

SETTLEMENT AGREEMENT

BETWEEN:

ARLENE McDOWELL
and THE ESTATE OF BRYAN MADRYGA BY HIS LITIGATION ADMINISTRATOR,
REBECCA SHAW

(Plaintiffs)

- and -

FMP MORTGAGE INVESTMENTS INC., MICHAEL DARAMOLA, TONINO
AMENDOLA, and GRAHAM MCWATERS

(Settling Parties)

The parties hereto agree to settle the Plaintiffs' and proposed class members' claims against the Defendants, FMP Mortgage Investments Inc. ("FMP"), Michael Daramola, Tonino Amendola and Graham McWaters (the "Settling Parties"), in Ontario Superior Court of Justice (the "Court") File No.: CV-17-570361-00CP (the "Class Action") on the following basis, subject to the approval of the Court:

1. The "Settling Parties" includes, where applicable, each of FMP's, past and present directors, officers, employees, independent contractors, agents, sub-agents, referral agents including individuals or personal corporations retained by FMP under personal service contracts or personal service agreements, servants, administrators, affiliates, heirs, executors, successors, assigns, trustees, and personal representatives, but excludes any Defendants to the Class Action other than the Settling Parties. The Settling Parties also includes the insurer of FMP, but only insofar as the insurer is the insurer of the Settling Parties, and not to the extent that it is also the insurer of any other Defendants in the Class Action.
2. The "Settled Project" is defined as the proposed development project in Calgary, AB, known as "The Orchard", which is the subject of the Class Action.
3. The Settling Parties agree to pay to the Plaintiffs the sum of CAD three million dollars (CAD \$3,000,000.00), inclusive of legal fees, disbursements, HST, interest, and notice, administrative and all other expenses (the "Settlement Fund"), in full and final settlement of any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Parties in the Class Action, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of the Class Action (the "Settled Claims").

4. The Settlement Fund shall be paid to MSTW Professional Corporation (“MSTW”), in trust, within 45 days of this Settlement Agreement being approved by the Court, to be held in a separate and interest-bearing trust account pending any order of the Court with respect to its distribution, or return to counsel for the Settling Parties if this Settlement Agreement is terminated in accordance with paragraph 15 hereof.
5. Following execution of this Settlement Agreement, the Plaintiffs will apply to the Court for a hearing in the Class Action for the purpose of approving the Settlement Agreement (the “Settlement Approval Hearing”), at which the Plaintiffs will seek an order approving this Settlement Agreement, certifying the Class Action as a class proceeding as against the Settling Parties on consent and for settlement purposes only, and barring all claims against the Settling Parties, substantially in the form attached hereto as Schedule A, or as may be amended with the written consent of the Settling Parties (the “Settlement Approval Order”). The Class Action shall be certified as a class proceeding as against the Settling Parties, on consent and without costs, on the following basis, or as otherwise approved by the Court.

a. Representative Plaintiffs

Arlene McDowell and Rebecca Shaw, Estate Administrator of the Estate of Bryan Madryga shall be the representative plaintiffs.

b. Common Issues

The common issues to be certified as against the Settling Parties will be:

- i. Did FMP breach its contracts with the Class members? If so, how?
- ii. Did FMP owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did FMP breach its fiduciary duty owed to the Class members, and if so, how?
- iii. Did the Settling Parties owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- iv. If the Settling Parties owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- v. If the Settling Parties owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?

- vi. Did FMP make fraudulent misrepresentations to the Class members, and, if so, is FMP liable to the Class with respect thereto?
- vii. Did FMP conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Building & Development Mortgages Canada Inc., or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- viii. Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

c. Class Definition

The Class will be defined as:

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

- 6. Notice of Certification of the Class Action as against the Settling Parties and Notice of Approval of this Settlement Agreement will be substantially in accordance with the Notice Protocol in **Schedule B** or as otherwise ordered by the Court. Schedule B shall not form part of this Settlement Agreement, and Court approval of this Settlement Agreement will not depend on the Court's approval of the content of Schedule B, which may be modified by the Court as it deems fit.
- 7. The plan for distribution of the Settlement Fund does not form part of this Settlement Agreement, and the Court's approval of the Settlement Agreement shall not be contingent on either the presentation or approval of any plan for distribution of the Settlement Fund.
- 8. MSTW and Waddell Phillips Professional Corporation (together, "Class Counsel") may seek Court approval of class counsel fees and disbursements, and Plaintiffs' honoraria, either at or subsequent to the Settlement Approval Hearing. Court approval of the Settlement Agreement will not depend on approval of class counsel fees and disbursements, or Plaintiffs' honoraria. The Settling Parties will take no position with respect to Class Counsel's motion for approval of Class Counsel fees and disbursements, and Plaintiffs' honoraria.
- 9. The Plaintiffs and Non-Settling Defendants will be entitled to read into the record at the trial of the Class Action any of the evidence of the Settling Parties given on their cross-examinations as though the Settling Parties had provided that

evidence on examination for discovery, and as though they remained defendants in the Class Action.

10. The Class Action will be dismissed as against the Settling Parties, with prejudice, and on consent and without costs.

Bar Orders:

11. The Plaintiffs and the Settling Parties agree that the Settlement Approval Order shall contain a bar order which shall include the following provisions:
 - (a) all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Settled Claims which were or could have been brought in this Class Action or that have been, or that could have been asserted by a separate action by any Non-Settling Defendants or by any other person or party against the Settling Parties, or by the Settling Parties against any Non-Settling Defendants, shall be forever barred, prohibited and enjoined;
 - (b) all claims of all members of the Class against the Settling Parties of any nature whatsoever arising out of or relating in any way to the Settled Claims, which could have been brought in the Class Action or in a separate proceeding shall be forever barred, prohibited and enjoined;
 - (c) a full and final release in favour of the Settling Parties in respect of the Settled Claims, by all Class Members where the release of a joint tortfeasor does not result in a release of all joint tortfeasors;
 - (d) if a Non-Settling Defendant or any other person or party would have the right to make a claim for contribution and indemnity against the Settling Parties in the Class Action or in any other proceedings:
 - (i) the Plaintiffs and/or Class Members shall not claim or be entitled to recover from the Non-Settling Defendants or any other person that portion of any loss, damages, costs, expense, or other amount awarded that corresponds to the proportionate liability of the Settling Parties in relation to the Settled Claims and/or Settled Project as proven at trial in the Class Action or in any other proceedings; and
 - (ii) the Court shall have full authority to determine the proportionate liability of the Settling Parties at the trials or other disposition of the Class Action or other proceedings involving the Settled Project as if the Settling Parties were parties to the Class Action or other proceedings and any such finding by the Court in respect of the Settling Parties' proportionate liability in the Class Action or other

proceeding in which the liability was determined shall not be binding upon the Settling Parties in any other proceedings.

12. For greater certainty, to the extent that the Settling Parties are found to have any liability to any of the Non-Settling Defendants for contribution or indemnity arising from or related to amounts for which the Non-Settling Defendants are found liable to any of the Class in the Class Action, the Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Parties are found liable to the Non-Settling Defendants.
13. For greater certainty, the Plaintiffs hereby agree to indemnify the Settling Parties and hold them harmless in the event that there is a finding that the Settling Parties are liable to pay any amounts to any Non-Settling Defendants pursuant to any claims brought against them by any Non-Settling Defendants for contribution and indemnity in the Class Action.
14. Except as provided herein, this Settlement Agreement does not settle, compromise, release, or limit in any way whatsoever any claim by the Class Members against any person other than the Settling Parties.
15. If any one of the following events occurs:
 - a. the Settlement Approval Order is not granted;
 - b. the Settlement Approval Order is reversed or modified on appeal, and remains so after the exhaustion or exercise of all rights of appeal;

then:

- i. this Settlement Agreement shall be automatically terminated upon the happening thereof, and shall have no further force and effect with respect to the parties, save and except for paragraphs 4, 15, and 18 of this Settlement Agreement, which shall survive termination;
- ii. all orders made pursuant to this Settlement Agreement shall be null and void, and shall have no further force and effect;
- iii. this Settlement Agreement shall not be offered in evidence or used in any litigation for any purpose other than to enforce the terms of this Settlement Agreement that survive termination;
- iv. MSTW shall return the Settlement Fund forthwith to counsel for the Settling Parties, together with all accrued interest; and
- v. all Parties shall be returned to the position they were in immediately before executing this Settlement Agreement.



General Terms

16. Notwithstanding the forgoing, if the Settlement Agreement is terminated, the out of pocket costs reasonably incurred by Class Counsel to provide notice of the Settlement Approval Hearing to the Class Members, up to a maximum of \$5,000.00, will be paid by the Settling Parties to Class Counsel out of the Settlement Funds before the balance is returned to counsel for the Settling Parties.
17. The Plaintiffs hereby acknowledge that this Settlement Agreement does not constitute any admission whatsoever of liability on the part of the Settling Parties and that no liability shall be imputed to the Settling Parties as a result of entering into this Settlement Agreement.
18. The Plaintiffs and the Settling Parties represent and warrant that they have had a reasonable opportunity to review and consider this Settlement Agreement prior to executing it, have had the opportunity to obtain independent legal advice in respect thereto, and understand the significance of this Settlement Agreement, including their obligations and rights hereunder, and they are under no incapacity of any nature at the time that it was executed and explained to them. The Settling Defendants acknowledge that Class Counsel have not provided them with legal advice.
19. Class Counsel warrants that they are fully authorized to execute this Settlement Agreement on behalf of the Plaintiffs and to execute and legally bind the Plaintiffs to this Settlement Agreement.
20. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement Agreement must be made by application to the Court.
21. This Settlement Agreement shall be construed under, and governed by the laws of the Province of Ontario.

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22. This Settlement Agreement may be executed either by original signature, or electronically, including by PDF signature attached to an e-mail, or by facsimile signature, and may be executed by the parties in one or more counterparts, each of which when so executed and delivered, shall be an original and such counterparts shall together constitute one and the same instrument, notwithstanding its date of actual execution.

Dated this 14th day of August, 2024

 <hr/> <p>FMP Mortgage Investments Inc., Michael Daramola, Tonino Amendola and Graham McWaters by their lawyers Branch MacMaster LLP</p>	 <hr/> <p>Arlene McDowell, and Rebecca Shaw, Estate Administrator of the Estate of Bryan Madryga By their lawyers, MSTW Professional Corporation, and Waddell Phillips Professional Corporation</p>
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Schedule A – Certification Order

Court File No. CV-17-570361-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE) THE
) DAY OF , 2024

B E T W E E N:

(Court Seal)

ARLENE MCDOWELL and REBECCA SHAW, ESTATE ADMINISTRATOR of
THE ESTATE OF BRYAN MADRYGA

Plaintiffs

-and-

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., JAWAD
RATHORE, VINCENZO PETROZZA, LAMB CALGARY INC., ORCHARD CALGARY
INC., BUILDING & DEVELOPMENT MORTGAGES CANADA INC., ILDINA GALATI,
FFM CAPITAL INC., ROSALIA SPADAFORA, FMP MORTGAGE INVESTMENTS INC.,
MICHAEL DARAMOLA, TONINO AMENDOLA, GRAHAM MCWATERS,
DEREK SORRENTI, GRANT MORGAN and SORRENTI LAW PROFESSIONAL
CORPORATION

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants, FMP Mortgage Investments Inc., Michael Daramola, Tonino Amendola and Graham McWaters (the “Settling Defendants”), and approving the settlement agreement between the Plaintiffs and the Settling Defendants,

approving the form and content of the notice of certification and settlement approval, and counsel fee approval (the “Notice”), and the method of dissemination of the Notice, and dismissing this action as against the Settling Defendants with prejudice and without costs, was heard this day by judicial videoconference at the court house, Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5.

ON READING the materials filed, including the settlement agreement dated as of August 14, 2024 attached to this Order as **Appendix A** (the “Settlement Agreement”), and on hearing the submissions of the Plaintiffs and the Settling Defendants;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions 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 action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.

4. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

5. **THIS COURT ORDERS** that Arlene McDowell and Rebecca Shaw, Estate Administrator of the Estate of Bryan Madryga, are appointed as the representative plaintiffs.

6. **THIS COURT ORDERS** that MSTW Professional Corporation and Waddell Phillips Professional Corporation are appointed as Class Counsel.

7. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Settlement Class:

- (a) breach of contract;
- (b) breach of fiduciary duty;
- (c) negligence;
- (d) negligent misrepresentation;
- (e) fraudulent misrepresentation; and
- (f) conspiracy.

8. **THIS COURT DECLARES** that the relief sought by the Settlement Class is declarations, general damages, punitive damages, interest, and costs.

9. **THIS COURT ORDERS** that the following issues are common to the Settlement Class:

- (a) Did FMP breach its contracts with the Class members? If so, how?
- (b) Did FMP owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did FMP breach its fiduciary duty owed to the Class members, and if so, how?
- (c) Did the Settling Parties owe a duty of care to the Class members with respect to the claims asserted against it in negligence or negligent misrepresentation?

- (d) If the Settling Parties owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for this Settling Parties?
- (e) If the Settling Parties owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- (f) Did FMP make fraudulent misrepresentations to the Class members, and, if so, is FMP liable to the Class with respect thereto?
- (g) Did FMP conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Building & Development Mortgages Canada Inc., or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- (h) Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. **THIS COURT DECLARES** that a class proceeding is the preferable procedure for the resolution of the common issues as against the Settling Defendants.

11. **THIS COURT ORDERS** that FAAN Mortgage Administrators Inc. is appointed as the Claims Administrator to deliver the Notices and to disseminate the Settlement Funds to the Class Members.

12. **THIS COURT ORDERS** that the Plaintiffs shall give notice of the certification of this action, and notice of the approval of the Settlement Agreement to the Class Members in

substantially the form set out in **Appendix B** hereto and in the manner set out in the Notice Protocol attached as **Schedule B** to the Settlement Agreement.

13. **THIS COURT ORDERS** that no Class Member may opt out of this action as the opt out period has already expired.

14. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the parties, FAAN Mortgage Administrators Inc., counsel for the Settling Defendants or Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any matter in any way relating to the implementation of this Order or the Settlement Agreement, except with leave of this Court.

15. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action as against the Settling Defendants for settlement purposes only, the definition of the Class, and the certified Common Issues, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with this action and, without restricting the generality of the foregoing, may not be relied on by any person to establish the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the action, as against the Non-Settling Defendants.

16. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendants in accordance with the terms hereof, and upon each member of the Class, including those persons who are minors or mentally incapable, and that the requirements

of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 are dispensed with in respect of the action.

17. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.

18. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented and enforced in accordance with its terms.

19. **THIS COURT ORDERS** that, on the date on which any appeal of this Order is finally disposed of, or the time to bring any appeal of this Order, if any, has expired (the “Effective Date”) each Class Member and any of their past and current successors, heirs, executors, administrators, trustees, or assigns (“Releasors”) releases and shall be conclusively deemed to have forever and absolutely released the Settling Defendants and their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, insurers, beneficiaries and assigns (“Releasees”) from any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Defendants in this action, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of this action (the “Released Claims”).

20. **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 of any nature whatsoever against any Releasee, or against any other person who may claim contribution or indemnity or other claims over relief from any Releasee, arising out of, in respect of or relating in any way to any Released Claim, and all such claims are hereby forever barred, prohibited and enjoined.

21. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those members of the Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

22. **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 or arising from the Released Claims, which were or could have been brought in this action or any other actions, or otherwise by any Non-Settling Defendants, any named or unnamed co-conspirator that is not a Releasee or by any other person or party against a Releasee, or by a Releasee against any Non-Settling Defendants or any named or unnamed co-conspirator that is not a Releasee or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order.

23. **THIS COURT ORDERS** that, for greater certainty, all claims of the Class members of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of the Settling Defendants relating to or arising from the syndicated mortgage loans that are the subject of this action, and which could have been brought in this action or in a separate proceeding are barred, prohibited and enjoined.

24. **THIS COURT ORDERS** that, for greater certainty, this Order does not preclude the Class from continuing this action against any Non-Settling Defendants or named or unnamed alleged co-conspirators that are not Releasees, or the continuation of the claims asserted in this action on an individual basis or otherwise against any Non-Settling Defendants or named or unnamed co-conspirator that is not a Releasee, provided that no relief is sought against any Non-Settling Defendants, named or unnamed alleged co-conspirator, or other party in those proceedings for or arising from any Released Claims.

25. **THIS COURT ORDERS** that, if this Court ultimately determines that a claim by any Non-Settling Defendants, named or unnamed alleged co-conspirator, or other person for contribution and indemnity or other claim over against any Releasee, whether in equity or in law, by statute or otherwise, is a legally recognized claim:

- (a) the Plaintiff and Class Members shall not be entitled to claim or recover from any Non-Settling Defendants, named or unnamed alleged co-conspirator or other person that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and Class Members shall limit their claims against any Non-Settling Defendants, named or unnamed alleged co-conspirator or other person to include only, and shall only seek to recover from any Non-Settling Defendants, named or unnamed alleged co-conspirator or other person, such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-Settling Defendants, named or unnamed alleged co-conspirator or other person to

the Plaintiff and Class Members, if any, and, for greater certainty, the Class Members shall be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Defendants(s), named or unnamed alleged co-conspirator and/or any other person or party that is not a Releasee, if any, 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 this action, whether or not the Releasees remain in the action 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 action and any determination by this Court in respect of the proportionate liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceeding.

26. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which any Non-Settling Defendants, named or unnamed alleged co-conspirator or other person may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs or judgment against them in favour of the Class Members in the action or the rights of the Plaintiff and the Class Members to oppose or resist any such arguments, except as provided for in this Order.

27. **THIS COURT ORDERS** that, for greater certainty, to the extent that the Settling Defendants are found to have any liability to any of the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person for contribution or indemnity arising from or related to amounts for which the Non-Settling Defendants, named or unnamed alleged co-

conspirator or other person are found liable to the Class, the Class Members' recovery from the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person.

28. **THIS COURT ORDERS** that, for greater certainty, the Plaintiffs will indemnify the Settling Defendants and hold them harmless in the event that there is a finding that the Settling Defendants are liable to pay any amounts to any Non-Settling Defendants pursuant to any claims brought against them by any Non-Settling Defendants for contribution and indemnity in the Class Action.

29. **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 acknowledges and attorns 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.

30. **THIS COURT ORDERS** that, without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

31. **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 have or may have in the action against any Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.

32. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

33. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

34. **THIS COURT ORDERS** that, upon the Effective Date, this action is hereby dismissed as against all Settling Defendants, without costs and with prejudice.

35. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice

**Appendix B to FMP Certification and Settlement Approval Order
(Short-Form Notice)**

**NOTICE OF CLASS ACTION CERTIFICATION and
APPROVAL OF PARTIAL SETTLEMENT**

**Fortress Syndicated Mortgage Class Actions in respect of:
The Orchard, Calgary**

You are receiving this notice because you invested in the following “Fortress” syndicated mortgage loan in respect of the following Development Project:

- the **Orchard Project**, located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta in respect of the charge registered as Registration Number 141 112 373

A Class action has been commenced in respect of this Development Project:

- *Arlene McDowell and The Estate of Bryan Madryga by his Estate Administrator Rebecca Shaw v. Fortress Real Capital Inc. and others CV-17-570361-00CP (Orchard)*

(the “Class Action”)

This notice provides you with important information about the Class Action that you need to be aware of because there are **two important developments** that can impact your legal rights.

1. The Action has been Certified for Settlement Purposes against the FMP Defendants, only

The court has certified this class action as against the Defendants FMP Mortgage Investments Inc., Michael Daramola, Tonino Amendola and Graham McWaters (the “FMP Defendants”).

The FMP Defendants are referred to as the “Settling Defendants”.

2. The Court has Approved a Settlement with the FMP Defendant

The Court has approved a settlement with the FMP Defendants that will fully and finally resolve the Class Members' claims against the FMP Defendants. The FMP Defendants will pay \$3 million inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members.

The Court has approved legal fees payable to Class Counsel of \$X, which is equal to Y% of the settlement funds, plus HST and disbursements. Class Counsel have been retained on a contingency fee basis, and have paid all the expenses related to the action.

This Notice only contains a summary of how the certification and settlement of this action affects you. Go to www.fortressclassaction.ca to review the Long-Form Notice for more details, or contact Class Counsel at the addresses below if you have any questions.

CERTIFICATION OF THE ACTIONS AGAINST THE SETTLING DEFENDANTS

The Court has granted an order certifying the Orchard action as class proceeding as against the FMP Defendants, for the purpose of effecting that settlement.

There are other Defendants in this action that have not settled, and the Class Action will be continuing against those non-Settling Defendants.

The Class Members in the Class Action are:

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

You have received this Notice because you have been identified by FAAN, the mortgage administrator, as a Class Member in the Orchard Class Action.

What the Class Action Is About

In the Class Action, the Plaintiffs assert claims against the Settling Defendants for breach of contract, negligence, negligent misrepresentation, fraudulent misrepresentation, and conspiracy. The claims seek payment of damages (money) to the Class Members to compensate them for the losses that they have suffered from their investments in the syndicated mortgage loans for this Development Project.

None of the allegations made against the Settling Defendants have been proven in court, and the Settling Defendants deny all the allegations that have been made against them. If a settlement had not been reached, the Settling Defendants would be defending the Class Action and opposing the certification of this action as a class proceeding. The settlement is a compromise of the parties' positions and is not an admission of liability or fault by the Settling Defendants.

For more information, including details about the Class Action or the Settlement, visit www.fortressclassaction.ca, or contact Class Counsel at:

<p>Waddell Phillips Professional Corporation Barristers 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 reception@wadellphillips.ca Tel: 1-888-684-5545 (toll-free) Fax: 416-477-1657</p>	<p>MSTW Professional Corporation Barristers and Solicitors 1301- 20 Adelaide Street E Toronto, ON M5C 2T6 mwine@mstwlaw.com Tel: 416-477-5524 Fax: 416-777-2050</p>
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The Ontario Superior Court of Justice approved this notice, however, if you have questions or comments, contact Class Counsel and NOT the Court.

Appendix B to FMP Certification and Settlement Approval Order
(Long-Form Notice)

NOTICE OF CLASS ACTION CERTIFICATION and
APPROVAL OF PARTIAL SETTLEMENT

Fortress Syndicated Mortgages Class Action in respect of:
The Orchard, Calgary

You are receiving this notice because you invested in a “Fortress” syndicated mortgage loan in respect of the following Development Project:

- the **Orchard Project**, located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta in respect of the charge registered as Registration Number 141 112 373; or

A Class action has been commenced in respect of this Development Project:

- *Arlene McDowell and The Estate of Bryan Madryga by his Estate Administrator Rebecca Shaw v. Fortress Real Capital Inc. and others CV-17-570361-00CP (Orchard)*

(the “Class Action”)

This notice provides you with important information about the Class Action that you need to be aware of because there are **two important developments** that can impact your legal rights.

1. The Class Action has been Certified for Settlement Purposes as against the FMP Defendants

The Court has certified the action involving the Orchard Development Project as against the Defendant FMP Investments Inc., Michael Daramola, Tonino Amendola and Graham McWaters (the “FMP Defendants”).

The FMP Defendants are referred to as the “Settling Defendants”.

The Class Action has not been certified as against any of the remaining Defendants who have not already settled (the “Non-Settling Defendants”). A further notice will be sent to you if the Class Action is certified against the Non-Settling Defendants.

2. The Court has Approved a Settlement with the FMP Defendant

The Ontario Superior Court of Justice has approved a settlement with the FMP Defendants that will fully and finally resolve the Class Members’ claims against the FMP Defendants. The **FMP Defendants will pay \$3 million** inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members.

In this Settlement, the Settlement Funds are being paid by the Settling Defendants’ insurer. The Court has determined that the Settlement is fair, reasonable and in the best interests of the Class.

No settlement has been reached with the Non-Settling Defendants. If any future settlement is achieved, you will receive another notice to tell you about that.

What Do I Need to Know?

Please read the following **Part I** and **Part II** to understand how the certification and settlement approval impact your legal rights.

You do not have to pay any legal fees out of your own pocket to participate in the Class Action. Class Counsel are paid on a contingency fee basis from the Settlement Funds, as explained below. You are also not at risk to pay any court costs. Only the Representative Plaintiffs are liable for any adverse court costs, and Class Counsel has provided them with an indemnity.

The opt out period for this class proceeding has already expired following an earlier settlement with the BDMC and FFM Defendants. You are a member of the Class because you did not opt out at that time.

As a Class Member, you are entitled to receive your proportionate share of the Settlement Funds after deduction of settlement administration costs and the court-approved legal fees and disbursements.

For more information about the Class Action, please visit: www.fortressclassaction.ca.

For more information, including details about the Class Action or the Settlement, visit www.fortressclassaction.ca, or contact Class Counsel at:

Waddell Phillips Professional Corporation
Barristers
36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5
reception@wadellphillips.ca
Tel: 1-888-684-5545 (toll-free)
Fax: 416-477-1657

MSTW Professional Corporation
Barristers and Solicitors
1301- 20 Adelaide Street E
Toronto, ON M5C 2T6
mwine@mstwlaw.com
Tel: 416-477-5524
Fax: 416-777-2050

Your Rights and Options are explained in this Notice.
Please Read the Following Pages

THIS NOTICE CONTAINS:

Part I: Certification of the Action against FMP

BASIC INFORMATION

1.	What is a class action lawsuit	p.
2.	What is the lawsuit about	p.
3.	What are the allegations	p.
4.	How does the Defendant respond to these allegations	p.
5.	Has the Court decided who's right	p.

CERTIFICATION INFORMATION

6.	Why did I get this Notice	p.
7.	What is Certification and why is it necessary	p.
8.	Who is a Class Member	p.
9.	What are the Common Issues	p.

10.	Are there risks involved in being a Class Member	p. 13
11.	What if I don't want to be Involved in the Class Action (Opt Out)	p. 13
12.	What happens if I do nothing	p. 14

Part II: Approval of the Settlement with FMP

SETTLEMENT AGREEMENT INFORMATION

13.	What are the terms of the Settlement Agreement	p.
14.	Who are the Settling Defendants	p.
15.	What does a Partial Settlement mean	p.
16.	How do I get paid from the Settlement	p.

THE LAWYERS REPRESENTING YOU

17.	Do I have a lawyer	p.
18.	Do I have to pay any legal fees or court costs	p.

ADDITIONAL INFORMATION

19.	What if I have more questions	p.
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Part I: Certification of the Action Against FMP

BASIC INFORMATION

1. What is a Class Action?

A class action is a unique type of lawsuit. It allows many people to sue someone who hurt or injured them in a similar way. For example, in this case the investors in each of the syndicated mortgage loans in this Development Project are called the “Class” and each individual investor is a “Class Member”.

Because the number of people in a class can be large, one or more class members act as “representative plaintiffs”. These class members chose to bring the action on behalf of everyone who was affected by the Defendant. Here, the Representative Plaintiffs are pursuing this Class Action for the benefit of everyone who invested in a syndicated mortgage loan relating to the Orchard Development Project. The lawyers for the Representative Plaintiffs and the Class are called “Class Counsel”.

In a class action, the court decides the issues about what happened and the legal questions that are common to the whole class. These are called “Common Issues”, and when they are decided at trial, they are decided for everyone in the class.

2. What is the lawsuit about?

The Representative Plaintiffs in this Class Action are seeking to recover the losses they and the Class Members suffered because of their investments in the Fortress syndicated mortgage loan secured on the Orchard Development Project. The claims do not relate to investors’ losses from their investments in any other syndicated mortgage loans on any other developments.

The Defendants in the Class Action include Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Lamb Calgary Inc., Orchard Calgary Inc., Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.), The Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc., FFM Capital Inc., Rosalia Spadafora, Derek Sorrenti, and Sorrenti Law Professional Corporation, as well as the Settling Defendants. Settlements have already been reached with Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.), The Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc., FFM Capital Inc., and Rosalia Spadafora,

3. What are the allegations?

The Class Action alleges that the Class Members suffered investment losses because of the misconduct of the Defendants.

The Class Action raises several different causes of action against the Defendants. The legal terms for these allegations are: violations of statutory duties as per the *Financial*

Services of Ontario Act, breach of fiduciary duties, fraudulent and negligent misrepresentations, negligence, conspiracy to injure, and breach of contract.

If you would like to read more, copies of the Statements of Claim can be viewed under the documents tab at: www.fortressclassaction.ca.

4. How do the Defendants respond to these allegations?

The Defendants who have defended the Action all deny wrongdoing. The Defendants, Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza did not defend the Action and have been noted in default. The Defendants, Lamb Calgary Inc. and Orchard Calgary Inc. were not served with the claim as they were single-purpose entities with no assets.

None of the allegations made against the Settling Defendants have been proven in court, and the Settling Defendants deny all the allegations that have been made against them. If a settlement had not been reached, the Settling Defendants would be defending the Class Action and opposing the certification of this action as a class proceeding. The settlement is a compromise of the parties' positions and is not an admission of liability or fault by the Settling Defendants.

5. Has the Court decided who is right?

No decision has been made about whether the Class or the Defendants are right. This will not happen unless the matter goes to trial against the Non-Settling Defendants.

While the Settling Defendants have negotiated a Settlement, the Court has not, and will not, decide if the Settling Defendants are at fault.

CERTIFICATION INFORMATION

6. Why did I get this Notice?

You received this Notice because, according to the records of FAAN, you invested in the syndicated mortgage loan that is the subject of this Class Action, and you are, therefore, a Class Member.

The Notice lets you know that the Plaintiffs have reached a Settlement with the Settling Defendants.

As part of the Settlement, the Settling Defendants have consented to the action being certified as a class proceeding against them.

This Notice tells you that the Class Action has been certified, and the Court has approved the Settlement. As part of the Settlement, the Class Members will be providing a full and final release to the Settling Defendants. They will also be limiting their claims against the

Non-Settling Defendants to the Non-Settling Defendants' proportionate share of liability as determined at trial.

7. What is "Certification" and why is it necessary?

In order for the Court to decide if the Settlement Agreement is fair, reasonable, and in the best interests of Class Members, the Court must first decide if the Action is suitable to be prosecuted as a class action. It must appoint the representative plaintiff(s) to allow the representative(s) to pursue the action on behalf of the Class, and it must decide who the Class Members are. The Court does this through a process called "certification". Without certification, the lawsuit could not be prosecuted for the benefit of the Class, and each investor would have to make claims for their losses individually.

8. Who is a Class Member?

The Class Members in the Class Action are:

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

9. What are the Common Issues?

The common issues certified as against the FMP Defendants are:

- i. Did FMP breach its contracts with the Class members? If so, how?
- ii. Did FMP owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did FMP breach its fiduciary duty owed to the Class members, and if so, how?
- iii. Did the Settling Parties owe a duty of care to the Class members with respect to the claims asserted against it in negligence or negligent misrepresentation?
- iv. If the Settling Parties owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for this Settling Parties?
- v. If the Settling Parties owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- vi. Did FMP make fraudulent misrepresentations to the Class members, and, if so, is FMP liable to the Class with respect thereto?

- vii. Did FMP conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Building & Development Mortgages Canada Inc., or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- viii. Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. Are there risks involved in being a Class Member?

Class Members are not responsible for any court costs that might be payable to the Non-Settling Defendants. Only the Representative Plaintiffs are at risk for any adverse cost awards, and they are being indemnified by Class Counsel.

Class Members do not have to pay any legal fees out of their own pockets. Class Counsel are working on a contingency fee basis, which means that they are only paid if the Class Action is successful, either through settlements or a trial judgment. Class Counsel's fees are paid from the settlement fund or trial judgment, and must first be approved by the Court.

Class Members cannot sue the Defendants on their own, and they are bound by the Court's decisions in the Class Action - whether or not they are favourable to the Class.

11. What if I don't want to be involved in the Class Action (Opt Out)?

As the Class Action has already been certified in respect of the BDMC and FFM settlements, and you received payments in respect of those settlements, you cannot now opt out of the Action.

12. What happens now?

FAAN Mortgage Administration Inc. will distribute the net Settlement Funds to the Class Members in accordance with a distribution plan approved by the Court as part of the Settlement Approval. The net Settlement Funds is that amount of the Settlement Funds that remains after deduction of the court-approved Class Counsel legal fees and disbursements, the costs of delivering the Notices, and the Settlement administration costs.

As a Class Member, you will be legally bound by all Court orders and judgments, including a release to be granted in favour of the Settling Defendants. You will not be able to sue the Defendant on your own with respect to your syndicated mortgage loan investment losses.

Part II: Approval of the Settlements with FMP

13. What are the terms of the Settlement Agreement?

The Court has approved a settlement with the FMP Defendants that will fully and finally resolve the Class Members' claims against the FMP Defendants. The FMP Defendants will pay \$3 million inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members.

In exchange for payment of the Settlement Funds, all of the Class Members' claims against the Settling Defendants will be released on a full and final basis. The ongoing claims against the Non-Settling Defendants will be limited to the Non-Settling Defendants' proportionate share of fault, if any, for the Class Members' losses.

14. Who are the "Settling Defendants"?

There are many defendants in this Class Action. The Settling Defendants are FMP Mortgage Investment Inc., a mortgage brokerage firm, Tonino Amendola, Michael Daramola and Graham McWaters.

15. What does a Partial Settlement mean?

The Court has approved the Settlement with the Settling Defendants. But that will not end the lawsuit. The Class Action will be continued as against each of the Non-Settling Defendants. This will include bringing a motion for certification of the Class Actions as against each of the Non-Settling Defendants, and eventually holding a trial on the common issues, assuming that certification is granted, or obtaining a default judgment against the Defendants who have been noted in default. It is possible that there may be future settlements, and if there are you will be notified. You will also be notified about the outcome of any common issues trial.

16. How do I get paid from the Settlement?

The Court has determined that the Settlement Agreement is fair, reasonable, and in the best interests of Class Members in the Class Action.

The Court has also approved a distribution plan for the payment of the net Settlement Funds to the Class Members. Because the Class Members are all known from the records of FAAN, FAAN will distribute the settlement funds directly to the Class Members in accordance with the distribution plan. There is no need to fill out any forms or to make any application to receive a payment.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer?

Waddell Phillips Professional Corporation and MSTW Professional Corporation are the lawyers for the Representative Plaintiffs and are referred to as Class Counsel.

18. Do I have to pay anything?

You do not have to pay any of the fees and expenses of Class Counsel, directly. Class Counsel's fees and expenses have been approved by the Court in the total amount of \$X, inclusive of disbursements and taxes for the FMP Settlement. These amounts will be deducted from the Settlement Funds, along with FAAN's costs associated with providing the Notices and administering the Settlements, and the balance will then be paid out to the Class Members.

ADDITIONAL INFORMATION

19. What if I have more questions?

You can obtain additional information about this case by contacting Class Counsel using the information below:

Waddell Phillips Professional Corporation Barristers 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 reception@wadellphillips.ca Tel: 1-888-684-5545 (toll-free) Fax: 416-477-1657	MSTW Professional Corporation Barristers and Solicitors 1301- 20 Adelaide Street E Toronto, ON M5C 2T6 mwine@mstwlaw.com Tel: 416-477-5524 Fax: 416-777-2050
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This notice is a summary of the Settlement Approval order. If there is a conflict between this notice and the terms of the Settlement Approval order, the Settlement Approval order prevails. The Settlement Approval Order can be viewed in the documents tab at www.fortressclassaction.ca.

The Ontario Superior Court of Justice approved this notice, however, if you have questions or comments, contact Class Counsel and not the Court.

**PLAINTIFFS' CERTIFICATION and SETTLEMENT APPROVAL
NOTICE PROTOCOL
(FMP DEFENDANTS)**

The Plaintiffs' notice plan pursuant to s. 19 of the *Class Proceedings Act, 1992* to provide notice of the partial certification of this action as against FMP Mortgage Investments Inc., Michael Daramola, Tonino Amendola and Graham McWaters (the "Settling Defendants"), and the approval of the settlement with the Settling Defendants is set out below.

1. There are 382 individuals who participated in the syndicated mortgages with respect to The Orchard development.
2. The syndicated mortgage is being administered by FAAN Mortgage Administrators Inc. ("FAAN" or the "Trustee") as Trustee of Building & Development Mortgages Canada Inc. ("BDMC"), pursuant to the Appointment Order granted by the Ontario Superior Court of Justice in Court File No. CV-18-596204-00CL (the "Trustee Proceeding").
3. FAAN, in its capacity as Trustee, has access to the books and records of BDMC, which contain the names and last known contact information for every member of the Class (the "Master Class Member List").
4. The Plaintiffs have obtained an order appointing FAAN, if it consents, to act as Notice Administrator to provide notice to the Class Members of the motion for settlement approval, and if the settlement agreement is approved, to provide notice of certification and the approval of the settlement with the FMP Defendants (the "Notice of Settlement Approval"), and to act as Claims Administrator to distribute the Settlement Funds in accordance with the court-approved distribution protocol.
5. Class Counsel will arrange for translation into French of both the Short-Form and Long-Form Notice of Hearing for Settlement Approval and of the Short-Form and Long-Form Notice of Certification and Settlement Approval in the forms approved by the Court (the "Notices").

6. Upon FAAN's appointment as the Notice Administrator and the court's approval of the form of the Notice of Hearing for Settlement Approval, FAAN will email, and where no valid email exists, mail to the Class Members listed in the Master Class Member List, the Short-Form Notice of Hearing for Settlement Approval, in both English and French.
7. Upon the court's certification of the Action, FAAN will email, and where no valid email exists, mail to the Class Members listed in the Master Class Member List, the Short-Form Notice of Settlement Approval, in both English and French.
8. FAAN has a dedicated website in respect of the administration of the Trustee Proceedings on which it posts court documents and other materials related to the Trustee Proceedings to inform the investors in Fortress syndicated mortgage loans of the status of their investments. FAAN has created a page on this website related to the Notices it is providing as Notice Administrator. FAAN will post the Short-Form and Long-Form Notices on this webpage, in both English and French. Class Members will be directed to contact Class Counsel with any questions regarding the Notices.
9. Class Counsel has a dedicated page on its website for this class action, on which is posted current information and key documents about this class action. The Notices will be posted on this webpage, in both English and French, along with a narrative explaining the terms of the settlement.
10. Class Counsel's website includes a confidential portal through which Class Members can send messages directly to Class Counsel. Class Members can also email Class Counsel directly. Class Counsel also has a toll-free number available for Class Members to contact them by telephone. Class Counsel will continue to promptly return all communications from Class Members and will provide copies of the Settlement Agreement or other court documents to any Class Members who request hard copies.
11. Class Counsel will post a link to the Notices to their Twitter and LinkedIn accounts.

12. Class Counsel will request that the administrator of the website VOSMI – Victims of Syndicated Mortgage Investments (www.vosmi.ca/wine-waddell) post an update on its website, on the page related to this action, advising of the partial certification and settlement approval, including a link to Class Counsel's website.

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