INC., OCEAN QUALITY NORTH AMERICA, OCEAN QUALITY PREMIUM BRANDS, INC.
Sandra Forbes Alisa McMaster	FOR THE DEFENDANTS LEROY SEAFOOD GROUP ASA, LEROY SEAFOOD USA, INC.
Robert Kwinter	FOR THE DEFENDANTS MOWI ASA, MOWI USA, LLC, MOWI DUCKTRAP, LLC, MARINE HARVEST CANADA

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Samantha Gordon Guneev Bhinder	FOR THE DEFENDANT SOJOR AS
Michael Eizenga Mehak Kawatra	FOR THE DEFENDANTS SALMAR ASA, SCOTTISH SEA FARMS LTD.

SOLICITORS OF RECORD:

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