

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM)
)
JUSTICE HORKINS)
) WEDNESDAY, THE 15TH DAY
) OF DECEMBER, 2010

B E T W E E N :

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON, deceased,
By Her Trustee without a will, BRUCE ALLEN GAGNON

Plaintiffs

and

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

ORDER

THIS MOTION, made by the Plaintiffs in the Ontario Proceeding for an Order approving the settlement agreement entered into with the Defendants, was heard this day at Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement (without schedules) attached to this Order as Schedule "A", and on hearing the submissions of counsel for the Plaintiffs and counsel for the Defendants;

AND ON BEING ADVISED that: (a) the Plaintiffs in the Ontario Proceeding consent to this Order; and (b) the Defendants consent to this Order:


1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act*, 1992 and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all Ontario Settlement Class Members.
5. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Ontario Settlement Class Members shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
6. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any Ontario Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

7. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain 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 action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.
10. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role solely for the purpose of implementing, administering and enforcing the Settlement Agreement.
11. **THIS COURT ORDERS** that upon the Effective Date the Defendants shall pay:

- (a) to the Class Proceedings Fund the levy of \$80,000 determined pursuant to section 10(3) of Ontario Regulation 771/92 as amended by O. Reg. 535/95;
 - (b) to the CDA the amount of \$ 970,000.00;
 - (c) to Diabete the amount of \$185,000.00;
 - (d) to the Fonds the amount of \$15, 000.00
12. **THIS COURT ORDERS** that the fees of Class Counsel are fixed in the amount of \$1.5 million inclusive of fees, disbursements, taxes and the amount of \$24,659.50 which is to be repaid to the Class Proceedings Funds in full and final settlement of Class Counsel's claims pursuant to the fee agreement.
13. **THIS COURT ORDERS** that upon the Effective Date the Defendants shall pay the amount of \$1.5 million referred to above in paragraph 12 to Sutts, Strosberg LLP in trust.
14. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, this action be and is hereby dismissed without costs and with prejudice.
15. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the British Columbia Court and this Order shall have no force and effect if such approval is not obtained in Quebec and British Columbia.

16. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

Date: December 15, 2010


Justice Horkins

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 16 2010

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:



SCHEDULE A

**CANADIAN SURESTEP CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of September 10, 2010

Between

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON, deceased,
By Her Trustee without a will, BRUCE ALLEN GAGNON,
CARL KUHNKE and FRÉDÉRIC BISSON

(the "Plaintiffs")

and

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

(the "Defendants")

TABLE OF CONTENTS

SECTION 1 – DEFINITIONS.....	3
SECTION 2 - SETTLEMENT APPROVAL	8
2.1 Best Efforts	8
2.2 Motions Approving Notice	8
2.3 Motions for Approval of the Settlement.....	8
2.4 Sequence of Motions.....	9
SECTION 3 – SETTLEMENT BENEFITS	9
3.1 Provision of Product and Payment of Settlement Funds	9
SECTION 4 – OBJECTIONS AND EXCLUSIONS	9
4.1 Procedure to Object.....	9
4.2 Procedure for Quebec Class Member to Exclude Themselves	10
SECTION 5 – THE DEFENDANTS’ SETTLEMENT OBLIGATIONS.....	10
5.1 Settlement Obligations.....	10
5.2 Product and Settlement Funds	10
SECTION 6 - RELEASES AND DISMISSALS.....	11
6.1 Release of Releasees	11
6.2 No Further Claims.....	12
6.3 Dismissal of the Proceedings.....	12
6.4 Releases.....	12
SECTION 7 – EFFECT OF SETTLEMENT	12
7.1 No Admission of Liability	12
7.2 Agreement Not Evidence	13
SECTION 8 – NOTICE TO SETTLEMENT CLASS	13
8.1 Notice Required	13
8.2 Form and Distribution of Notice.....	13
SECTION 9 – ADMINISTRATION AND IMPLEMENTATION.....	13
9.1 Mechanics of Administration.....	13
SECTION 10 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES	14
SECTION 11 - TERMINATION OF SETTLEMENT AGREEMENT	14
11.1 Right of Termination.....	14
11.2 If Settlement Agreement is Terminated.....	15

11.3	Survival of Provisions After Termination.....	15
SECTION 12 - MISCELLANEOUS		15
12.1	Releasees Have No Liability for Administration.....	15
12.2	Motions for Directions	16
12.3	Headings, etc.....	16
12.4	Computation of Time	16
12.5	Ongoing Jurisdiction	17
12.6	Governing Law	17
12.7	Entire Agreement	17
12.8	Amendments	18
12.9	Binding Effect.....	18
12.10	Counterparts	18
12.11	Negotiated Agreement	18
12.12	Language.....	19
12.13	Transaction.....	19
12.14	Recitals.....	19
12.15	Schedules	19
12.16	Acknowledgements.....	19
12.17	Authorized Signatures.....	20
12.18	Notice	20
12.19	Date of Execution	21

**CANADIAN SURESTEP CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Plaintiffs have commenced the Proceedings in the Courts which allege that the Defendants knowingly marketed defective SureStep Meters and Strips;
- B. AND WHEREAS the Defendants deny liability in respect of the claims as alleged in the Proceedings, and believe that they have good and reasonable defences in respect of the merits in the Proceedings;
- C. AND WHEREAS the Defendants assert that they would actively pursue these defences in respect of the merits at trial if the Plaintiffs continued the Proceedings against them;
- D. AND WHEREAS, the parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation arising out of the facts that gave rise to this litigation and achieve final resolutions of all claims asserted or which could have been asserted against the Defendants by the Plaintiffs on their own behalf and on behalf of the classes they represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;
- E. AND WHEREAS counsel for the Defendants and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations in respect of this Settlement Agreement;
- F. AND WHEREAS as a result of these settlement discussions and negotiations, the Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendants and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of the Courts;
- G. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Product and the amount of the Settlement Funds to be provided by the

Defendants under this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;

H. AND WHEREAS the Defendants do not admit, through the execution of this Settlement Agreement, any of the conduct alleged in the Proceedings;

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

J. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

K. AND WHEREAS the Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

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

M. AND WHEREAS the Ontario Proceeding was certified on July 4, 2004, the opt-out period has expired and no one opted out;

N. AND WHEREAS the BC Proceeding was certified on August 15, 2008, the opt-out period has expired and no one opted out;

O. AND WHEREAS the parties will seek a consent order authorizing the Quebec Proceeding;

P. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Proceedings against the Defendants;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed on the merits with prejudice as to the Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) *Administration Expenses* mean the costs to CDA for administering the Compassionate Use Program.
- (2) *Approval Hearings* mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) *Associated Paraphenalia* means the lancets and contact solution sold by Defendants for use in conjunction with the SureStep Meter and Strips.
- (4) *BC Counsel* means Camp Fiorante Matthews.
- (5) *BC Court* means the Supreme Court of British Columbia.
- (6) *BC Proceeding* means the proceeding commenced by Carl Kuhnke in the B.C. Court (Vancouver registry), Court File No. L013383, filed on November 30, 2001.
- (7) *BC Settlement Class* means (i) all persons in British Columbia who acquired a SureStep Meter on or after February 1, 1996; and (ii) all persons in British Columbia who used a Strip on or after February 1, 1996.

- (8) **CDA** means the Canadian Diabetes Association, a non-share capital corporation registered as a registered charity under the *Income Tax Act* (Canada) under #118830744RR001.
- (9) **CDA Contract** means the agreement between LifeScan Canada Ltd., the CDA and Class Counsel as represented by Sutts, Strosberg LLP;
- (10) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel who act as class counsel in the Proceedings.
- (11) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.
- (12) **Courts** mean the Ontario Court, the Quebec Court and the BC Court.
- (13) **CPF** means the Class Proceedings Fund.
- (14) **Defendants** mean Johnson & Johnson, LifeScan Canada and LifeScan, Inc.
- (15) **Diabète** means Diabète Québec, a non-share capital corporation registered as a registered charity under the *Income Tax Act* (Canada).
- (16) **Effective Date** means the latest date on which any of the Final Orders in Ontario, British Columbia or Québec take effect.
- (17) **Final Order** means a final order entered by a Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.
- (18) **Fonds** means the Fonds d'aide aux recours collectifs.
- (19) **LifeScan Canada** means LifeScan Canada Ltd..

- (20) ***Notice of Approval Hearings*** means the form of notice, agreed to by the Plaintiffs and the Defendants, or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the dates and locations of the Approval Hearings; (ii) the principal elements of this Settlement Agreement; and (iii) the process by which they may object to the Settlement.
- (21) ***Notice of Settlement Approval*** means the form of notice, agreed to by the Plaintiffs and the Defendants, or such other form as may be approved by the Courts, which informs the Settlement Class of the approval of this Settlement Agreement.
- (22) ***Notices*** mean the Notice of the Approval Hearings and the Notice of Settlement Approval.
- (23) ***Ontario Counsel*** means Sutts, Strosberg LLP, Koskie Minsky LLP and Pape Barristers Professional Corporation.
- (24) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (25) ***Ontario Proceeding*** means the proceeding commenced on August 9, 2001 by Ahmed Serhan and Beverley Gagnon, as continued by their Estate Trustees, Court File No. CV-04-CV-278809CP00 (Toronto).
- (26) ***Ontario Settlement Class*** means all persons in Ontario and elsewhere in Canada, except British Columbia and Quebec, who acquired a SureStep Meter on or after February 1, 1996 and/or who used a Strip on or after February 1, 1996.
- (27) ***Opt Out Form*** means the form that enables a Quebec Class Member to exclude himself from the Class authorized by the Quebec Court;
- (28) ***Parties*** mean the Plaintiffs, the Settlement Class Members and the Defendants.
- (29) ***Plaintiffs*** mean the individuals named as representative plaintiffs in the Proceedings.

- (30) *Proceedings* mean the Ontario Proceeding, the Quebec Proceeding and the BC Proceeding.
- (31) *Product* means 5000 kits or packages of home glucose monitors, strips, lancets and instructions which have a total wholesale value of approximately \$1,250,000.
- (32) *Quebec Contract* means the agreement between LifeScan Canada Ltd., Diabète and Class Counsel as represented by Siskinds Desmeules s.e.n.c.r.l.;
- (33) *Quebec Counsel* means Siskinds Desmeules s.e.n.c.r.l.
- (34) *Quebec Court* means the Superior Court of Quebec.
- (35) *Quebec Opt Deadline* means 90 days following the publication of the Approval Order;
- (36) *Quebec Proceeding* means the proceeding commenced by Frédéric Bisson in the form of an application for authorization (la Requête pour obtenir l'autorisation d'exercer un recours collectif) in the Quebec Superior Court (Québec City registry), Court File No. 200-06-000022-015, filed on December 7, 2001.
- (37) *Quebec Settlement Class* means those members of the Class defined in the Quebec Approval Order who do not exclude themselves in accordance with the procedure prescribed by that Order.
- (38) *Released Claims* mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, for damages whenever incurred, damages of any kind, including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, in respect of the purchase and use of SureStep Meters

and Strips, or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly.

- (39) **Releasees** mean, jointly and severally, individually and collectively, the Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, trustees, servants and representatives and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (40) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs, and the Settlement Class Members and their respective successors, heirs, executors and administrators.
- (41) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (42) **Settlement Funds** means the sum of two million, seven hundred and fifty thousand dollars (\$2.75 million).
- (43) **Settlement Class** means all persons included in the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.
- (44) **Settlement Class Member** means a member of the Settlement Class.
- (45) **Strip** means a SureStep test strip manufactured before March 1, 1998 and distributed on or after February 1, 1996.
- (46) **SureStep Meter** means a SureStep blood glucose meter manufactured before August 1, 1997, bearing a serial number the first five digits of which were in the series L6000 to L7205 or a serial number in the series L7206-GA-0001 to L7206-GA-01128.

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effect this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Defendants.

2.2 Motions Approving Notice

(1) At a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs shall bring motions before the Courts for orders approving the Notice of the Approval Hearings described in section 2.3.

(2) The Ontario order, the British Columbia order and the Quebec order approving the Notice of the Approval Hearing shall be generally in the form attached hereto respectively, in Schedule "A1", Schedule "A2" and Schedule "A3".

2.3 Motions for Approval of the Settlement

(1) As soon as practicable after the orders referred to in section 2.2(2) are granted, after the Notice of the Approval Hearings has been published, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(2) The Ontario order approving this Settlement Agreement referred to in section 2.3(1) shall be generally in the form attached hereto as Schedule "B1".

(3) The Quebec and British Columbia orders approving the Settlement Agreement referred to in section 2.3(1) shall be generally in the form attached hereto respectively in Schedule "B2" and "B3". The Quebec and British Columbia orders shall mirror the substance and, where possible, the form of the Ontario order, except that the Quebec order shall deal with the matters necessary for authorization of the proceeding and the procedure for opt-outs.

(4) The form and content of the orders approving this Settlement Agreement contemplated in this Section 2.3 shall be considered a material term of this Settlement Agreement and the failure

of any Court to approve the orders contemplated herein shall give rise to a right of termination pursuant to Section 11 of this Settlement Agreement.

2.4 Sequence of Motions

(1) The Plaintiffs in Quebec and British Columbia shall not proceed with a motion to approve this Settlement Agreement unless and until the Ontario Court approves the Settlement Agreement. The approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec and BC Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision on the settlement approval motion. The Defendants may agree to waive this provision.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Provision of Product and Payment of Settlement Funds

(1) LifeScan Canada, LifeScan, Inc. or Johnson & Johnson shall provide or cause one of its affiliates to provide the Product to the CDA and pay or cause one of its affiliates to pay the Settlement Funds in accordance with the terms of this Settlement Agreement, the CDA Contract and the Quebec Contract, both of which are attached to this Settlement Agreement as Schedules “C” and “D”.

SECTION 4 – OBJECTIONS AND EXCLUSIONS

4.1 Procedure to Object

(1) A Settlement Class Member may object to the approval of the settlement by sending a written objection by pre-paid mail, courier or fax to Caroline Zayid at McCarthy Tétrault LLP, 53rd Floor, Toronto Dominion Tower, 66 Wellington Street West, Toronto, ON M5K 1E6, fax (416) 868-0673.

(2) A Settlement Class Member who wishes to object to the approval of the Settlement will be asked to provide the following:

- (a) the full name, current address and telephone number of the person who is objecting;
- (b) a brief statement of the nature of and reasons for the objection;
- (c) a declaration that the person believes he or she is a member of the Settlement Class and the reason for that belief; and
- (d) whether the person intends to appear at the appropriate Approval Hearing or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.

4.2 Procedure for Quebec Class Member to Exclude Themselves

- (1) Quebec Class Members who do not wish to be bound by the Agreement may exclude themselves from the Class. Class Members who want to exclude themselves must do so by giving notice to the Clerk of the Superior Court of Quebec by the Exclusion Deadline and in the manner prescribed by the Code of Civil Procedure of Quebec, as well as complete the Exclusion Form, attached as Schedule "D," and file it with Donald Bisson at McCarthy Tétrault, Suite 2500, 1000 De La Gauchetiere Street West, Montreal QC H3B 0A2 by the Opt Out Deadline.

SECTION 5- THE DEFENDANTS' SETTLEMENT OBLIGATIONS

5.1 Settlement Obligations

- (1) On and following the Effective Date, the Defendants will comply with the settlement obligations in the manner required by the provisions of this Settlement Agreement and directions of the Courts.

5.2 Product and Settlement Funds

- (1) One of the Defendants shall provide, or cause one of its affiliates to provide, the Product valued at about \$1,250,000 to the CDA for distribution by the CDA to persons with diabetes across Canada in accordance with the CDA Contract and the Compassionate Use Program described therein.

(2) One of the Defendants shall pay, or cause one of its affiliates to pay, Settlement Funds in the amount of \$1,250,000 which will be allocated and paid as follows:

- (a) to the CDA, \$270,000 to administer the CDA Compassionate Use Program.
- (b) to the CDA, \$700,000 to fund a Public Awareness Program to make people aware of diabetes, the effects thereof and the benefits of self-monitoring.
- (c) to Diabète, \$185,000 to use in accordance with the provisions of the Quebec Contract.
- (d) to the Fonds, \$15,000 which it has agreed to accept.
- (e) to the CPF, \$80,000 in payment of the statutory levy for the Ontario Proceeding.

In determining this amount, the costs of Administration Expenses, Class Counsel Fees and the amount paid to Diabète, the Fonds and a notional allocation of \$200,000 to the BC Class have been deducted from the Settlement Funds.

(3) One of the Defendants shall pay, or cause one of its affiliates to pay to Sutts, Strosberg LLP, in trust, \$1.5 million or such lesser sum as the Court fixes for Class Counsel Fees.

(4) Any amount not approved in accordance with the allocations described in 5.2(2) and (3) hereof will be paid to the CDA for the administration of the Compassionate Use Program, with any surplus thereafter to be used by the CDA at its discretion for the benefit of persons in Canada living with diabetes.

SECTION 6- RELEASES AND DISMISSALS

6.1 Release of Releasees

Upon the Effective Date, and in consideration of the delivery of Product and the payment of the Settlement Funds and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

6.2 No Further Claims

The Releasors shall not now or hereafter institute, continue, maintain 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 action, suit, cause of action, claim or demand against any Releasees or against any other person who may claim contribution or indemnity from any Releasees in respect of any Released Claim or any matter related thereto.

6.3 Dismissal of the Proceedings

The Proceedings shall be dismissed with prejudice and without costs as against the Defendants.

6.4 Releases

The releases contemplated in this section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 10 of this Settlement Agreement.

SECTION 7- EFFECT OF SETTLEMENT

7.1 No Admission of Liability

The Plaintiffs and the Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, the Plaintiffs and the Defendants agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, the negotiations, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any Defendant or by any Releasee, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

7.2 Agreement Not Evidence

The Plaintiffs and the Defendants agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

SECTION 8- NOTICE TO SETTLEMENT CLASS

8.1 Notice Required

The proposed Settlement Class shall be given the following Notices: (i) Notice of the Approval Hearings; and (ii) Notice of Settlement Approval.

8.2 Form and Distribution of Notice

The form of the Notices referred to in section 8.1 and the manner of publication and distribution shall be as agreed to by the Plaintiffs and the Defendants and approved by the Courts.

SECTION 9- ADMINISTRATION AND IMPLEMENTATION

9.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be as set out in the CDA Contract and the Quebec Contract.

SECTION 10- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. The Defendants shall not oppose Class Counsel's motions for payment of Class Counsel Fees.

SECTION 11-TERMINATION OF SETTLEMENT AGREEMENT

11.1 Right of Termination

(1) The Defendants, the Plaintiffs and Class Counsel shall respectively have the right to terminate this Settlement Agreement, in the event that:

- (a) any Court declines to approve this Settlement Agreement or any material term or part thereof;
- (b) any Court approves this Settlement Agreement in a materially modified form; or
- (c) any orders approving this Settlement Agreement made by the Ontario Court, BC Court or the Quebec Court do not become Final Orders; or
- (d) the form and content of any of the Final Orders approved by the Ontario Court, the BC Court and the Quebec Court fail to comply with Section 2.3(4) of this Settlement Agreement.

(2) To exercise a right of termination under Section 11.1(1), a terminating party shall deliver a written notice of termination pursuant to Section 12.18 of this Settlement Agreement. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 11.3, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court that is not substantially in the form of its respective order annexed as Schedule "A1", "A2", "A3", "B1", "B2" or "B3" shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for

the termination of this Settlement Agreement, provided however that the Defendants may agree to waive this provision.

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

11.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

11.3 Survival of Provisions After Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 7.1, 7.2, 12.2, 12.5 and 12.6 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of sections 7.1, 7.2, 12.2, 12.5 and 12.6 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 12 - MISCELLANEOUS

12.1 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration other than to provide the Product and pay the Settlement Funds in accordance with the provisions of Section 5.1 of the Settlement Agreement.

12.2 Motions for Directions

- (1) Class Counsel or the Defendants may apply to the Courts for directions in respect of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the Defendants.

12.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

12.4 Computation of Time

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

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

12.5 Ongoing Jurisdiction

- (1) Subject to Section 12.5(4), each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Proceeding.
- (2) Subject to Section 12.5(4), the Plaintiffs and the Defendants agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding the above but subject to Section 12.5(4) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, the Settlement Class and the Defendants submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the settlement provided for in this Settlement Agreement. Issues related to the administration of this Settlement Agreement and other matters not specifically related to the claim of a BC Settlement Class Member or a Quebec Settlement Class Member shall be determined by the Ontario Court.
- (4) The Plaintiffs and the Defendants may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

12.6 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

12.7 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or

representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

12.8 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

12.9 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Defendants, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

12.10 Counterparts

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

12.11 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

12.13 Transaction

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

12.14 Recitals

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

12.15 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

12.16 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

12.17 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.18 Notice

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Proceedings:

Harvey T. Strosberg, Q.C.
SUTTS, STROSBURG LLP
Barrister and Solicitors
600-251 Goyeau Street
Windsor, ON N9A 6V4
Tel: 519-258-9333
Fax: 519-258-9527
Email: harvey@strosbergco.com

J. J. Camp, Q.C.
CAMP FIORANTE MATTHEWS
4th Floor
856 Homer Street
Vancouver, BC V6B 2W5
Tel: 604-689-7555
Fax: 604-689-7554
Email: jjcamp@cfmlawyers.ca

Simon Hébert
SISKINDS DESMEULES S.E.N.C.R.L.
Les promenades du Vieux-Quebec
43 rue Beadle, bureau 320
Quebec City, QC G1R 4A2
Tel: 418-694-2009
Fax: 418-694-0281
Email: simon.hebert@siskindsdesmeules.com

For the Settling Defendants:

Caroline Zayid
MCCARTHY TÉTRAULT LLP
53rd Floor, Toronto Dominion Tower
66 Wellington Street West
Toronto, ON M5K 1E6

Tel: 416-601-7768
Fax: 416-868-0673
Email: czayid@mccarthy.ca

12.19 Date of Execution

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

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

 
Suits, Suttsberg LLP
Counsel in the Ontario Proceedings

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
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their counsel

By:

Camp Fiorante Matthews
Counsel in the BC Proceedings

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their counsel

By:

Siskinds Desmeules, s.e.n.c.r.l.
Counsel in the Quebec Proceedings

For the Settling Defendants:

Caroline Zayid
MCCARTHY TÉTRAULT LLP
53rd Floor, Toronto Dominion Tower
66 Wellington Street West
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GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

Sutts, Strosberg LLP
Counsel in the Ontario Proceedings

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

Camp/Blorante Matthews
Counsel in the BC Proceedings

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deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

Siskinds Desmeules, s.e.n.c.r.l.
Counsel in the Quebec Proceedings

For the Settling Defendants:

Caroline Zayid
MCCARTHY TÉTRAULT LLP
53rd Floor, Toronto Dominion Tower
66 Wellington Street West
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Tel: 416-601-7768
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their counsel

By:

Sutts, Strosberg LLP
Counsel in the Ontario Proceedings

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
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By:

Camp Fiorante Matthews
Counsel in the BC Proceedings


AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:


Siskinda Desmeules, s.e.n.c.r.l.
Counsel in the Quebec Proceedings

JOHNSON & JOHNSON, LIFESCAN CANADA LTD. and
LIFESCAN, INC., by their counsel

By:


McCarthy Tétrault LLP
Counsel for the Defendants

SERHAN et al.

vs. JOHNSON & JOHNSON et al.

Plaintiffs

Defendants

Court File No. CV-04-CV-278809CP00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

ORDER

PAPE BARRISTERS Professional Corporation
Suite 1910 – Box 69
One Queen Street East
Toronto, ON M5C 2W5

Paul J. Pape,
LSUC No. 12548P
416.364.8755
416.364.8855 fax

SUTTS, STROSBERG LLP
Lawyers
600 Westcourt Place
251 Goyeau Street
Windsor, ON N9A 6V4

PATRICIA A. SPEIGHT
LSUC No. 26380C
519.561.6213
519.561.6203 fax

LAWYERS FOR THE PLAINTIFFS

FILE: 60-900-000
REF: HTS/df