

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) TUESDAY, THE 28TH DAY
JUSTICE BELOBABA) OF MAY, 2019

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,
PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBA
CORPORATION and AMERICAN MITSUBA CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER
- Fan Motors -
- Mitsuba Settlement Approval -**

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered into with Mitsuba Corporation and American Mitsuba Corporation (collectively, the “Settling Defendants”) and dismissing this action as against the Settling Defendants, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

AND ON READING the materials filed, including the settlement agreement dated February 19, 2019, attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no written objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of the Proceeding is July 8, 2019, and that as of May 28, 2019, no Persons have validly exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that 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 Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Proceeding.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act*, 1992 and shall be implemented and enforced in accordance with its terms.

6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class 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.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceeding is not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding or on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceeding).
13. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

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

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

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

15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Proceeding, and on at least twenty (20) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

(a) documentary discovery and affidavit(s) of documents from Settling Defendant(s) in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 194;

- (b) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;
 - (c) leave to serve request(s) to admit on Settling Defendant(s) in respect of factual matters; and/or
 - (d) the production of representative(s) of Settling Defendant(s) to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above by service on Counsel for the Settling Defendants.
18. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class has or may have in the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Proceeding against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
22. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void.

24. **THIS COURT ORDERS** that the Proceeding be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.
25. **THIS COURT ORDERS** that this Order and any reasons given by this Court in relation thereto, except as to paragraphs 12-17 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding as against the Non-Settling Defendants.



The Honourable Justice Belobaba

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 30 2019



PER/PAR

Schedule "A"

**CANADIAN FAN MOTORS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of February 19, 2019

Between

**SHERIDAN CHEVROLET CADILLAC LTD., THE PICKERING AUTO MALL LTD.
and FADY SAMAHA**

(the "Plaintiffs")

and

MITSUBA CORPORATION and AMERICAN MITSUBA CORPORATION

(the "Settling Defendants")

**CANADIAN FAN MOTORS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

TABLE OF CONTENTS

RECITALS	1
SECTION 1 – DEFINITIONS	3
SECTION 2 – SETTLEMENT APPROVAL.....	9
2.1 Best Efforts	9
2.2 Motion Seeking Approval of Notice and Certification	9
2.3 Motion Seeking Approval of the Settlement	9
2.4 Pre-Motion Confidentiality	10
SECTION 3 – SETTLEMENT BENEFITS	10
3.1 Payment of Settlement Amount	10
3.2 Taxes and Interest	11
3.3 Intervention in the U.S. Litigation	11
SECTION 4 – COOPERATION	12
4.1 Extent of Cooperation	12
4.2 Limits on Use of Documents and Information	22
SECTION 5 – OPTING OUT	24
5.1 Procedure	24
SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT	25
6.1 Right of Termination.....	25
6.2 If Settlement Agreement is Terminated	27
6.3 Allocation of Settlement Amount Following Termination	28
6.4 Survival of Provisions After Termination.....	28
SECTION 7 – RELEASES AND DISMISSALS.....	29
7.1 Release of Releasees	29
7.2 Release by Releasees	29
7.3 Covenant Not to Sue	29
7.4 No Further Claims.....	29
7.5 Dismissal of the Proceeding.....	30
7.6 Dismissal of Other Actions	30
7.7 Material Term	30
SECTION 8 – BAR ORDER AND RESERVATION OF OTHER CLAIMS.....	31

8.1	Bar Order	31
8.2	Claims Against Other Entities Reserved.....	34
8.3	Material Term	34
SECTION 9 – EFFECT OF SETTLEMENT.....		34
9.1	No Admission of Liability	34
9.2	Agreement Not Evidence	34
9.3	No Further Litigation	35
SECTION 10 – CERTIFICATION FOR SETTLEMENT ONLY		35
SECTION 11 – NOTICE TO SETTLEMENT CLASS.....		36
11.1	Notices Required.....	36
11.2	Form and Distribution of Notices	36
SECTION 12 – ADMINISTRATION AND IMPLEMENTATION		37
12.1	Mechanics of Administration.....	37
12.2	Information and Assistance.....	37
SECTION 13 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST		39
13.1	Distribution Protocol.....	39
13.2	No Responsibility for Administration or Fees	39
SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES.....		39
14.1	Responsibility for Fees, Disbursements and Taxes	39
14.2	Responsibility for Costs of Notices and Translation	39
14.3	Court Approval for Class Counsel Fees and Disbursements	40
SECTION 15 – MISCELLANEOUS		40
15.1	Motions for Directions.....	40
15.2	Headings, etc.....	40
15.3	Computation of Time.....	40
15.4	Ongoing Jurisdiction.....	41
15.5	Governing Law	41
15.6	Entire Agreement	41
15.7	Amendments	41
15.8	Binding Effect.....	42
15.9	Counterparts.....	42
15.10	Negotiated Agreement	42

15.11	Language.....	42
15.12	Transaction.....	43
15.13	Recitals.....	43
15.14	Schedules	43
15.15	Acknowledgements.....	43
15.16	Authorized Signatures.....	43
15.17	Notice	44
15.18	Date of Execution	44

**CANADIAN FAN MOTORS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

A. WHEREAS the Proceeding was commenced by the Plaintiffs in Ontario and the Plaintiffs claim class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceedings allege that some or all of the Releasees participated in an unlawful conspiracy with other manufacturers of Fan Motors to rig bids for, and to raise, fix, maintain or stabilize the prices of Fan Motors sold in Canada and elsewhere as early as January 1, 2000 until at least March 1, 2010, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 and the common law;

C. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct as alleged in the Proceeding, or in any Other Actions, and otherwise deny all liability and would have asserted a number of defences to the Proceeding and any Other Actions or otherwise if the Proceeding or Other Actions had proceeded against them;

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

E. WHEREAS, without limiting the generality of the foregoing, while Class Counsel has negotiated substantially similar language across the Canadian Settlement Agreements, the Settling Defendants have disputed their alleged involvement with respect to the manufacture and/or sale of various automotive parts and the Plaintiffs and the Settlement Class acknowledge and agree that nothing in this Settlement Agreement is intended to be or can be construed or interpreted as an admission or evidence of any such manufacture and/or sale, or that any of the Settling Defendants or Releasees have any sales, documents and/or information with respect to Fan Motors or any automotive part;

F. WHEREAS despite their belief that they are not liable in respect of the claims as 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 asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceeding and/or any Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the 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 is expressly provided in this Settlement Agreement with respect to the Proceeding;

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

I. WHEREAS as a result of these 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, subject to approval of the Court;

J. WHEREAS the Plaintiffs and Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, 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;

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

L. WHEREAS the Settling Defendants are prepared to submit to the jurisdiction of the Courts for the sole purpose of implementing this Settlement Agreement and contingent on approvals by the Courts as provided for in this Settlement Agreement, and the Settling Defendants shall reserve all of their existing procedural, substantive and jurisdictional rights and defences in the event that

this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

M. WHEREAS the Parties consent to certification of the Proceeding as a class proceeding and to the Settlement Class and the Common Issue in respect of the Proceeding solely for the purposes of implementing this Settlement Agreement and contingent on approvals by the Court 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; and

N. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class they seek to represent and will seek to be appointed representative plaintiffs in the Proceeding;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the Settlement Class they seek to represent, or the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

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

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) ***Automotive Vehicle*** means all automobiles, passenger cars, sport utility vehicles, vans, trucks, buses and, without limitation, any other type of vehicle containing Fan Motors.
- (3) ***Canadian Settlement Agreements*** means the settlement agreements reached between the Settling Defendants and the respective plaintiffs in the actions listed in Schedule C.

- (4) ***Certification Date*** means the later of the date on which an order granting certification of the Proceeding against one or more Non-Settling Defendants is issued by the Court and the time to appeal such certification has expired without any appeal being taken, or if an appeal is taken the date of the final disposition of such appeal.
- (5) ***Claims Administrator*** means the firm proposed by Class Counsel and appointed by the 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.
- (6) ***Class Counsel*** means Siskinds LLP and Sotos LLP.
- (7) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding as well as any adverse costs awards issued against the Plaintiffs in the Proceeding.
- (8) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.
- (9) ***Class Period*** means January 1, 2000 to the date of the order certifying the Proceeding for settlement purposes.
- (10) ***Common Issue*** means: Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Fan Motors in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (11) ***Counsel for the Settling Defendants*** means McMillan LLP.
- (12) ***Court*** means the Ontario Superior Court of Justice.
- (13) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (14) ***Defendants*** means the Persons named as defendants in the Proceeding and any Persons that are not Releasees that are added as defendants in the Proceeding in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.

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

(16) ***DOJ*** means the United States Department of Justice.

(17) ***Effective Date*** means the date when Final Orders have been received from the requisite courts approving all Canadian Settlement Agreements in accordance with their terms.

(18) ***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, and those Persons who validly and timely opt out of the Proceeding in accordance with the order of the Court.

(19) ***Fan Motors*** means small electric motors that are used to turn Radiator cooling fans in Automotive Vehicles.

(20) ***Final Order*** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.

(21) ***Non-Settling Defendant*** means any Defendant that is not a Settling Defendant or a Settled Defendant.

(22) ***Opt-Out Deadline*** means the date which is sixty (60) days after the date in the notice described in Section 11.1(1) is first published.

(23) ***Other Actions*** means actions or proceedings, excluding the Proceeding, relating to Released Claims and commenced by a Settlement Class Member either before or after the Effective Date, including, without limitation, the putative class action claims bearing case captions: *Dyck et. al. v. Denso Corporation et. al.*, S.K. Q.B. No. 500 of 2016; *Scott et. al. v. Denso Corporation et. al.*, M.B. Q.B. No. C116-01-00745; *Kett et. al. v. Denso Corporation et. al.*, B.C. S.C. No. S-1510785, Ontario Superior Court of Justice Court File No. CV-13-478182-00CP, British Columbia

Supreme Court File No. S-135610 (Vancouver Registry), Quebec Action Superior Court of Quebec (district of Québec), File No. 200-06-000160-138.

(24) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(25) **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.

(26) **Plaintiffs** means Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd. (incorrectly named in the style of cause as Pickering Auto Mall Ltd.) and Fady Samaha.

(27) **Proceeding** means the action commenced in the Court bearing Court File No. CV-14-506635-00CP.

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

(29) **Radiator** means a device designed to cool an automotive internal-combustion engine, constructed from thin-walled tubes through which water or coolant passes.

(30) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (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 without limitation 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, relating in any way to any conduct related to, arising from, or described in the Proceeding, prior to the Date of Execution on account of, arising out of, resulting from, or related to in any respect the purchase, sale, pricing, discounting, manufacturing, marketing, offering, or distributing of Fan Motors,

Radiators or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceeding and/or *Dyck et. al. v. Denso Corporation et. al.*, S.K. Q.B. No. 500 of 2016; *Scott et. al. v. Denso Corporation et. al.*, M.B. Q.B. No. C116-01-00745; *Kett et. al. v. Denso Corporation et. al.*, B.C. S.C. No. S-1510785, including, without limitation, any such claims which have been asserted or could have been asserted, directly or indirectly, whether in Canada or elsewhere, in respect of the purchase, sale, pricing, discounting, manufacturing, marketing, offering or distributing of Fan Motors or the purchase or lease of new Automotive Vehicles, including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the Date of Execution in respect of any agreement, combination or conduct that occurred prior to the Date of Execution. However, the Released Claims do not include: (i) claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, or breach of product warranty, or breach of contract claims or similar claims between the Parties that relate to Fan Motors but do not relate to alleged anti-competitive conduct; (ii) claims brought outside of Canada that relate to Fan Motors and fall within the scope of, and were resolved by, any U.S. Settlement Agreements; or (iii) claims concerning any automotive part other than Fan Motors or radiators, where such claims do not concern Fan Motors or radiators.

(31) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(32) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and

all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(33) ***Settled Defendants*** means any Defendant that has entered into a settlement agreement with the Plaintiffs in the Proceeding and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.

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

(35) ***Settlement Amount*** means CAD \$476,042.96.

(36) ***Settlement Class*** means all Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, Fan Motors; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle. Excluded Persons are excluded from the Settlement Class.

(37) ***Settlement Class Member*** means a member of the Settlement Class.

(38) ***Settling Defendants*** means MITSUBA Corporation and American MITSUBA Corporation.

(39) ***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*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

(40) ***U.S. Litigation*** means the consolidated class action proceedings, in which a plaintiff alleges that certain auto parts manufacturers rigged bids for and/or conspired to raise, fix, maintain or stabilize the prices of Fan Motors, in which the Settling Defendants are named as parties, currently pending in the United States District Court for the Eastern District of Michigan, Southern Division, including the actions under the captions *In re Automotive Parts Antitrust Litigation*, Fan

Motors Cases, Case No. 2:13-cv-02101 (MOB), *In re Automotive Parts Antitrust Litigation*, Fan Motors Cases, Case No. 2:13-cv-02102 (MOB), *In re Automotive Parts Antitrust Litigation*, Fan Motors Cases, Case No. 2:13-cv-02103 (MOB), and includes all such class actions transferred by the Judicial Panel for Multidistrict Litigation for coordination with those actions, all such class actions pending such transfer, and all such class actions that may be transferred for such coordination in the future.

(41) ***U.S. Protective Order*** means "Stipulation and Protective Order Governing the Production and Exchange of Confidential Information" issued on July 10, 2012 in *In re: Automotive Parts Antitrust Litigation*, Master File No. 12-MD-02311-MOB-MKM, Docket No. 200, and any order(s) entered that supplement, modify or supersede such order.

(42) ***U.S. Settlement Agreements*** includes any settlement reached with the Settling Defendants in the U.S. Litigation in respect of Fan Motors.

SECTION 2— SETTLEMENT APPROVAL

2.1 Best Efforts

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

2.2 Motion Seeking Approval of Notice and Certification

(1) The Plaintiffs shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order approving the notices described in Section 11.1(1) and certifying the Proceeding as a class proceeding as against the Settling Defendants (for settlement purposes only).

(2) The order approving the notices described in Section 11.1(1) and certifying the Proceeding for settlement purposes shall be substantially in the form attached as Schedule A.

2.3 Motion Seeking Approval of the Settlement

(1) The Plaintiffs shall make best efforts to file a motion before the 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 notices described in Section 11.1(1) have been published.
- (2) The order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.
- (3) This Settlement Agreement shall become final only upon the Effective Date.

2.4 Pre-Motion Confidentiality

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

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within sixty (60) days of the Date of Execution, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP for deposit into the Trust Account.
- (2) Payment of the Settlement Amount shall be made by wire transfer. At least thirty (30) days prior to the Settlement Amount becoming due, Siskinds LLP will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.
- (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 shall be all-inclusive of all amounts, including, without limitation, interest, costs, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.
- (5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Proceeding or any Other Actions.

(6) Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.

(7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) Siskinds LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the 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) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Siskinds LLP or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned 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 Siskinds LLP or the Claims Administrator.

3.3 Intervention in the U.S. Litigation

(1) The Settling Defendants shall not oppose any application that may be brought by or on behalf of the Plaintiffs following the Effective Date to intervene in the U.S. Litigation in order to

gain access to discovery documents and other documents and information that are relevant to the Proceeding and Fan Motors, provided that (a) the Plaintiffs agree to abide by the terms of the U.S. Protective Order or similar order(s) that have been issued that provide protection equivalent to that provided by the U.S. Protective Order and (b) such application is not otherwise inconsistent with the terms of this Settlement Agreement, including, without limitation, Section 4.1(13). However, it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application for intervention by or on behalf of the Plaintiffs.

SECTION 4 – COOPERATION

4.1 Extent of Cooperation

(1) Subject to the limitations set forth in this Settlement Agreement, the Settling Defendants agree to provide cooperation as set out in this Section of the Settlement Agreement provided, however, that neither the Settling Defendants nor any of the Releasees shall be required, and nothing in this Settlement Agreement shall be construed to require any Settling Defendant or Releasee, to perform any act, provide any cooperation, or to transmit, provide, disclose or produce any documents or information: (i) in violation of any law, regulation or rule of any jurisdiction, including without limiting the generality of the foregoing, any privacy or other laws, regulations or policies of Ontario or any other Canadian or foreign jurisdiction; (ii) in contravention of the terms of any order of a court or tribunal in any jurisdiction, including without limitation the U.S. Protective Order or similar order(s) in the Proceeding; (iii) in contravention of or inconsistent with an instruction or directive from, or any obligations to, the Canadian Competition Bureau, DOJ or any regulatory authority or governmental body in Canada, the United States or any other jurisdiction; (iv) subject to and/or inconsistent with any applicable solicitor client privilege, litigation privilege, settlement privilege, joint defence privilege or any other privilege, doctrine or law; (v) that would disclose or produce any information or documents they obtained on a privileged or co-operative basis from any Person or party to any action or proceeding who is not a Releasee; (vi) with regard to conduct or matters outside the scope of the Released Claims; or (vii) that is not within the possession, custody or control of the Settling Defendants.

(2) Before the expiration of sixty (60) days from the Effective Date, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, and subject to the other

provisions of this Settlement Agreement, legal counsel for the Settling Defendants will meet with Class Counsel in Canada or the United States, to provide a legal counsel proffer or hypothetical attorney proffer regarding Fan Motors. In no event shall the total proffer time for all of the Canadian Settlement Agreements, including question and answer sessions, exceed five (5) business days or thirty-five (35) hours of proffer time. One (1) of those five (5) proffer days for the Canadian Settlement Agreements may take place prior to the Effective Date and shall take place prior to February 22, 2019, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, subject to the other provisions of this Settlement Agreement. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by legal counsel for the Settling Defendants are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, except with the express consent of the Settling Defendants and their legal counsel or unless disclosure is ordered by a Court. Further, absent a Court order, Class Counsel will not attribute any information obtained from the proffer to the Settling Defendants and/or legal counsel for the Settling Defendants. Class Counsel agrees not to seek any such disclosure or attribution order and to provide advance written notice to Counsel for the Settling Defendants of any motion or application for such an order or orders. Subject to the foregoing and the other terms of this Settlement Agreement, Class Counsel may use information obtained from the proffer in the prosecution of the Proceeding, including during privileged and confidential settlement discussions for the purpose of advancing those discussions in the interests of the Settlement Class, except the prosecution of any claims against Releasees. The Settling Defendants agree to consider any reasonable request by Class Counsel to provide to Class Counsel the source Documents or other evidence that formed the basis of the proffer in advance of when such Documents and/or evidence would otherwise be due in accordance with the terms of this Settlement Agreement. The Parties agree that the proffer itself is settlement privileged, does not constitute evidence, that there shall be no audio or video recording or written transcription or record of any statements made or information by legal counsel for the Settling Defendants or any other Person at the proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. Class Counsel shall give Settling Defendants sufficient advance notice of any motion, petition or other request for entry of a court order allowing or compelling attribution of

any information obtained from the proffer, or disclosure of any information obtained from the proffer, to allow Settling Defendants to oppose the motion, petition or other request.

(3) At the request of Class Counsel after the Effective Date, the Settling Defendants shall provide to Class Counsel the following:

- (a) within ten (10) days of receiving the request, or at a time mutually agreed upon by the Parties, the Settling Defendants shall provide to Class Counsel a list of current and former employees, directors and officers of the Settling Defendants who were interviewed or prosecuted by the DOJ in connection with alleged price-fixing, bid rigging, and market allocation with respect to Fan Motors, who appeared before the grand jury in the DOJ's investigation into the alleged antitrust violations with respect to Fan Motors; and/or who were disclosed as having knowledge or information relating to the DOJ's investigation into alleged anti-trust violations with respect to Fan Motors. If a list is provided, it may at the election of the Settling Defendants be a single list for all Canadian Settlement Agreements without separation by product(s). The Settling Defendants make no representation that they have, can or will produce a list or an accurate or complete list, and it is understood and agreed that the failure to produce a list or an accurate or complete list shall not constitute a breach or violation of this Settlement Agreement;
- (b) within ninety (90) days of receiving the request, or at a time mutually agreed upon by the Parties, sales data for the production and sale of Fan Motors by the Settling Defendants from January 1, 1998 to December 31, 2013 produced by the Settling Defendants to the plaintiffs in the U.S. Litigation, if any, but only to the extent that it exists and is reasonably accessible in the Settling Defendants' existing live electronic databases. The Settling Defendants shall not be required to produce sales data where there is no reasonable likelihood that such sales were associated with Fan Motors that are the subject of claims of the Settlement Class in the Proceeding. Any sales data produced shall be delivered in electronic form (if reasonably possible, Microsoft Access or Microsoft Excel) or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel, and shall be delivered as a separate production from the documents to be delivered pursuant

to Sections 4.1(3)(d)-(h) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3). The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such sales data, or a complete set of such data, and it is understood and agreed that the failure to produce such data shall not constitute a breach or violation of this Settlement Agreement;

- (c) reasonable assistance to Class Counsel in understanding any sales data produced by the Settling Defendants pursuant to Section 4.1(3)(b) above, through Counsel for the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel;
- (d) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of any documents (as defined in Rule 30.01 of the *Ontario Rules of Civil Procedure*) regarding Fan Motors produced by the Settling Defendants to the plaintiffs in the U.S. Litigation, including any documents produced or made available by the Settling Defendants to the plaintiffs pursuant to the U.S. Settlement Agreements, including any pre-existing translations of those documents produced to the plaintiffs in the U.S. Litigation, and any pre-existing and non-privileged electronic coding produced to the plaintiffs in the U.S. Litigation, including where the documents previously produced in the U.S. Litigation contain bates stamps on their face the documents will be produced in the same format produced to the plaintiffs in the U.S. Litigation. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such documents, or a complete set of such documents, and it is understood and agreed that the failure to produce such documents shall not constitute a breach or violation of this Settlement Agreement.
- (e) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of transcripts and video recordings of any depositions or other testimony regarding Fan Motors of current or former employees, officers or directors of the Settling Defendants, including all exhibits,

taken in the U.S. Litigation, and any pre-existing translations of those transcripts to the extent produced to the plaintiffs in the U.S. Litigation, or, if later, within thirty (30) business days of said transcripts becoming available, but only to the extent permitted under any applicable protective order, including, without limitation, the U.S. Protective Order, and only to the extent the content of the transcript or video recording is relevant to the allegations in the Proceeding. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such transcripts or recordings, or a complete set of such transcripts or recordings, and it is understood and agreed that the failure to produce such transcripts or recordings shall not constitute a breach or violation of this Settlement Agreement;

(f) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of any responses to written interrogatories regarding Fan Motors by the Settling Defendants produced to the plaintiffs in the U.S. Litigation, including all schedules thereto and any pre-existing translations of those responses produced to the plaintiffs in the U.S. Litigation, but only to the extent permitted under any applicable protective order, including, without limitation, the U.S. Protective Order. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such responses to written interrogatories, or a complete set of such responses, and it is understood and agreed that the failure to produce such responses shall not constitute a breach or violation of this Settlement Agreement;

(g) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of any declarations regarding Fan Motors by the Settling Defendants produced to the plaintiffs in the U.S. Litigation, including all schedules thereto and any pre-existing translations of those declarations produced to the plaintiffs in the U.S. Litigation, but only to the extent permitted under any applicable protective order, including, without limitation, the U.S. Protective Order. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such declarations, or a complete set of such responses, and it is understood and agreed that the failure to produce such responses shall not constitute a breach or violation of this Settlement Agreement; and

- (h) within ninety (90) days of receiving the request, or at a time mutually agreed upon by the Parties, any cost information of the Settling Defendants regarding Fan Motors produced by the Settling Defendants to the plaintiffs in the U.S. Litigation, if any, but only to the extent that it exists and is reasonably accessible in the Settling Defendants' existing live electronic databases. The Settling Defendants shall not be required to produce such information where there is no reasonable likelihood that such information is associated with Fan Motors that are the subject of claims of the Settlement Class in the Proceeding. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such cost information, or a complete set of such information, and it is understood and agreed that the failure to produce such information shall not constitute a breach or violation of this Settlement Agreement.
- (4) Subject to the other terms of this Settlement Agreement, the obligation to produce documents pursuant to Sections 4.1(3)(b), (d), (e), (f), (g) and (h) shall be a continuing obligation to the extent additional documents are produced by the Settling Defendants in the U.S. Litigation following the initial productions pursuant to this Settlement Agreement.
- (5) All cooperation to be provided by Settling Defendants in the Proceeding, and in respect of proceedings involving products other than Fan Motors pursuant to other Canadian Settlement Agreements, shall be coordinated in a manner such that all unnecessary duplication and expense is avoided. Notwithstanding anything to the contrary in this Settlement Agreement, in any of the Canadian Settlement Agreements, or in any settlement agreement pertaining to products other than Fan Motors, including, without limitation, Section 4.1(8) of this Settlement Agreement, the Settling Defendants shall not be required to make available, in total for all of the Canadian Settlement Agreements, more than a total of eight (8) current or former officers, directors or employees of the Settling Defendants for personal interviews with Class Counsel and/or experts retained by Class Counsel.
- (6) After the Effective Date, the Settling Defendants shall not object to the Plaintiffs' participation through Class Counsel in the portion(s) of any interviews of the Settling Defendants' representatives that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreements that relate to the Proceeding, if and only to the extent such interviews relate to Fan Motors. The Settling

Defendants shall, where possible, provide notice to Class Counsel thirty (30) days before any such interview of representatives of the Settling Defendants that occurs in the U.S. Litigation pursuant to the U.S. Settlement Agreements. Nothing in this Settlement Agreement requires the Settling Defendants to provide notice to or allow the Plaintiffs, their counsel, or Class Counsel to participate in any interviews or any portion of any interviews that do not relate to the Proceeding and Fan Motors.

(7) It is understood that the proffer described in Section 4.1(2) might take place before the Effective Date. In such event:

- (a) any documents or information provided shall be subject to the terms and protections of this Settlement Agreement; and
- (b) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, all documents, data and information provided shall not be disclosed or used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Releasees as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Releasees or of the truth of any claims or allegations in the Proceeding, and such documents, data and information shall be treated as strictly confidential and privileged and shall not be discoverable by any Person or treated as evidence of any kind. Within thirty (30) days of such non-approval, termination or failure to take effect, Class Counsel shall return all copies of any documents, data or other information received during or in connection with these proffers, and destroy all copies of any notes or reports regarding documents, data or other information received during or in connection with these proffers, and shall provide written confirmation to the Settling Defendants of having done so.

(8) After the Effective Date, and subject to Section 4.1(5), in the event that any employee interviews provided for in the U.S. Settlement Agreements: (i) have already occurred; (ii) occur within six (6) months of the Effective Date, but Class Counsel is unable to attend or is not given reasonable advance notice of the time and location of the interviews; or (iii) do not occur within six (6) months of the Effective Date, the Settling Defendants shall, at the request of Class Counsel, upon at least sixty (60) days' notice, and subject to any legal restrictions, make reasonable efforts

to make available at a mutually convenient time, no more than two (2) current or former officers, directors or employees of the Settling Defendants for a personal interview regarding the allegations in the Proceeding regarding Fan Motors with Class Counsel and/or experts retained by Class Counsel. Class Counsel shall use reasonable efforts to limit this requirement to no more than a single current employee. The timing and arrangements for any such interview will be coordinated with any interviews that may be provided in respect of proceedings involving products where there is a Canadian Settlement Agreement with any of the Settling Defendants. Such personal interviews shall take place in a location acceptable to Class Counsel, the Settling Defendants and the interviewee, and shall not exceed one (1) business day or seven (7) hours for each individual. Costs incurred by, and the expenses of, the employees of the Settling Defendants in relation to such interviews shall be the responsibility of the Settling Defendants. Other costs, including without limitation costs of meeting rooms and the costs of an interpreter or otherwise related to foreign language translation in connection with interviews, shall be the responsibility of Class Counsel. If a current employee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use all reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The failure of any one or more proposed interviewees to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.

(9) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to produce at trial or otherwise in the Proceeding (including through affidavit evidence): (i) up to one (1) current representative qualified to establish for admission into evidence the Settling Defendants' sales data provided pursuant to Section 4.1(3)(b); (ii) up to one (1) current representative qualified to establish for admission into evidence any of the Settling Defendants' documents provided as cooperation pursuant to Section 4.1 of this Settlement Agreement that is reasonable and necessary for the prosecution of the Proceeding (with Class Counsel using its best efforts to authenticate documents for use at trial or otherwise without use of a live witness); and (iii) up to three (3) representatives qualified to establish for admission into evidence information provided in cooperation pursuant to Section 4 of this Settlement Agreement; provided that Class Counsel shall use all reasonable efforts to limit this requirement to a single witness. To the extent reasonably possible, a single witness will be used both to authenticate documents and provide the

information at trial or otherwise contemplated by this Section. The Settling Defendants make no representation that they have, can or will be able to produce a qualified representative, and it is understood and agreed that the failure to do so shall not constitute a breach or violation of this Settlement Agreement. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. To the extent any of the Settling Defendants' obligations under this Section 4.1 require any witnesses to travel from their principal place of residence to another location, Class Counsel shall reimburse the Settling Defendants for half of the reasonable travel expenses incurred by such representatives in connection with fulfilling the Settling Defendants' obligations under this Section. Such reimbursement of travel expenses as set forth herein shall not exceed CDN\$5,000 per person. In no event shall Class Counsel be responsible for reimbursing such persons for time or services rendered.

(10) The Settling Defendants are not required to create a privilege log. However, if a relevant privilege log was or is produced to the plaintiffs in the U.S. Litigation in connection with Fan Motors, the Settling Defendants, at the request of Class Counsel, will provide Class Counsel with a copy of any relevant part of such log or document.

(11) If any documents protected by any privilege, doctrine, law, regulation or rule of any jurisdiction, including without limiting the generality of the foregoing, any privacy or other laws, regulations or policies of Ontario, Quebec, British Columbia or any other Canadian or foreign jurisdiction, and/or subject to any other protection or non-disclosure obligation, including any order of a court or tribunal in any jurisdiction, are accidentally or inadvertently disclosed or produced, including without limitation if any documents are accidentally or inadvertently disclosed or produced in breach of any order or regulatory directive, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection in relation to such documents.

(12) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. The

Settling Defendants' cooperation obligations pursuant to this Section 4.1 are contingent upon the continuation of the Proceeding in relation to Fan Motors as against other Defendants, and for greater certainty shall cease upon the earlier of (i) the settlement, dismissal, discontinuance or abandonment of the Proceeding as against all Defendants; or (ii) the dismissal or withdrawal of motions to certify the Proceeding as a class proceeding.

(13) Subject to Sections 4.1(14) and (15), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees, whether in Canada or elsewhere and whether under the rules or laws of Ontario or any other Canadian or foreign jurisdiction.

(14) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceeding as against a specific current or former officer, director and/or employee of the Settling Defendants put forward to participate in employee interviews, or provide testimony at trial or otherwise pursuant to Sections 4.1(8), if that current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

(15) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move, on thirty (30) days' notice to the Settling Defendants, before the Court to enforce the terms of this Settlement Agreement, seek an order setting aside Section 4.1(13) and allowing the Plaintiffs to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained parties to the Proceeding, or seek such other remedy that is available at law.

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

(17) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceeding as presently filed.

(18) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of any of the documents or information described in this Section 4.1, or that they have, can or will produce a complete set of any of the documents or information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

4.2 Limits on Use of Documents and Information

(1) The Plaintiffs and Class Counsel agree they will not disclose or use the documents and information provided by the Settling Defendants and/or Counsel for the Settling Defendants except as permitted by this Settlement Agreement. It is understood and agreed that all documents and information made available or provided by the Settling Defendants and/or Counsel for the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceeding as against Persons who are not Releasees, and shall not be disclosed or used directly or indirectly for any other purpose, except to the extent that the documents or information are or become publicly available other than through breach of this Settlement Agreement or any applicable confidentiality or protective order. Even where disclosure is permitted by this Settlement Agreement, the Plaintiffs and Class Counsel shall not disclose such documents or information beyond what is reasonably necessary for the prosecution of the Proceeding or as otherwise required by law, except to the extent that the documents or information, are or become publicly available other than through breach of this Settlement Agreement or any applicable confidentiality or protective order. Except to the extent disclosure is expressly permitted by this Settlement Agreement, the Plaintiffs and Class Counsel shall make best efforts to ensure and maintain the confidentiality of the documents provided by the Settling Defendants and/or Counsel for the Settling Defendants, and of any work product of Class Counsel that discloses such documents and information.

(2) Class Counsel shall use best efforts to obtain a confidentiality order in the Proceeding in a form acceptable to the Settling Defendants, acting reasonably. Class Counsel shall use best efforts to obtain such confidentiality order prior to the Effective Date.

(3) If, to the extent permitted by this Settlement Agreement and any applicable confidentiality or protective order, the Plaintiffs intend to produce or file with the Court any documents or other information provided by the Settling Defendants and or Counsel for the Settling Defendants, and

there is not already a confidentiality order issued in the Proceeding that applies to the documents and information provided as cooperation by the Settling Defendants, Class Counsel shall, at least thirty (30) days in advance of the proposed production or filing, file a motion for a confidentiality order in accordance with Section 4.2(2). The Plaintiffs and Class Counsel shall not produce or file the confidential information or documents until the motion for a confidentiality order has been decided in the Proceeding and the appeal period has expired, except, so as not to delay prosecution of the Proceeding, Class Counsel may seek the consent of the Settling Defendants, which consent shall not be unreasonably withheld, to provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceeding, or a competitor of the Settling Defendants.

(4) In the event that a Person requests disclosure of documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants as cooperation under this Settlement Agreement which, at the time of being provided, were marked or designated by the Settling Defendants as "Confidential — Subject to Procedure Under Section 4.2(4) of the Settlement Agreement" and there is not already a confidentiality order issued in the Proceeding that applies to the documents and information provided as cooperation by the Settling Defendants, Class Counsel shall forthwith proceed with a motion for a confidentiality order in accordance with Section 4.2(2) to seek confidentiality protection over such documents and information and provide notice to the Settling Defendants promptly upon becoming aware of the request in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or documents until the motion has been decided and a final order has been issued requiring production of such documents or information, and all applicable appeal periods have expired, except: (i) to the extent such information or documents are or become otherwise publicly available except through breach of this Settlement Agreement, any applicable confidentiality order or similar obligation; (ii) as ordered to do so by a Court; and (iii) in the event that the Person making the

request is a Non-Settling Defendant who has brought a motion seeking to compel disclosure or production, so as not to delay prosecution of the Proceeding, Class Counsel may seek the consent of the Settling Defendants, which consent is not to be unreasonably withheld, to provide, on an interim basis, documents or information to counsel for the Non-Settling Defendant provided that counsel for the Non-Settling Defendant agree and give assurances that the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceeding or a competitor of the Settling Defendants.

(5) In addition, the Plaintiffs and Class Counsel shall treat any documents and information received from the Settling Defendants as Highly Confidential in accordance with the provisions of the U.S. Protective Order and the Plaintiffs and Class Counsel agree to abide by the terms of the U.S. Protective Order. Once a confidentiality order described in Section 4.2(2) is in place in the Proceeding that applies to the documents and information provided as cooperation by the Settling Defendants, that order shall govern to the extent of any conflict between that order and Plaintiffs' and Class Counsel's agreement in this Section 4.2(5) to abide by the terms of the U.S. Protective Order.

SECTION 5 – OPTING OUT

5.1 Procedure

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

- (a) Persons seeking to opt out of the Proceeding must do so by sending a written request to opt out to Class Counsel at an address to be identified in the notice described in Section 11.1(1), postmarked on or before the Opt-Out Deadline.
- (b) The written election to opt out must be signed by the Person or the Person's designee and must include the following information:
 - (i) the Person's full name, current address and telephone number;

- (ii) 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
 - (iii) a statement to the effect that the Person wishes to be excluded from the Proceeding.
 - (c) Where the postmark is not visible or legible, the request to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
 - (d) Persons who opt out of the Proceeding shall have no further right to participate in the Proceeding or to share in the distribution of any funds received as a result of a judgment or settlement in the Proceeding.
 - (e) No further right to opt out of the Proceeding will be provided.
 - (f) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants a report containing the names of each Person who has validly and timely opted out of the Proceeding and a summary of the information delivered by such Persons pursuant to Section 5.1(1)(a) above.
- (2) The Settling Defendants reserve all of their legal rights and defences with respect to any potential Settlement Class Member who validly opts out from the Proceeding.

SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

- (1) In the event that:
- (a) any Court declines to certify the Proceeding for the purposes of the Settlement Agreement;
 - (b) the Court declines to dismiss the Proceeding against the Settling Defendants;
 - (c) any Court declines to approve this Settlement Agreement or any material part hereof;

- (d) any Court approves this Settlement Agreement in a materially modified form;
- (e) any 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 B;
- (f) any order approving this Settlement Agreement made by the Court does not become a Final Order; or
- (g) any Court or other court whose approval or recognition is required declines to approve or enforce any of the Canadian Settlement Agreements in substantially the form in which it was executed or any material part of such settlement agreements;

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice in accordance with Section 15.17, 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 in accordance with Section 15.17.

(3) Except as provided for in Section 6.4, if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Settlement Agreement shall be null and void and have no further force or effect, and 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.

(4) Any order, ruling or determination made or rejected by the Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) the Distribution Protocol

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.

6.2 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 Proceeding 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) any issued order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceeding 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 Proceeding or any Other Actions or other litigation; and
- (d) within ten (10) days of such non approval, termination or failure to take effect having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section 6.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the

Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the relevant Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

- (e) Any issued order with respect to the submission or attornment to jurisdiction of any of the Settling Defendants arising in connection with this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise.

6.3 Allocation of Settlement Amount Following Termination

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Siskinds LLP shall, within thirty (30) days of the written notice of termination issued pursuant to Sections 6.1(1) or 6.1(2) or other non-approval or failure to take effect, return to the Settling Defendants the Settlement Amount they have paid to Siskinds LLP, plus all accrued interest thereon. If the Settling Defendants have issued a notice of termination pursuant to Section 6.1(1) or the termination has occurred pursuant to Section 6.1(2) as a result of non-payment of the Settlement Amount, the amount to be returned shall be reduced by the Settling Defendants' proportional share of the costs of notices required by Section 11.1(1), up to a maximum deduction of CAD\$30,000 for all the Canadian Settlement Agreements, and any translations required by Section 15.11, up to a maximum deduction of CAD\$7,750 for all of the Canadian Settlement Agreements.

6.4 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 3.1(8), 3.2(3), 4.1(7)(b), 6.1(3), 6.2, 6.3, 6.4, 9.1, 9.2, 10(4), 10(5), 11.1(2) and 12.2(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 3.1(8), 3.2(3), 4.1(7)(b), 6.1(3), 6.2, 6.3, 6.4, 9.1, 9.2, 10(4), 10(5), 11.1(2) and 12.2(4), within the meaning of this Settlement

Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 7.3, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

7.2 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.

7.3 Covenant Not to Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead the Releasors covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.4 No Further Claims

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on

their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceeding is not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasees shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

7.5 Dismissal of the Proceeding

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

7.6 Dismissal of Other Actions

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

(2) Upon the Effective Date, all Other Actions commenced by any Settlement Class Member, to the extent such Other Actions relate to Fan Motors, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

7.7 Material Term

(1) For greater certainty and without limitation, the releases, covenants, dismissals, declarations and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any requisite court to approve the releases, covenants, dismissals, declarations and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 – BAR ORDER AND RESERVATION OF OTHER CLAIMS

8.1 Bar Order

- (1) Class Counsel shall seek a bar order from the Court providing for the following:
 - (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceeding);
 - (b) if the Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
 - (i) the Plaintiffs and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - (ii) the Plaintiffs and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators

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

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

(c) after the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted and on at least twenty (20) days' notice to Counsel for the Settling Defendants, a Non-Settling Defendant may, on motion to the Court seek an Order for the following, which order shall be determined as if the Settling Defendants remained parties to the Proceeding:

(i) documentary discovery and affidavit(s) of documents from Settling Defendant(s) in accordance with the *Ontario Rules of Civil Procedure*;

- (ii) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;
 - (iii) leave to serve a request(s) to admit on Settling Defendant(s) in respect of factual matters; and/or
 - (iv) the production of a representative(s) of Settling Defendant(s) to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) the Settling Defendants retain all rights to oppose any motion brought pursuant to Section 8.1(1)(c), including any such motion brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Releasees from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with Section 8.1(1)(c);
- (e) on any motion brought pursuant to Section 8.1(1)(c), the Court may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all documentary discovery and the transcripts of any oral discovery shall, at the expense of Class Counsel, be provided by the Settling Defendants to Class Counsel within thirty (30) days of such discovery being provided to a Non-Settling Defendant;
- (g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for these purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 8.1(1)(c) on a Settling Defendant by service on Counsel for the Settling Defendants.

8.2 Claims Against Other Entities Reserved

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

8.3 Material Term

(1) For greater certainty and without limitation, the Parties acknowledge that the bar order and reservation of rights contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any requisite court to approve the bar order and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

(1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, 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 or evidence of (i) any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants or any of the Releasees, or of (ii) the truth of any of the claims or allegations contained in the Proceeding or any Other Actions, or any other pleading filed by the Plaintiffs, and evidence thereof shall not be discoverable or used in any way, whether in the Proceeding or in any other action or proceeding against any one or more of the Settling Defendants or other Releasees.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to,

offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel or any person working in association with Class Counsel (including Camp Fiorante Matthews Mogerman LLP and Siskinds Desmeules s.e.n.c.r.l.) 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 which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceeding against any Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Proceeding is not certified, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or unnamed alleged co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information is or becomes otherwise publicly available or unless ordered to do so by a court, and subject to Section 4.2 of this Settlement Agreement.

SECTION 10- CERTIFICATION FOR SETTLEMENT ONLY

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

(2) The Plaintiffs agree that, in the motion for certification of the Proceeding as a class proceeding for settlement purposes and for 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 the Settlement Class.

(3) The Parties agree that the certification of the Proceeding as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from

the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

(4) The Parties acknowledge this Settlement Agreement does not provide for any certification of any class for any purpose other than effectuating this Settlement Agreement, and that, if this Settlement Agreement is terminated, the agreement as to certification of the Settlement Class becomes null and void ab initio, and this Settlement Agreement or any other settlement-related statement may not be cited in support of an argument for certifying a class for any purpose related to the Proceeding.

(5) In the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, any submission or attornment in connection with this Settlement Agreement by the Settling Defendants shall be deemed to have no effect, the Settling Defendants shall reserve all of their existing procedural, substantive and jurisdictional rights and defences, and this Settlement Agreement or any other settlement-related statement may not be cited in support of an argument as against the Releasees.

SECTION 11 – NOTICE TO SETTLEMENT CLASS

11.1 Notices Required

(1) The proposed Settlement Class shall be given a single notice of: (i) the certification of the Proceeding as a class proceeding as against the Settling Defendants for settlement purposes; (ii) the right to opt out of the Proceeding; (iii) the hearing at which the Court will be asked to approve the Settlement Agreement; and (iv) if they are brought with the hearing to approve the Settlement Agreement, the hearing to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

11.2 Form and Distribution of Notices

(1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

SECTION 12 – ADMINISTRATION AND IMPLEMENTATION

12.1 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 shall be determined by the Court on motions brought by Class Counsel.

12.2 Information and Assistance

(1) The Settling Defendants will make reasonable best efforts to provide to the Court-appointed notice provider or Claims Administrator a list of names and addresses (including any relevant email addresses) of Persons in Canada who are within the definition of the Settlement Class and who received delivery of Fan Motors from the Settling Defendants during the Class Period, if any, if and to the extent such information exists and is reasonably available from the Settling Defendants' live electronic databases. The Settling Defendants make no representation that any such Persons exist, or that the Settling Defendants have, can or will produce such a list, or an accurate or complete list, and it is understood and agreed that the failure to produce such a list and/or an accurate or complete list shall not constitute a breach or violation of this Settlement Agreement;

(2) The information provided under Section 12.2 shall be delivered to the Court-appointed notice provider or Claims Administrator, within thirty (30) days of the Date of Execution or at a time mutually agreed upon by the Parties.

(3) The recipient of the information provided under Section 12.2 (the Court-appointed notice provider or Claims Administrator) must hold the information in strict confidence and may use the information provided under Section 12.2 only to the extent necessary:

- (a) to facilitate the dissemination of the notices required in Section 11.1;
- (b) following the Effective Date, to advise Persons in Canada who purchased Fan Motors from the Settling Defendants during the Class Period of any subsequent

settlement agreement reached in the Proceeding, any related approval hearings, and any other major steps in the Proceeding;

- (c) following the Effective Date, to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) achieved or court awards issued in the Proceeding.

(4) All information provided by the Settling Defendants pursuant to Section 12.2 may be used or disclosed only in accordance with Sections 12.2(3) and 12.2(4). If this Settlement Agreement is not approved, is terminated, or fails to take effect, the recipient of the information provided under Section 12.2 (the Court-appointed notice provider or Claims Administrator) shall, within ten (10) days of such non approval, termination or failure to take effect having occurred, destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Section 12.2 or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and no record of the information so provided shall be retained by any Court-appointed notice provider and/or the Claims Administrator in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available, through Counsel for the Settling Defendants, to respond to questions respecting the information provided pursuant to Section 12.2(1) from the Court-appointed notice provider and/or the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available, through Counsel for the Settling Defendants, to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 7 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 12.2 shall cease when the Proceeding is resolved as against all Defendants and all settlement funds or court awards have been distributed. The Settling Defendants make no representation that they can or will be able to respond to such questions and a failure to do so shall not constitute a violation of this Settlement Agreement.

(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 12.2.

SECTION 13 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

13.1 Distribution Protocol

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will bring a motion seeking an order from the 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 shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

13.2 No Responsibility for Administration or Fees

(1) Except as otherwise provided for in this Settlement Agreement, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the administration of the Settlement Agreement or the investment, distribution or administration of monies in the Trust Account including, but not limited to Administration Expenses.

SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

14.1 Responsibility for Fees, Disbursements and Taxes

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

14.2 Responsibility for Costs of Notices and Translation

(1) Siskinds LLP shall pay the costs of the notices required by Section 11 and any costs of translation required by Section 15.11 from the Trust Account, as they become due. Subject to Section 6.3, the Releasees shall not have any responsibility for the costs of the notices or translation.

14.3 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel may seek the 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. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

SECTION 15 – MISCELLANEOUS

15.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the 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.

15.2 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.

15.3 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 *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

15.4 Ongoing Jurisdiction

(1) The Court shall retain exclusive jurisdiction over the Proceeding, and Class Counsel Fees and Class Counsel Disbursements.

(2) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Court for such purposes.

15.5 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.

15.6 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.

15.7 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 Court.

15.8 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, 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. In addition, this Settlement Agreement shall be binding upon Siskinds LLP, Sotos LLP, Camp Fiorante Matthews Mogerman LLP, and Siskinds Desmeules s.e.n.c.r.l.

15.9 Counterparts

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

15.10 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 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.

15.11 Language

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

15.12 Transaction

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

15.13 Recitals

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

15.14 Schedules

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

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

15.16 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.

15.17 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, facsimile 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 Proceeding:

Charles M. Wright and Linda Visser
SISKINDS LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8
Tel: 519.672.2121
Fax: 519.672.6065
Email: charles.wright@siskinds.com
linda.visser@siskinds.com

David Sterns and Jean Marc Leclerc
SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1250
Toronto, ON M5G 1Z8
Tel: 416.977.0007
Fax: 416.977.0717
Email: dsterns@sotosllp.com
jleclerc@sotosllp.com

For the Settling Defendants:

Éric Vallières and Benjamin Bathgate
McMillan LLP
181 Bay Street
Suite 4400, Brookfield Place
Toronto, ON M5J 2T3
Tel: 416.865.7000
Fax: 416.865.7048
Email: eric.vallieres@mcmillan.ca
benjamin.bathgate@mcmillan.ca

15.18 Date of Execution

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

FADY SAMAHA on his own behalf and on behalf of the Settlement Class, by his counsel

Name of Authorized Signatory:

Linda Visser

Signature of Authorized Signatory:


Siskinds LLP
Class Counsel

SHERIDAN CHEVROLET CADILLAC LTD. and THE PICKERING AUTO MALL LTD., on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory:

Linda Visser

Signature of Authorized Signatory:

hll

per Sotos LLP
Class Counsel

MITSUBA CORPORATION and AMERICAN MITSUBA CORPORATION, by their counsel

Name of Authorized Signatory:

Signature of Authorized Signatory:

McMillan LLP
Counsel for the Settling Defendants

SISKINDS LLP

Per:

hll

Name: Linda Visser

Title: partner

I have the authority to bind the Partnership

SOTOS LLP

Per:

hll

Name: Linda Visser

Title: per Sotos

I have the authority to bind the Partnership

SHERIDAN CHEVROLET CADILLAC LTD. and THE PICKERING AUTO MALL LTD., on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____


Sotos LLP
Class Counsel

MITSUBA CORPORATION and AMERICAN MITSUBA CORPORATION, by their counsel

Name of Authorized Signatory: _____

ERIC VALLIERES

Signature of Authorized Signatory: _____


McMillan LLP
Counsel for the Settling Defendants

SISKINDS LLP

Per: _____

Name: _____

Title: _____

I have the authority to bind the Partnership

SOTOS LLP

Per: _____

Name: _____


Title: _____

I have the authority to bind the Partnership

CAMP FIORANTE MATTHEWS MOGERMAN LLP

Per: 
Name: Linda Visser
Title: per CFM
I have the authority to bind the Partnership

SISKINDS DESMEULES S.E.N.C.R.L.

Per: 
Name: Linda Visser
Title: per Siskinds Desmeules
I have the authority to bind the Partnership

SCHEDULE "A"

Court File No. CV-14-506635-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2019

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,
PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBA
CORPORATION and AMERICAN MITSUBA CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

ORDER

- Fan Motors -

- Mitsuba Notice Approval and Consent Certification -

THIS MOTION made by the Plaintiffs for an Order approving the abbreviated, publication and long-form notices of settlement approval hearings and the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement purposes as against Mitsuba Corporation and American Mitsuba Corporation (collectively, the "Settling Defendants") was read this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement with the Settling Defendants dated as of ●, 2019 attached to this Order as Schedule "A" (the "Settlement

Agreement”), and on reading the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order;

AND ON BEING ADVISED that ● consents to being appointed as notice provider in accordance with the terms of this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the abbreviated, publication and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the plan of dissemination for the abbreviated, publication and long-form notices of settlement approval hearing (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “E” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that ● is appointed to disseminate the notices of settlement approval hearing to the direct purchasers customers of the Settling Defendants, if any, as disclosed to ● by the Settling Defendants in accordance with Section 12.2 of the Settlement Agreement.

5. **THIS COURT ORDERS** that the Proceeding is certified as a class proceeding as against the Settling Defendants for settlement purposes only.

6. **THIS COURT ORDERS** that the "Settlement Class" is certified as follows:

All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, Fan Motors; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle. Excluded Persons are excluded from the Settlement Class.

7. **THIS COURT ORDERS** that Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd. and Fady Samaha are appointed as the representative plaintiffs for the Settlement Class.

8. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

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

9. **THIS COURT ORDERS** that in the event that the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, paragraphs 5-8 of this Order shall be declared null and void.

10. **THIS COURT ORDERS** that paragraphs 1 and 5-8 of this Order, including the certification of the Proceeding as against the Settling Defendants for settlement purposes and the definition of Settlement Class and Common Issue, and any reasons given by the Court in connection with paragraphs 1 and 5-8 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceeding and, without restricting the generality of the foregoing, may not be relied on by

any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding, as against the Non-Settling Defendants.

11. **THIS COURT ORDERS** that putative members of the Settlement Class can opt out of the Proceeding by sending a written request to opt out to Class Counsel, postmarked 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 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 Proceeding.
12. **THIS COURT ORDERS** that where the postmark is not visible or legible, the request to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
13. **THIS COURT ORDERS** that any putative member of the Settlement Class who validly opts out of the Proceeding shall have no further right to participate in the Proceeding or to share in the distribution of any funds received as a result of a judgment or settlement in the Proceeding.
14. **THIS COURT ORDERS** that no further right to opt out of the Proceeding will be provided.

15. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants a report containing the names of each Person who has validly and timely opted out of the Proceeding and a summary of the information delivered by such Persons pursuant to paragraph 11 above.

The Honourable Justice Belobaba

SCHEDULE "B"

Court File No. CV-14-506635-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2019

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,
PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBA
CORPORATION and AMERICAN MITSUBA CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6

**ORDER
- Fan Motors -
- Mitsuba Settlement Approval -**

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered into with Mitsuba Corporation and American Mitsuba Corporation (collectively, the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

AND ON READING the materials filed, including the settlement agreement dated ●, 2019, attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

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

AND ON BEING ADVISED that the deadline for opting out of the Proceeding has passed, and ● Persons validly exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that 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 Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Proceeding.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act*, 1992 and shall be implemented and enforced in accordance with its terms.

6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class 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.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceeding is not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding or on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceeding).
13. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

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

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

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

15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Proceeding, and on at least twenty (20) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

(a) documentary discovery and affidavit(s) of documents from Settling Defendant(s) in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 194;

- (b) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;
- (c) leave to serve request(s) to admit on Settling Defendant(s) in respect of factual matters; and/or
- (d) the production of representative(s) of Settling Defendant(s) to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.

16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above by service on Counsel for the Settling Defendants.
18. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class has or may have in the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Proceeding against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
22. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void.

24. **THIS COURT ORDERS** that the Proceeding be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.
25. **THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by this Court in relation thereto, except any reasons given in connection with paragraphs 12-17 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding as against the Non-Settling Defendants.

The Honourable Justice Belobaba

SCHEDULE "C"
CANADIAN SETTLEMENTS

Autolights	Ontario	<i>Sheridan Chevrolet et al v Koito Manufacturing Co., Ltd. et al</i> Court File No. CV-13-478642-00CP
	Quebec	<i>Serge Asselin v Koito Manufacturing Co., Ltd. et al</i> Court File No. 200-06-000174-147
Electric Powered Steering Assemblies	Ontario	<i>Sheridan Chevrolet et al v JTEKT Corporation et al</i> Court File No. CV-14-506652-00CP
Electronic Throttle Bodies	Ontario	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i> Court File No. CV-14-506649-00CP
	Quebec	<i>Serge Asselin v Hitachi, Ltd. et al</i> Court File No. 200-06-000199-169
Fan Motors	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-14-506635-00CP
Fuel Injection Systems	Ontario	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i> Court File No. CV-14-506683-00CP
	Quebec	<i>Serge Asselin et al v Hitachi, Ltd. et al</i> Court File No. 200-06-000180-144
	British Columbia	<i>Darren Ewert v Hitachi, Ltd. et al</i> Court File No. S-149988
Power Window Motors	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-14-506679-00CP
Starters	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-13-478127-00CP
	Quebec	<i>Serge Asselin v Denso Corporation et al</i> Court File No. 200-06-000163-132
	British Columbia	<i>Darren Ewert v Denso Corporation et al</i> Court File No. S-135611
Windshield Washer Systems	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-14-506669-00CP
Windshield Wiper Systems	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-13-478180-00CP
	Quebec	<i>M. Gaëtan Roy v Denso Corporation et al</i> Court File No. 200-06-000161-136
	British Columbia	<i>Darren Ewert v Denso Corporation et al</i> Court File No. S-135607

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
- Fan Motors -
Mitsuba Settlement Approval**

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