

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

TK HOLDINGS INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 17-11375 (BLS)  
Jointly Administered

**STIPULATION AND SETTLEMENT AGREEMENT RESOLVING PROOF OF  
CLAIM NO. 3617 AND RELATED MOTION**

This Stipulation and Settlement Agreement (“Agreement”) is made and entered into this 3rd day of January 2019 (“Execution Date”) by and between Joseph J. Farnan, Jr., solely as Trustee (the “Trustee”) of the Reorganized TK Holdings Trust (the “Trust”), and the Canadian Anti-Trust Class Representatives (as defined below and together with the Trust, the “Parties”), both individually and on behalf of the Settlement Class, as more particularly defined in paragraph 7 below.

**RECITALS**

WHEREAS, prior to the Petition Date (as defined below) the Canadian Anti-Trust Class Representatives commenced the following lawsuits in Canada against TK Holdings and others (collectively, the “Actions”):

- *Sheridan Chevrolet Cadillac Ltd. v. Autoliv ASP, Inc.*, Case No. CV-13-472259-00CP, Superior Court of Justice, Ontario, Canada (the “Ontario Action”);

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<sup>1</sup> The debtors in these chapter 11 cases (collectively, the “Debtors”), along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Takata Americas (9766); TK Finance, LLC (2753); TK China, LLC (1312); TK Holdings Inc. (3416); Takata Protection Systems Inc. (3881); Interiors in Flight Inc. (4046); TK Mexico Inc. (8331); TK Mexico LLC (9029); TK Holdings de Mexico S. de R.L. de C.V. (N/A); Industrias Irvin de Mexico, S.A. de C.V. (N/A); Takata de Mexico, S.A. de C.V. (N/A); and Strosshe-Mex, S. de R.L. de C.V. (N/A). Except as otherwise set forth herein, the Debtors’ international affiliates and subsidiaries are not debtors in these chapter 11 cases. The location of the Debtors’ corporate headquarters is 2500 Takata Drive, Auburn Hills, Michigan 48326.

- *Ewert v. Autoliv, Inc.*, Case No. S132959, Supreme Court, British Columbia, Canada (the “BC Action”); and
- *Asselin v. Autoliv Inc.*, Case No. 200-06-000158-132, Superior Court, Province of Quebec, District of Quebec, Canada (the “Quebec Action”).

WHEREAS, the Canadian Anti-Trust Class Representatives allege that they and each of the members of the Settlement Class were injured as a result of TK Holdings, Inc.’s (“TKH”) participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate Canadian markets and customers for Occupant Safety Systems (defined below) in violation of antitrust and unfair competition laws as more particularly set forth in the pleadings (as may have been amended) filed in the Actions (the “Pleadings”);

WHEREAS, an opt-out process has already occurred in the Actions;

WHEREAS, the Canadian courts ordered that no further right to opt out of the Actions would be provided;

WHEREAS, three groups of class members validly and timely opted out of the Actions,

WHEREAS, on June 25, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);

WHEREAS, on July 7, 2017, the Debtors filed their *Motion of Debtors Pursuant to 11 U.S.C. §§ 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005, and 9007, and Local Rules 2002-1(e), 3001-1, and 3003-1 for Authority to (I) Establish Deadlines for Filing Proofs of Claim, (II) Establish the Form and Manner of Notice Thereof, and (III) Approve Procedures for Providing Notice of Bar Date and Other Important Deadlines and Information to Potential PSAN Inflater Claimants* [D.I. 171] (the “Bar Date Motion”);

WHEREAS, on October 4, 2017, the Bankruptcy Court (as defined below) granted the Bar Date Motion and entered an *Order For Authority to (I) Establish Deadlines for Filing Proofs of Claim, (II) Establish the Form and Manner of Notice Thereof, and (III) Approve Procedures for Providing Notice of Bar Date and Other Important Deadlines and Information to Potential PSAN Inflater Claimants* [D.I. 959] (the “Bar Date Order”);

WHEREAS, pursuant to the Bar Date Order, November 27, 2017, was established as the General Bar Date;

WHEREAS, the Canadian Anti-Trust Class Representatives timely filed the following proofs of claim on behalf of themselves and members of the Settlement Class:

- On June 30, 2017, certain purported creditors filed a proof of claim against TKH that was subsequently denoted as Claim No. 20 on the claims register. Claim No. 20 was a general unsecured claim for \$100,000,000, and was based on the claims and allegations asserted in the Ontario Action;
- On August 9, 2017, an individual named Darren Ewert filed a proof of claim against TKH that was subsequently denoted as Claim No. 72 on the claims register. Claim No. 72 was a general unsecured claim for \$100,000,000, and was based on the claims and allegations asserted in the BC Action;
- On August 23, 2017, an individual named Serge Asselin filed a proof of claim against TKH that was subsequently denoted as Claim No. 97 on the claims register. Claim No. 97 was a general unsecured claim for \$110,000,000, and was based on the claims and allegations asserted in the Quebec Action;
- On August 24, 2017, Serge Asselin filed another proof of claim against TKH that was subsequently denoted as Claim No. 104 on the claims register. Claim No. 104 was a general unsecured claim for \$110,000,000, was based on the Quebec Action, and appears to be duplicative of Claim No. 97; and
- On November 27, 2017, a proof of claim was filed against TKH by “Canadian Anti-Trust Class Action Claimants in all Canadian anti-trust class actions” and was subsequently denoted as Claim No. 3617 on the claims register. Claim No. 3617 is a general unsecured claim for \$29,542,726.16.

WHEREAS, on February 21, 2018, the Bankruptcy Court entered an order [D.I. 2120] confirming the *Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings and its Affiliated Debtors* [D.I. 2116] (the “Plan”);

WHEREAS, the Plan became effective on April 10, 2018 [D.I. 2646];

WHEREAS, after the Plan became effective, the Trust was established for the purpose of reconciling certain claims, administering the trust assets and making distributions to the trust beneficiaries, all as provided for under the Plan;

WHEREAS, on June 4, 2018, the Canadian Anti-Trust Class Representatives filed that certain *Motion by Canadian Antitrust Class Action Claimants Against TK Holdings, Inc. Pursuant to Fed. R. Bankr. P. 9014 and 7023 to Make Federal Rule of Civil Procedure 23 Applicable to These Proceedings, to Permit the Filing of a Class Proof of Claim and Appointing Class Counsel*, at Docket No. 2933 (the “Class Certification Motion”);

WHEREAS, on July 17, 2018, the Trustee filed his objection to the Class Certification Motion at Docket No. 3076;

WHEREAS, on August 27, 2018, the Bankruptcy Court entered an *Order Approving Stipulation Between the Reorganized TK Holdings Trust and Certain Claimants Regarding Expunging Claims Nos. 20, 72, 97, and 104* [Docket No. 3310], pursuant to which claim numbers 20, 72, 97, and 104 were expunged leaving Claim No. 3617 as the “operative” and remaining claim for the Canadian Anti-Trust Class Representatives;

WHEREAS, Settlement Class Counsel (as defined below) and counsel for the Trustee have engaged in arm’s-length settlement negotiations, and this Agreement is the result of those negotiations;

WHEREAS, the Canadian Anti-Trust Class Representatives, through Settlement Class Counsel, have conducted an investigation into the facts and the law regarding the Actions and have concluded that resolving the claims against TKH and the Trust, according to the terms set forth in this Agreement, is in the best interests of the Canadian Anti-Trust Class Representatives and the Settlement Class because of the payment of the Settlement Amount (as that term is defined below) that the Trustee has agreed to provide pursuant to this Agreement; and

WHEREAS, the Trust, despite its belief that it has no liability for the claims asserted and that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid the expense, inconvenience, distraction, and risk of protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement for the benefit of its stakeholders, and to finally resolve all claims that have been or could have been asserted by any Settlement Class Member (as defined below) against TKH or the Trust based on the claims and allegations in the Actions, as more particularly set out below.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that Claim No. 3617 and the Class Certification Motion be hereby resolved and that the Actions be settled, compromised, and dismissed with prejudice as to the Releasees and except as hereafter provided, without costs to Canadian Anti-Trust Class Representatives, the Settlement Class, TKH or the Trust, subject to the approval of the United States Bankruptcy Court for the District of Delaware overseeing the above-captioned bankruptcy cases (the "Bankruptcy Court"), and the Canadian bankruptcy court (the "Canadian Court").

A. Definitions

1. “Defendant” means any party named as a defendant in the Actions at any time up to and including the date when the Canadian Court has entered a final approval order certifying the Settlement Class described below and approving this Agreement.

2. “Occupant Safety Systems” or “OSS” means safety devices in automotive vehicles (passenger cars, sports utility vehicles, vans and light trucks (up to 10,000 lbs.), including but not limited to seatbelts, steering wheels and airbags).

3. “Released Claims” means the claims described in paragraph 20.

4. “Releasees” shall refer to (i) TKH; (ii) the Trust; and (iii) each of TKH and the Trust’s respective present and former principals, partners, officers, directors, supervisors, employees, agents, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns (including but not limited to the Trustee, the Trustee’s representatives, attorneys, and financial advisors, and the Trust’s Claims Oversight Committee and its individual members) each solely in their capacity as such. “Releasees” does not include Takata Corporation or any other Defendant in the Actions other than TKH.

5. “Releasers” shall refer to the Canadian Anti-Trust Class Representatives and each of the Settlement Class Members, as defined herein, and their past and present officers, directors, supervisors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, affiliates, principals, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing, each solely in their capacity as such.

6. “Settlement Amount” shall refer to all monies received by the Canadian Anti-Trust Class Representatives for the benefit of the Settlement Class in connection with the

treatment of Claim No. 3617 as a general unsecured, non-priority claim in the amount of US\$7,000,000 under the Plan in the above-captioned bankruptcy cases as set forth in paragraph 14 of this Agreement. The “Settlement Fund” shall be the Settlement Amount plus any income or accrued interest that may be earned on that amount after distributions are made by the Trust for the benefit of the Settlement Class.

7. For purposes of this Agreement, the “Settlement Class” is defined as:

All Persons in Canada who purchased OSS or who purchased and/or leased a new automotive vehicle containing Occupant Safety Systems during the period January 1, 2003 through December 4, 2014.

8. “Settlement Class Counsel” shall refer to the law firm of:

Jean-Marc Leclerc  
Sotos LLP  
180 Dundas Street West, Suite 1200  
Toronto, Canada  
M5G 1Z8  
Telephone: (416) 977-6857  
jleclerc@solollp.com

9. “Settlement Class Member” means each member of the Settlement Class who has not timely elected to be excluded from the Settlement Class.

10. “Canadian Anti-Trust Class Representatives” means those Settlement Class Members who are named plaintiffs in the Pleadings.

B. Approval of this Agreement and Dismissal of Claims Against TKH

11. The Canadian Anti-Trust Class Representatives and the Trust shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Canadian Court’s approval for the establishment of procedures to secure the complete, and final dismissal with prejudice of the Actions as to the Releasees only.

12. No later than thirty (30) days after any order entered by the Bankruptcy Court granting the Rule 9019 Motion (as defined below) has become a final, none-appealable order which is not subject to a pending appeal, the Canadian Anti-Trust Class Representatives shall submit to the Canadian Court a motion seeking approval of this Agreement (“Approval Motion”). The Approval Motion shall include (i) the proposed form of an order approving this Agreement, and (ii) a proposed form of order and judgment that shall include at least the Canadian Court Relief (as defined below).

13. The Canadian Anti-Trust Class Representatives at a time to be decided in their sole discretion, shall submit to the Canadian Court a motion for authorization to disseminate notice of the settlement and judgment contemplated by this Agreement to all Settlement Class Members identified by the Canadian Anti-Trust Class Representatives (“Notice Motion”). To mitigate the costs of notice, the Canadian Anti-Trust Class Representatives shall endeavor, if practicable, to disseminate notice of this settlement with notice of any other settlements reached in the Actions. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice.

C. Treatment of Claim No. 3617

14. Subject to the provisions hereof, upon the Effective Date (as defined herein), Claim No. 3617 shall be allowed as a general unsecured, non-priority claim in the amount of US\$7,000,000 (seven million dollars and no cents).

15. The Trust shall make distributions with respect to Claim No. 3617 at the same time and in the same manner as distributions are made to other holders of allowed Class 6 claims under the Plan.

16. Upon the Effective Date (as defined below), the Class Certification Motion shall be, and shall be deemed to be, withdrawn with prejudice.



D. Bankruptcy Court Approval

17. As soon as practicable after the execution of this Agreement, the Trust shall file a motion pursuant to Rule 9019 (the "Rule 9019 Motion") of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for Bankruptcy Court approval of this Agreement. If and to the extent requested by the Bankruptcy Court, Settlement Class Counsel shall provide whatever evidence or other proof is reasonably necessary to demonstrate to the Bankruptcy Court that the Settlement Class should be certified for settlement purposes under Bankruptcy Rule 7023.

E. Canadian Court Approval

18. The Canadian Anti-Trust Class Representatives shall, at their own cost and expense, use their best efforts to obtain the Canadian Court Relief described below. Towards that end, the Canadian Anti-Trust Class Representatives shall seek, and the Trust will not object unreasonably to, the entry of an order and judgment in the Actions that will include, at a minimum, the substance of the following provisions (collectively, the "Canadian Court Relief"):

(a) certifying the Settlement Class described above, solely for purposes of this settlement as Settlement Class for the Actions;

(b) as to the Actions, approving finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members and directing its consummation according to its terms;

(c) directing that all Releasers shall, by operation of law, be deemed to have released all Releasees from the Released Claims;

(d) as to TKH, directing that the Ontario and British Columbia Actions be dismissed and the Quebec Action declared settled out of court, all with prejudice and without costs;

(e) providing that the Bankruptcy Court, the Canadian Court and the applicable Canadian court(s) overseeing the Actions shall have jurisdiction concerning the interpretation, administration, consummation and enforcement of this Agreement;

(f) determining that there is no just reason for delay and directing that the judgment of dismissal in the Actions as to TKH shall be final; and

(g) providing that (i) the Canadian Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any Defendant, including TKH, to contest certification of any other class proposed in the Actions, (ii) the Canadian Court's findings in the order shall have no effect on the applicable Canadian court(s) ruling on any motion to certify any class in the Actions or on the applicable Canadian court(s)' rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Canadian Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

19. This Agreement shall become effective (the "Effective Date") when all of the following have occurred: (i) the Bankruptcy Court has entered a final order granting the Rule 9019 Motion; (ii) the Canadian Court has entered an approval order and judgment that contains at least all of the Canadian Court Relief (the "Canadian Court Orders and Judgments"); and (iii) the time for appeal or to seek permission to appeal from the foregoing final orders and judgment has expired or, if appealed, the order granting the Rule 9019 Motion and the Canadian Court Orders and Judgments have been affirmed in their entirety by the court of last resort to which such appeal has been taken, and such affirmance has become no longer subject to further appeal or review, and no other motion or pleading is pending with respect thereto in any court. On the date that the Canadian Anti-Trust Class Representatives and the Trustee have executed this

Agreement, the Canadian Anti-Trust Class Representatives and Trustee shall be bound by its terms and this Agreement shall not be rescinded except as provided in this Agreement.

F. Release, Discharge, and Covenant Not To Sue

20. In addition to the effect of any final order or judgment entered in accordance with this Agreement, upon the Effective Date, and in consideration of payment of the Settlement Amount, as specified in paragraph 6 of this Agreement, into the Settlement Fund, and in consideration of the allowance of Claim No. 3617 as set forth above, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasers, or any of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to (i) any conduct alleged in the Pleadings, and/or (ii) any act or omission of the Releasees (or any of them) concerning Occupant Safety Restraint Systems, including, but not limited to, any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other pleading filed in the Actions (“Released Claims”), provided however, that nothing herein shall release: (1) any claims made by any government, governmental agency, or instrumentality or political subdivision of a State as to government purchases and/or penalties; (2) claims involving any negligence, personal injury, property damage, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities or similar claim relating to

Occupant Safety Restraint Systems; (3) claims concerning any automotive part other than Occupant Safety Restraint Systems; and (4) claims under laws other than those of the Canada relating to purchases of Occupant Safety Restraint Systems made by any Releasor outside of Canada.

21. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Canadian Anti-Trust Class Representatives have agreed to release pursuant to this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

G. Settlement Amount

22. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, the Trust, shall pay or cause to be paid the Settlement Amount. The Settlement Amount shall be paid in U.S. dollars into one or more accounts designated in a writing provided by Settlement Class Counsel to the counsel for the Trust. None of the Releasees shall have any contractual, legal, or equitable responsibility or obligation with respect to any account designated by Settlement Class Counsel, any assets held therein or any payments or distributions made therefrom.

23. Exclusions from the Settlement Class

(a) Subject to Canadian Court approval, any member of the Settlement Class who has submitted a valid and timely request for exclusion from the Settlement Class is not a Settlement Class Member and shall not be bound by the terms of this Agreement. The Trust

reserves all of its legal and equitable rights and defenses, including, but not limited to, any defenses relating to (i) whether any excluded member of the Settlement Class is a purchaser of Occupant Safety Restraint Systems or has standing to bring any claim against TKH, or (ii) the expiration of the General Bar Date as provided for in the Bar Date Motion.

24. Payment of Expenses

The Parties shall bear their own respective costs and expenses for all purposes, including but not limited to those incurred in connection with the negotiation and execution of this Agreement, the Rule 9019 Motion, and the Actions, regardless of whether the Effective Date occurs. For the avoidance of doubt, none of the Releasees shall be liable for any of the costs or expenses of the litigation of the Actions, including but not limited to attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the courts, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

H. The Settlement Fund

25. After the Effective Date, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the applicable Canadian court(s) at the appropriate time by Settlement Class Counsel, subject to approval by the applicable Canadian court(s). None of the Releasees shall have any financial, contractual, legal or equitable responsibility, obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration.

26. The Canadian Anti-Trust Class Representatives and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs, as may be provided by the applicable Canadian court(s). None of the Releasees shall be liable for

any costs, fees, or expenses of any of the Canadian Anti-Trust Class Representatives or the Settlement Class' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the applicable Canadian court(s) shall be paid out of the Settlement Fund.

27. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Class Representatives

(a) Settlement Class Counsel may, at a time to be determined in its sole discretion after approval, submit an application or applications to the applicable Canadian court(s) ("Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the Settlement Fund; plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Actions and incentive awards, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid), as may be awarded by the applicable Canadian court(s) ("Fee and Expense Award"). Settlement Class Counsel reserves the right to make additional applications for Canadian Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall any of the Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) Subject to the applicable Canadian court(s), the Canadian Anti-Trust Class Representatives and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses and incentive awards. Attorneys' fees and expenses awarded by the applicable Canadian court(s) shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class

Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to the terms of this Agreement.

(c) The procedure for and the allowance or disallowance by the applicable Canadian court(s) of the application by Settlement Class Counsel for attorneys' fees, costs, and expenses, and incentive awards for class representatives to be paid out of the Settlement Fund is not part of this Agreement, and is to be considered by the applicable Canadian court(s) separately from the Canadian Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate, cancel, amend or modify this Agreement, or affect the finality of the settlement.

(d) None of the Releasees shall have any responsibility for, or interest in, or liability (whether legal or equitable) whatsoever with respect to any payment to Settlement Class Counsel and/or the Canadian Anti-Trust Class Representatives of any Fee and Expense Award in the Actions.

(e) None of the Releasees shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation of the Settlement Fund among Settlement Class Counsel, the Canadian Anti-Trust Class Representatives and/or any other person who may assert some claim thereto, or of any Fee and Expense Award that the applicable Canadian court(s) may make in the Actions.

I. Rescission If Final Orders And Judgments Are Not Entered

28. If (a) the Bankruptcy Court does not grant the Rule 9019 Motion, *or* (b) the Canadian Court does not enter the Canadian Court Order and Judgment; *or* (c) if the order

granting the Rule 9019 Motion or the Canadian Court Order and Judgment is modified in any material way or is set aside on appeal, then TKH and the Canadian Anti-Trust Class Representatives shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms set forth below. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Canadian Court from the Settlement Fund shall not be deemed a material modification of all or a part of the terms of this Agreement or such judgment.

29. If the Effective Date of this Agreement does not occur, or this Agreement otherwise is terminated pursuant to paragraph 28, then this Agreement shall be of no force or effect. The Trust expressly reserves all rights and defenses if this Agreement does not become final.

30. Further, and in any event, the Canadian Anti-Trust Class Representatives and the Trust agree that this Agreement, whether or not it shall become final, and any and all negotiations, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by TKH, or the other Releasees, to be used against TKH, or (ii) the truth of any of the claims or allegations contained in the Pleadings or any other pleading filed in the Actions, to be used against TKH, and evidence thereof shall not be discoverable or used in any way, whether in the Actions or in any other action or proceeding, against TKH.

31. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement.



32. The Parties to this Agreement contemplate and agree that, prior to final approval of the settlement by the Canadian Court as provided for above, appropriate notice (1) of the settlement; and (2) of a hearing at which the Canadian Court will consider the approval of this Agreement, will be given to the Settlement Class.

J. Miscellaneous

33. This Agreement does not settle or compromise any claim by the Canadian Anti-Trust Class Representatives or any Settlement Class Member asserted in the Pleadings or, if amended, any subsequent pleading, against any Defendant or alleged co-conspirator other than TKH. All rights against such other Defendants or alleged co-conspirators are specifically reserved by the Canadian Anti-Trust Class Representatives and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than TKH and other Releasees, for sales made by TKH and TKH's alleged illegal conduct are specifically reserved by the Canadian Anti-Trust Class Representatives and Settlement Class Members. TKH's sales to the class and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Actions as a basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Actions or other persons or entities other than TKH and the other Releasees.

34. This Agreement shall be governed by and interpreted according to the substantive laws of the State of Delaware without regard to its choice of law or conflict of law principles.

35. This Agreement constitutes the entire, complete and integrated agreement between the Canadian Anti-Trust Class Representatives and the Trust pertaining to the resolution of Claim No. 3617 and the settlement of the Actions against TKH, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations

and discussions, either oral or written, between the Canadian Anti-Trust Class Representatives and the Trust in connection herewith. This Agreement may not be modified or amended except in writing executed by the Canadian Anti-Trust Class Representatives and the Trust, and approved by both the Bankruptcy Court and the Canadian Court.

36. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Canadian Anti-Trust Class Representatives and the Trust. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Canadian Anti-Trust Class Representatives or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than the Trust which is a party hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

37. This Agreement may be executed in counterparts by the Canadian Anti-Trust Class Representatives and the Trust, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

38. Neither the Canadian Anti-Trust Class Representatives nor the Trust shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

39. Where this Agreement requires either party to provide notice or any other communication or Document to the other, such notice shall be in writing, and such notice, communication or Document shall be provided by facsimile, or electronic mail (provided that the recipient acknowledges having received that email, with an automatic “read receipt” or similar notice constituting an acknowledgement of an email receipt for purposes of this paragraph), or

letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

40. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement subject to the approval of the Bankruptcy Court and the Canadian Court.

*[signature pages follow]*

Dated: January 3, 2019

/s/ Jean-Marc Leclerc

Jean-Marc Leclerc  
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