

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE BELOBABA )

FRIDAY, THE 28<sup>th</sup> DAY  
OF FEBRUARY, 2020

BETWEEN :

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

Plaintiffs

- and -

**SUMITOMO ELECTRIC INDUSTRIES, LTD., SEWS CANADA LTD., SUMITOMO  
WIRING SYSTEMS, LTD., SUMITOMO ELECTRIC WIRING SYSTEMS, INC.,  
SUMITOMO WIRING SYSTEMS (U.S.A.), INC., DENSO CORPORATION, DENSO  
INTERNATIONAL AMERICA, INC., DENSO MANUFACTURING CANADA, INC.,  
DENSO SALES CANADA, INC., MITSUBISHI ELECTRIC CORPORATION,  
MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA, INC., MITSUBISHI ELECTRIC  
SALES CANADA INC., HITACHI, LTD., HITACHI AUTOMOTIVE SYSTEMS, LTD.,  
and HITACHI AUTOMOTIVE SYSTEMS AMERICA, INC.**

Defendants

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

**ORDER  
- Electronic Control Units -  
Distribution Protocol Approval**

**THIS MOTION** made by the Plaintiffs for an Order approving *inter alia*, the Distribution Protocol, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**ON READING** the materials filed, including the protocol for distribution of settlement funds attached to this Order as Schedule "A" (the "Distribution Protocol"), the Defendants taking no position on this motion;



**ON BEING ADVISED** that RicePoint Administration Inc. (“RicePoint”) consents to being appointed as the Claims Administrator and agrees to be bound by this Order, including the terms of the Distribution Protocol;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions set out in the Distribution Protocol apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Distribution Protocol is hereby approved and shall be implemented in accordance with its terms.
3. **THIS COURT ORDERS** that the Distribution Protocol shall govern the administration of the Settlement Agreements entered into in the following automotive price-fixing class actions:
  - (a) Air Flow Meters (*Sheridan Chevrolet Cadillac Ltd. et al v Hitachi, Ltd. et al.* – Court File No. CV-14-506641-00CP);
  - (b) Electronic Control Units (*Sheridan Chevrolet Cadillac Ltd. et al v Sumitomo Electric Industries, Ltd. et al* – Court File No. CV-13-482967-00CP);
  - (c) Fan Motors (*Sheridan Chevrolet Cadillac Ltd. et al v Denso Corporation et al* – Court File No. CV-14-506635-00CP);
  - (d) Fuel Senders (*Sheridan Chevrolet Cadillac Ltd. et al v Yazaki Corporation et al* – Court File No. CV-13-482959-00CP);
  - (e) Power Window Motors (*Sheridan Chevrolet Cadillac Ltd. et al v Denso Corporation et al* – Court File No. CV-14-506679-00CP); and

(f) Windshield Washer Systems (*Sheridan Chevrolet Cadillac Ltd. et al v Denso Corporation et al* – Court File No. CV-14-506669-00CP).

4. **THIS COURT ORDERS** that the settlement amounts paid in accordance with the Settlement Agreements shall be distributed by the Claims Administrator in accordance with the Distribution Protocol.
5. **THIS COURT ORDERS** that RicePoint Administration Inc. is hereby appointed as Claims Administrator for the purposes of administering the Distribution Protocol.
6. **THIS COURT ORDERS** that all information received from Settlement Class Members collected, used and retained by the Claims Administrator for the purpose of administering the Settlement Agreements, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreements is protected under the *Personal Information Protection and Electronic Documents Act, SC 2000 c 5 (PIPEDA)*. The information provided by the Settlement Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with the Settlement Agreements, orders of this Court and/or the Distribution Protocol.
7. **THIS COURT ORDERS** that the opt-out requests of Ken Hacking, Samuel Marcotte, Gerald Scott, and Terri Dyck are hereby revoked, such that they may participate as Settlement Class Members in this action (*Sheridan Chevrolet Cadillac Ltd. et al v Sumitomo Electric Industries, Ltd. et al* – Court File No. CV-13-482967-00CP).
8. **THIS COURT ORDERS** that a copy of this Order shall be placed in the following Court files:

- (a) Air Flow Meters (*Sheridan Chevrolet Cadillac Ltd. et al v Hitachi, Ltd. et al.* – Court File No. CV-14-506641-00CP);
- (b) Fan Motors (*Sheridan Chevrolet Cadillac Ltd. et al v Denso Corporation et al* – Court File No. CV-14-506635-00CP);
- (c) Fuel Senders (*Sheridan Chevrolet Cadillac Ltd. et al v Yazaki Corporation et al* – Court File No. CV-13-482959-00CP);
- (d) Power Window Motors (*Sheridan Chevrolet Cadillac Ltd. et al v Denso Corporation et al* – Court File No. CV-14-506679-00CP); and
- (e) Windshield Washer Systems (*Sheridan Chevrolet Cadillac Ltd. et al v Denso Corporation et al* – Court File No. CV-14-506669-00CP)

9. **THIS COURT ORDERS** that approval of the Distribution Protocol and paragraphs 2 to 7 of this Order are contingent upon the issuance of parallel orders by the Supreme Court of British Columbia in the Electronic Control Units and Fuel Senders actions and the Superior Court of Quebec in the Air Flow Meters, Electronic Control Units and Fuel Senders actions.



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The Honourable Justice Belobaba

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**DISTRIBUTION PROTOCOL OF THE  
AUTO PARTS PRICE-FIXING CLASS ACTION SETTLEMENT FUNDS**

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## GENERAL PRINCIPLES

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into in the following automotive price-fixing class actions:
  - (a) Air Flow Meters;
  - (b) Electronic Control Units;
  - (c) Fan Motors;
  - (d) Fuel Senders;
  - (e) Power Window Motors; and
  - (f) Windshield Washer Systems.

(the "Settlement Agreements").
2. The administration shall:
  - (a) implement and conform to the Settlement Agreements, orders of the Courts and this Distribution Protocol;
  - (b) employ secure, paperless, and electronic record-keeping wherever possible; and
  - (c) rely on information provided in the context of the WH Distribution wherever possible.
3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their purchases of Affected Vehicles, 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.

## **DEFINITIONS**

4. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.

5. For the purpose of this Distribution Protocol, the following definitions apply, as well as those stated in paragraph 10:

(a) *Affected Vehicle* means:

- (i) In respect of Air Flow Meters, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2002 and December 31, 2009 under the following brand names: Honda/Acura, Nissan/Infiniti and Toyota/Lexus;
- (ii) In respect of Electronic Control Units, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2000 and December 31, 2008 under the following brand names: Toyota/Lexus;
- (iii) In respect of Fan Motors, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2001 and December 31, 2008 under the following brand names: Honda/Acura, Nissan/Infiniti, and Subaru;

- (iv) In respect of Fuel Senders, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2004 and December 31, 2010 under the following brand names: Toyota/Lexus;
  - (v) In respect of Power Window Motors, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2000 and December 31, 2005 under the following brand names: Honda/Acura, and Nissan/Infiniti; and
  - (vi) In respect of Windshield Washer Systems, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2000 and December 31, 2010 under the following brand names: Nissan/Infiniti, and Subaru.
- (b) *Affected Vehicle Purchases* means the total value assigned to a Settlement Class Member's purchases and/or leases of Affected Vehicles, as calculated pursuant to paragraphs 8 to 11.
- (c) *Decision Notice* shall have the meaning attributed to it in paragraph 20.
- (d) *Net Settlement Funds* means, for each class action identified in paragraph 1, the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements, plus accrued interest, less:
- (i) Class Counsel Fees as approved by the Courts;
  - (ii) Administration Expenses;



- (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties); and
  - (iv) any other deductions approved by the Courts.
- (e) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.
- (f) ***Settlement Class Members*** means all persons in Canada who purchased and/or leased an Affected Vehicle. The following persons are excluded:
- (i) the Defendants and their respective parents, subsidiaries, affiliates, officers and directors; and
  - (ii) persons who validly and timely opted out of the applicable proceeding.
- (g) ***WH Distribution*** means the distribution protocol approved by the Courts in respect of settlements reached in the automotive wire harness price-fixing class action and appended hereto as Schedule “A”.

## **DISTRIBUTION OF SETTLEMENT FUNDS**

### **Calculation of Payments**

6. For each class action identified in paragraph 1, the Net Settlement Funds will be distributed to qualifying Settlement Class Members *pro rata* (or proportionally) based on the value of the qualifying Settlement Class Member’s Affected Vehicle Purchases as against the value of all qualifying Settlement Class Members’ Affected Vehicle Purchases.
7. Settlement Class Members might be eligible for settlement benefits in more than one of the class actions identified in paragraph 1. In such an event, separate calculations will be made for each relevant class action. For example, if a Settlement Class Member is eligible to

participate in the distribution of settlement funds in the Air Flow Meters and Alternators class actions, separate calculations will be made for each class action.

8. For the purposes of the *pro rata* distribution, Affected Vehicle Purchases will be calculated based on:

- (a) the purchase price of the Affected Vehicle (see paragraphs 9 to 9); and
- (b) the categorization of the Settlement Class Member (see paragraphs 10 to 11).

(a) The Purchase Price of the Affected Vehicle

9. The purchase price of the Affected Vehicle will be calculated based on the purchase price determined in the WH Distribution (see paragraphs 14 to 17), adjusted to cover the relevant years only. For example, in the Windshield Washer Systems action, a Settlement Class Member's purchase price would be calculated based on their purchases between 2000 and 2010 (as determined in the WH Distribution).

(b) The Categorization of the Settlement Class Member

10. Settlement Class Members will be categorized into the following purchaser groups based on their position in the distribution chain:

- (a) **National Brand Importers** means Toyota Canada Inc., Honda Canada Inc., Nissan Canada Inc., and Subaru Canada, Inc.
- (b) **Dealer** means a Settlement Class Member who purchased Affected Vehicles from a National Brand Importer or a subsidiary thereof, for resale to End Users; and
- (c) **End User** means a Settlement Class Member who purchased or leased an Affected Vehicle for its own use and not for commercial resale.

11. For the purposes of calculating Affected Vehicle Purchases, the following values will be applied in order to account for the capacity in which the Affected Vehicle was purchased:
  - (a) purchases or leases by a National Brand Importer will be valued at 7.5%;
  - (b) purchases or leases by a Dealer will be valued at 25%; and
  - (c) purchases or leases by an End User will be valued at 67.5%.

#### **Sample Calculation**

12. If an End User purchased Affected Vehicles with purchase prices totaling \$150,000, its Affected Vehicle Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

$\$150,000$  (representing the purchase price)  $\times$   $0.675$  (representing the categorization of the Settlement Class Member as an End User) =  $\$101,250$

13. Assuming the value of all qualifying Settlement Class Members' Affected Vehicle Purchases totalled \$10 million, this Settlement Class Member would be entitled to 1% ( $\$101,250/\$10$  million) of the Net Settlement Funds.

#### **Distribution**

14. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of the Net Settlement Funds to ensure a fair and cost effective distribution of the Net Settlement Funds.
15. The WH Distribution provides for a minimum payment of \$25 (see paragraph 23). Any payments pursuant to this Distribution Protocol will be added to the payment pursuant to the WH Distribution prior to any increase to the minimum payment. For example, if a Settlement Class Member is entitled to \$17 pursuant to the WH Distribution and an additional \$6 pursuant to this Distribution Protocol, the Settlement Class Member would

receive a \$2 increase, for a total payment of \$25. If a Settlement Class Member is entitled to \$20 pursuant to the WH Distribution and an additional \$7 pursuant to this Distribution Protocol, the Settlement Class Member would not receive an increase and would receive a total payment of \$27.

16. To the extent that the full Net Settlement Funds are not paid out due to uncashed e-transfers or cheques, residual interest or otherwise, subject to further instructions of the Ontario Court, such monies shall be distributed in accordance with paragraph 24 of the WH Distribution.

## **THE CLAIMS PROCESS**

### **Claims Process**

17. Settlement Class Members who file a claim pursuant to the WH Distribution will automatically be considered for eligibility pursuant to this Distribution Protocol.
18. Settlement Class Members' eligibility will be evaluated based on the information provided pursuant to the WH Distribution and in accordance with the procedures provided for in the WH Distribution (see paragraphs 25 to 27 and 32 to 43).

### **Claims Administrator's Decision**

19. In respect of each Settlement Class Member who has filed a Claim in accordance with the WH Distribution, the Claims Administrator shall:
  - (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Funds in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol;

- (b) classify the Settlement Class Member's Affected Vehicle Purchases as being made by a National Brand Importer, Dealer or End User; and
  - (c) make a determination of the Affected Vehicle Purchases in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol.
20. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim, the classification of purchases as being made in the capacity of a National Brand Importer, Dealer or End User and the determination of the Affected Vehicle Purchases (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim or re-classified the Settlement Class Member's purchases, the Claims Administrator shall include in the Decision Notice its grounds for doing so. This Decision Notice shall be sent with or included within the Decision Notice issued in the context of the WH Distribution.
21. The Claims Administrator's decision will be binding upon the Settlement Class Member and there will be no right of appeal.
22. The WH Distribution provides for a limited right to appeal (see paragraphs 47 to 53). If the result of any appeal pursuant to the WH Distribution affects the Settlement Class Member's entitlements under this Distribution Protocol, the Settlement Class Member's entitlements under this Distribution Protocol shall be amended accordingly.

**Payment of Claims**

23. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:

- (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
  - (b) make arrangements to pay approved Claims.
24. Payments will be added to the amount payable pursuant to the WH Distribution and paid concurrently with the payments to be made pursuant to the WH Distribution.
25. If a Settlement Class Member has elected to assign its settlement benefits to Canadian charitable foundations or initiatives pursuant to the WH Distribution (see paragraph 56), its settlement benefits under this Distribution Protocol will be assigned to the same charitable foundation or initiative.

## **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

### **Supervisory Powers of the Ontario Court**

26. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

### **Investment of Settlement Funds**

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

### **Communication, Languages and Translation**

28. The Claims Administrator shall communicate with Settlement Class Members in accordance with the processes set forth in the WH Distribution (see paragraphs 59 to 62).

**Undeliverable Mail & Reissuance of Payment**

29. Undeliverable mail and reissuance of payment will be handled in accordance with the processes set forth in the WH Distribution (see paragraphs 63 to 65).

**Taxes**

30. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds while held in trust and shall pay any taxes imposed on such monies while held in trust out of the Net Settlement Funds. Settlement Class Members shall be responsible for any taxes payable by them as a result of the receipt of any settlement funds.

**Reporting**

31. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
32. The Claims Administrator shall provide any reports requested by the Courts.

**Assistance to the Claims Administrator**

33. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol.

**Confidentiality, and Preservation and Disposition of Claim Submissions**

34. Settlement Class Member information will be maintained in accordance with the processes set forth in the WH Distribution (see paragraphs 69, 71 and 72).

**DISTRIBUTION PROTOCOL**  
**IN THE MATTER OF THE CANADIAN AUTOMOTIVE WIRE HARNESS SYSTEMS**  
**PRICE-FIXING CLASS ACTION SETTLEMENTS**

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## **GENERAL PRINCIPLES**

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into in the Canadian Automotive Wire Harness Systems price-fixing class actions (the “Settlement Agreements”).<sup>1</sup>
2. The administration shall:
  - (a) implement and conform to the Settlement Agreements, orders of the Courts and this Distribution Protocol;
  - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping wherever possible; and
  - (c) rely on the National Brands Data wherever economically feasible.
3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their purchases of Affected Vehicles, 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.

## **DEFINITIONS**

4. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.

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<sup>1</sup> The Settlement Agreements are available online at [www.siskinds.com/autoparts](http://www.siskinds.com/autoparts).

5. For the purpose of this Distribution Protocol, the following definitions apply, as well as those stated in paragraph 10:
- (a) *Affected Vehicle* means new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 1999 and November 30, 2014 under the following brands: Honda/Acura, Nissan/Infiniti, Toyota/Lexus, Subaru, and new Pontiac Vibes purchased and/or leased between January 1, 1999 and November 30, 2014.
  - (b) *Affected Vehicle Purchases* means the total value assigned to a Settlement Class Member's purchases and/or leases of Affected Vehicles, as calculated pursuant to paragraphs 12-20.
  - (c) *Claim* means the electronic or paper form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
  - (d) *Claims Filing Deadline* means the date by which Claims (and any required supporting documentation) must be electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.
  - (e) *Decision Notice* shall have the meaning attributed to it in paragraph 44.
  - (f) *National Brands* means General Motors of Canada Company (in respect of the Pontiac Vibe), Honda Canada Inc., Nissan Canada Inc., Subaru Canada, Inc., and Toyota Canada Inc.

- (g) ***National Brands Data*** means the information provided by the National Brands in accordance with paragraph 32 below.
  
- (h) ***Net Settlement Funds*** means the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements, plus accrued interest, less:
  - (i) Class Counsel Fees as approved by the Courts;
  - (ii) Administration Expenses;
  - (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties);
  - (iv) the *cy pres* payment provided for in paragraph 6;
  - (v) any compensation provided to the National Brands pursuant to paragraph 33; and
  - (vi) any other deductions approved by the Courts.
  
- (i) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.
  
- (j) ***Settlement Class Members*** means all persons in Canada who purchased and/or leased an Affected Vehicle. The following persons are excluded:
  - (i) the Defendants and their respective parents, subsidiaries, affiliates, officers and directors; and
  - (ii) persons who validly and timely opted out of the proceedings.

## DISTRIBUTION OF SETTLEMENT FUNDS

### *Cy Pres* Payment

6. Subject to paragraph 7, indirect compensation in the amount of \$250,000 will be provided for the benefit of those Settlement Class Members who are not eligible for direct payment through equal *cy pres* payments to the following organizations:
  - (a) Automobile Protection Association;
  - (b) London Community Foundation; and
  - (c) Pro Bono Canada.
7. The *cy pres* payments shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (2°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount payable to the Fonds d'aide aux actions collectives, 23.6%<sup>2</sup> of the *cy pres* payment will be notionally allocated to Quebec.
8. To be eligible to receive the monies under this distribution protocol, the *cy pres* recipient must:
  - (a) use the monies for the purposes outlined in the recipient's proposal submitted to Siskinds LLP and approved by the Courts; and

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<sup>2</sup> 23.6% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

- (b) report to the Claims Administrator on an annual basis until all funds are exhausted on how the monies have been used.
9. Subject to the consent of Class Counsel, all funds shall be used up within two years of receipt.

**Categorization of Settlement Class Members**

10. Settlement Class Members will be categorized into the following purchaser groups based on their position in the distribution chain:

- (a) ***National Brand Importers*** means General Motors of Canada Company (in respect of the Pontiac Vibe), Nissan Canada Inc., and Subaru Canada, Inc.;
- (b) ***Dealer*** means a Settlement Class Member who purchased Affected Vehicles from the National Brands or a subsidiary thereof, for resale to Individual End Users or Commercial End Users;
- (c) ***Individual End User*** means a Settlement Class Member who purchased or leased an Affected Vehicle for their own individual use and not for commercial resale; and
- (d) ***Commercial End User*** means a Settlement Class Member who purchased or leased an Affected Vehicle for its own commercial use and not for commercial resale.

**Calculation of Payments**

11. The Net Settlement Funds will be distributed to qualifying Settlement Class Members *pro rata* (or proportionally) based on the value of the qualifying Settlement Class Member's Affected Vehicle Purchases as against the value of all qualifying Settlement Class Members' Affected Vehicle Purchases.

12. For the purposes of the *pro rata* distribution, Affected Vehicle Purchases will be calculated based on:

- (a) the purchase price of the Affected Vehicle (see paragraphs 13-18);
- (b) the timing of the Affected Vehicle purchase or lease (see paragraph 19); and
- (c) the categorization of the Settlement Class Member (see paragraph 20).

(a) The Purchase Price of the Affected Vehicle

*Individual End User*

13. Where a Settlement Class Member is an Individual End User, the purchase price of the Affected Vehicle Purchases shall be calculated as follows:

- (a) purchases (including through a buy-out of a lease), shall be calculated based on the MSRP of the Affected Vehicle; and
- (b) leases not subsequently purchased, shall be calculated based on:
  - (i) 20% of the MSRP for year one of the lease; and
  - (ii) 10% of the MSRP for each subsequent year of the lease.

*Commercial End User*

14. Where a Settlement Class Member is a Commercial End User, the purchase price of the Affected Vehicle Purchases shall be calculated as follows:

- (a) for purchases and/or leases that are disclosed in the National Brands Data and/or additional purchases and/or leases of up to fifteen (15) Affected Vehicles:

- (i) purchases (including through a buy-out of a lease), shall be calculated based on the MSRP of the Affected Vehicle; and
  - (ii) leases not subsequently purchased, shall be calculated based on:
    - (A) 20% of the MSRP for year one of the lease; and
    - (B) 10% of the MSRP for each subsequent year of the lease.
- (b) for purchases and/or leases of more than fifteen (15) Affected Vehicles not disclosed in the National Brands Data, the purchase price or aggregate lease payments of the Affected Vehicle Purchases shall be calculated based on the information provided by the Commercial End User as part of the Claims process (including in response to any audit).

*Dealer*

15. Where a Settlement Class Member is a Dealer:
- (a) for purchases and/or leases of Affected Vehicles that are disclosed in the National Brands Data, purchases (including through a buy-out of a lease), shall be calculated based on the MSRP of the Affected Vehicle less 10%; and
  - (b) for purchases and/or leases of Affected Vehicles that are not disclosed in the National Brands Data, the purchase price or aggregate lease payments of the Affected Vehicle Purchases shall be calculated based on the information provided by the Dealer as part of the Claims process (including in response to any audit).

*National Brand Importers*

16. Where a Settlement Class Member is a National Brand Importer, the purchase price of the Affected Vehicle Purchases shall be calculated based on the information provided by the National Brand Importer as part of the Claims process (including in response to any audit).
  17. For the purposes of paragraph 13, 14(a) and 15(a), the MSRP of each Affected Vehicle will be calculated by averaging the MSRP of all trim levels of that Affected Vehicle during the model year.
  18. For the purposes of paragraph 14(b), 15(b) and 16, the purchase price or aggregate lease payments shall be calculated based on the purchase price, less any taxes, discounts, rebates, delivery or shipping charges, and for leases, less 5% to account for financing costs built into the lease payments and/or buy-out amount.
- (b) The Timing of the Affected Vehicle Purchase or Lease
19. For the purposes of calculating Affected Vehicle Purchases, the following values will be applied in order to account for the timing of the purchase:
    - (a) purchases or leases entered into between January 1, 1999 and February 28, 2010 will be valued at 100%; and
    - (b) purchases or leases entered into between March 1, 2010 and November 30, 2014 will be discounted by 50%.<sup>3</sup>

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<sup>3</sup> Where a Settlement Class Member purchased Affected Vehicles in 2010 and the Claims Administrator is not easily able to determine based on the information provided by the National Brands and/or the Settlement Class Member when during 2010 a purchase was made, the purchases will be allocated prorata as between January and February, and the remainder of the year.



(c) The Categorization of the Settlement Class Member

20. For the purposes of calculating Affected Vehicle Purchases, the following values will be applied in order to account for the capacity in which the Affected Vehicle was purchased:

- (a) purchases or leases by a National Brand Importer will be valued at 7.5%;
- (b) purchases or leases by a Dealer will be valued at 25%; and
- (c) purchases or leases by an End User will be valued at 67.5%.

**Sample Calculation**

21. If an End User purchased Affected Vehicles with purchase prices totaling \$50,000 between January 1, 1999 and February 28, 2010, and \$75,000 between March 1, 2010 and November 30, 2014, its Affected Vehicle Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

$\$50,000$  (representing the purchase price)  $\times$  1 (representing the timing of the purchase or lease)  $\times$  0.675 (representing the categorization of the Settlement Class Member as an End User) = \$33,750

Plus

$\$75,000$  (representing the purchase price)  $\times$  0.5 (representing the timing of the purchase or lease)  $\times$  0.675 (representing the categorization of the Settlement Class Member as an End User) = \$25,312.50

22. Assuming the value of all qualifying Settlement Class Members' Affected Vehicle Purchases totalled \$10 million, this Settlement Class Member would be entitled to 0.59% ( $\$59,062.50/\$10$  million) of the Net Settlement Funds.

**Distribution**

23. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of the Net Settlement Funds to ensure a fair and cost effective distribution of the Net Settlement Funds.

24. Notwithstanding any other provision in this Distribution Protocol and subject to further order of the Ontario Court following the adjudication of all claims, all valid Claims will be assigned a minimum value of \$25. The \$25 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution. If the distribution occurs in conjunction with distributions in other automotive parts price-fixing class actions, the \$25 valuation shall be applied only after summing all relevant distributions. For example, if a Settlement Class Member is entitled to \$17 pursuant to the within Distribution Protocol and an additional \$6 pursuant to other distributions, the Settlement Class Member would receive a \$2 increase, for a total payment of \$25. If a Settlement Class Member is entitled to \$20 pursuant to the within Distribution Protocol and an additional \$7 pursuant to other distributions, the Settlement Class Member would not receive an increase and would receive a total payment of \$27.
25. To the extent that the full Net Settlement Funds are not paid out due to uncashed e-transfers or cheques, residual interest or otherwise, subject to further instructions of the Ontario Court, such monies shall be distributed equally to the organizations identified in paragraph 6, less any amounts payable to the Quebec Fonds d'aide aux actions collectives, as calculated pursuant to paragraph 7.

## **THE CLAIMS PROCESS**

### **The Claim**

26. Each Claim shall require the following:
- (a) The Settlement Class Member's contact information;

- (b) Where the Settlement Class Member did not receive a notice containing the National Brands Data or is claiming for purchases of Affected Vehicles in addition to those prepopulated in the online claim portal, the Settlement Class Member must provide purchase information in accordance with the following:
  - (i) for Individual End Users and Commercial End Users who are claiming for up to fifteen (15) additional purchases or leases of Affected Vehicles, a declaration specifying the make, model and year of each Affected Vehicle purchased or leased between January 1, 1999 and November 30, 2014.
  - (ii) for Commercial End Users who are claiming for more than fifteen (15) additional purchases, Dealers or National Brand Importers, a declaration of:
    - (A) the dollar value of the aggregate Affected Vehicle purchases (less any taxes, shipping, delivery charges, rebates, discounts, etc.); and/or
    - (B) the aggregate lease payments plus any buy-out amount (less any taxes, shipping, delivery charges, rebates, discounts, etc.);
- (c) information that will allow the Claims Administrator to determine whether the Settlement Class Member's purchases and/or leases of Affected Vehicles were in the capacity of a National Brand Importer, Dealer or an End User;
- (d) disclosure regarding whether the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements in relation to its purchases and/or leases of Affected Vehicles, and/or whether the Settlement Class Member's claims in relation to its purchases and/or leases of

Affected Vehicles have been released, and details of the compensation received and the claims released;

- (e) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate, for more information and/or to audit the Claim;
  - (f) a declaration that the information submitted in the Claim is true and correct;
  - (g) if the Claim is submitted by a third-party on behalf of a Settlement Class Member (including a parent company claiming on behalf of a subsidiary or affiliate), the third-party must provide a signed statement from that Settlement Class Member at the time the Claim is filed authorizing the third-party to file the Claim on its behalf;
  - (h) an option for Settlement Class Members to consent to the Claims Administrator retaining the information provided in the Claim for the purpose of filing a future claim in other automotive parts class actions, including consent to receiving correspondence and/or notices relating to other automotive parts class actions by email or direct mail; and
  - (i) an option for Settlement Class Members to assign their settlement benefits in accordance with paragraph 55.
27. Where a Settlement Class Member has purchase records for Affected Vehicle purchases or leases for at least two years during the period between January 1, 1999 and November 30, 2014, the Settlement Class Member can use such records (alone or together with any National Brands Data) to extrapolate its Affected Vehicle purchases or leases for the remainder of the period between January 1, 1999 and November 30, 2014. If the Settlement

Class Member's Claim is audited pursuant to paragraphs 37 to 38, the Settlement Class Member must provide a sworn statement explaining the basis for and calculation of the extrapolation of purchases.

**Assistance in Filing a Claim**

28. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.
29. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Member will be responsible for any and all expenses incurred in doing so.

**The Online Claims Portal**

30. The Claims Administrator shall create an online claims portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administrative support to enable Settlement Class Members to do so.
31. The online claims portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraph 26 above.

**National Brands Data**

32. Pursuant to orders of the Courts, to the extent reasonably available, the National Brands have provided or will be providing some or all of the following information to the Claims Administrator respecting their End Users' and Dealers' Affected Vehicle purchases: name,

address (including email address, if available), and a listing of the Affected Vehicles purchased and/or leased between January 1, 1999 and November 30, 2014.

33. The National Brands will be compensated for their reasonable time and expenses associated with collecting and providing National Brands Data, which compensation will be paid out of the Net Settlement Funds. Any disputes regarding the reasonableness of time or expenses shall be resolved by the Ontario Court.

### **Claims Filing Process**

34. Settlement Class Members will be encouraged to complete and submit a Claim electronically using the online claims portal. Subject to paragraphs 35 and 42, or further order of the Ontario Court, Claims must be submitted to the online claims portal on or before the Claims Filing Deadline.
35. If an Individual End User does not have internet access or is otherwise unable to submit a Claim using the online claims portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to paragraph 42 or further order of the Ontario Court, the completed and executed hardcopy Claim must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.
36. For Settlement Class Members whose name, address and purchase information is available in the National Brands Data, the following process shall be implemented:
  - (a) Where an email address is available or where only a mailing address is available and the Settlement Class Member purchased ten (10) or more Affected Vehicles (or

such other threshold(s) that Class Counsel and the Claims Administrator agree is economically feasible), the Claims Administrator shall provide the Settlement Class Member with a user name and password for the online claims portal and the information disclosed in the National Brands Data shall be pre-populated on the online claims portal. The Settlement Class Member shall be given an opportunity to claim in respect of additional purchases of Affected Vehicles.

- (b) Where a Settlement Class Member did not receive a notice pursuant to (a) above or is claiming for additional purchases of Affected Vehicles, the Claims Administrator shall attempt to substantiate any claimed purchases of Affected Vehicles using the National Brands Data. Where the Claims Administrator is able to substantiate the purchases, no further information is required and those purchases shall be approved for payment (provided the Settlement Class Member otherwise satisfies the eligibility requirements). Where the Claims Administrator is unable to substantiate the purchases, the audit process contained in paragraphs 37 to 40 shall apply.

#### **Audits**

- 37. Where a Settlement Class Member's purchases and/or leases of Affected Vehicles are not substantiated by the National Brands Data, the Claims Administrator shall audit:
  - (a) a random selection of at least 10% of Claims; and
  - (b) Claims representing the top 20% of Claims (by value of Affected Vehicle Purchases).
- 38. At its sole discretion, the Claims Administrator can elect to audit any other Claim.

39. The Claims Administrator shall notify the Settlement Class Member that the Settlement Class Member's Claim is the subject of an audit and the requirement to provide documentary proof:

(a) For Settlement Class Members who purchased and/or leased up to fifteen (15) Affected Vehicles not substantiated by the National Brands Data, documentary proof might include invoices, receipts, original purchase or lease records, insurance documentation, government vehicle identification history documentation, historical accounting records or comparable verification that is acceptable to the Claims Administrator.

(b) For Settlement Class Members who purchased and/or leased more than fifteen (15) Affected Vehicles not substantiated by the National Brands Data, documentary proof might include invoices, receipts, original purchase or lease records, purchase summaries provided by a National Brand, historical accounting records or comparable verification that is acceptable to the Claims Administrator.

40. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to provide documentary proof. If documentary proof is not provided within the thirty (30) day period, the Claims Administrator shall reject the Claim.

#### **Deficiencies**

41. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other information is required, the Claims Administrator shall notify the Settlement Class Member of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If



the deficiencies are not corrected within the thirty (30) day period, depending on the nature of the deficiency, the Claims Administrator may reject the Claim.

**Adjustments to Claims Process and Extension of the Claims Filing Deadline**

42. By agreement between the Claims Administrator and Class Counsel:

- (a) the Claims Filing Deadline may be extended; and
- (b) the Claims Administrator may adjust the Claims process with respect to the use of the National Brands Data, deficiencies and/or audits.

Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the Claims process if, in their opinions, doing so will further the fair and efficient administration of the Net Settlement Funds and it is in the best interests of the Settlement Class Members to do so.

**Claims Administrator's Decision**

43. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:

- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Funds in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol;
- (b) classify the Settlement Class Member's Affected Vehicle Purchases as being made by a National Brand Importer, Dealer or End User; and

- (c) make a determination of the Affected Vehicle Purchases in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol.
44. The Claims Administrator shall send to the Settlement Class Member a decision as to: (i) the approval or rejection of the Claim; (ii) the classification of purchases as being made in the capacity of a National Brand Importer, Dealer or End User; and (iii) the determination of the Affected Vehicle Purchases (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim or re-classified the Settlement Class Member's purchases, the Claims Administrator shall include in the Decision Notice its grounds for doing so.
45. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's limited right to appeal, as outlined in paragraphs 46 to 52.

#### **Appeal of the Claims Administrator's Decision**

46. The right to appeal is limited to circumstances where the dispute as to the value of the Affected Vehicle Purchases is equal to or greater than \$1,000,000.
47. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.
48. Appeals will be determined by the Ontario Court or a third party designated by the Ontario Court.
49. Appeals will be on the basis of written submissions, supported by the documentation provided to the Claims Administrator by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation

as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Ontario Court or its designee for consideration.

50. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Settlement Class Member in response to requests for additional information, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court or its designee as is reasonably necessary.
51. Notwithstanding the foregoing, the Ontario Court or its designee, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court or its designee) from the Settlement Class Member and/or Claims Administrator.
52. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

#### **Payment of Claims**

53. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:
  - (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
  - (b) make arrangements to pay approved Claims.
54. Individual claimants will be paid by e-transfer through email where an email address has been provided or cheque where no email address has been provided or the Settlement Class

Member has made arrangements with the Claims Administrator. Commercial claimants will be paid by cheque or, at the Claims Administrator's discretion, wire transfer.

55. Settlement Class Members can elect to assign their settlement benefits to Canadian charitable foundations or initiatives created or supported by the National Brands. Where a Settlement Class Member has assigned their settlement benefits, the Claims Administrator shall issue the payment to the relevant entity rather than the Settlement Class Member. At that time, the Claims Administrator shall request a charitable tax receipt on behalf of the Settlement Class Member and provide the information necessary to enable the relevant entity to issue a charitable tax receipt to the Settlement Class Member.

## **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

### **Supervisory Powers of the Ontario Court**

56. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

### **Investment of Settlement Funds**

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

### **Communication, Languages and Translation**

58. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
59. The Claims Administrator shall establish a toll-free number for calls from Canada.

60. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.
61. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

**Undeliverable Mail**

62. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
63. The Claims Administrator shall have the discretion, but is not required, to reissue payments to a Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from that Settlement Class Member's settlement benefits.

**Reissuance of Payment**

64. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests that an e-transfer be reissued, \$10 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests that a cheque be reissued, \$15 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$25 will not be reissued.

**Taxes**

65. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds while held in trust and shall pay any taxes imposed on such monies while held in trust out of the Net Settlement Funds. Settlement Class Members shall be responsible for any taxes payable by them as a result of the receipt of any settlement funds.

**Reporting**

66. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
67. The Claims Administrator shall provide any reports requested by the Courts.

**Preservation and Disposition of Claim Submissions**

68. Subject to paragraph 71, the Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until two years after all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

**Assistance to the Claims Administrator**

69. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol.

**Confidentiality**

70. All information received from Defendants, the National Brands or Settlement Class Members collected, used, and retained by the Claims Administrator for the purposes of administering the Settlement Agreements, including evaluating the Settlement Class

Member's eligibility status under the Settlement Agreements, is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5. The information provided by Settlement Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with the Settlement Agreements, orders of the Ontario Court and/or this Distribution Protocol. Prior to implementing the Distribution Protocol, the Claims Administrator shall execute an undertaking that confirms its commitment to abide by the obligations set out in this paragraph.

71. If a Settlement Class Member consents, information respecting a Claim filed by that Settlement Class Member may be preserved and used by the Claims Administrator in the future administration of settlement agreements relating to alleged price-fixing and/or bid-rigging of other automotive parts. The information shall continue to be treated as strictly private and confidential and subject to the protections of the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
- Electronic Control Units -  
Distribution Protocol Approval**

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