**Court File No.:**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

|  |  |  |
| --- | --- | --- |
| THE HONOURABLE JUSTICE | ) | [weekday], the [#] day |
|  | ) | of [month], 20[year] |
| BETWEEN | | |
| **[Plaintiff(s)]** | | |
| - and- | | |
| **[Defendant(s)]** | | |

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

ORDER

## (Fee Approval)[[1]](#footnote-1)

**THIS MOTION** made by Class Counsel for an order approving the Class Action Contingency Fee Retainer Agreement, approving the fees and disbursements of Class Counsel [and approving the payment of honoraria to the Plaintiffs] [and approving payment to the litigation funder], was heard this day [by judicial videoconference at *(City)*]/[at *(address of courthouse)*], Ontario.

**ON READING** the materials filed, including the settlement agreement with the Defendants [*insert Defendant(s) intending to be bound by the settlement agreement*] (collectively, the “Settling Defendant(s)”), dated as of [*insert date*] (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff(s) and counsel for the Settling Defendant(s), [the non-settling defendant(s) taking no position];

**AND ON BEING ADVISED** that the Plaintiff(s), the Settling Defendant(s), and the [*litigation funder*] consent to this Order [and that the non-settling defendant(s) take no position]:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to, and are incorporated into, this Order.
2. **THIS COURT ORDERS AND DECLARES** that the Contingency Fee Retainer Agreement, dated [*date*], made between the Plaintiff(s) and Class Counsel, is fair and reasonable, and is hereby approved pursuant to s. 32(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
3. **THIS COURT ORDERS AND DECLARES** that the legal fees of Class Counsel, totalling $[*amount*] ([*percent*] per cent of the Settlement Fund), plus applicable taxes of $[*amount*], and the disbursements of Class Counsel, totalling $[*amount*], inclusive of interest and applicable taxes, are fair and reasonable, and are hereby approved.
4. **THIS COURT ORDERS** that the legal fees, disbursements, interest and applicable taxes payable to Class Counsel, as fixed in paragraph 3 of this Order, be paid [from the Settlement Fund] [by the Settling Defendant(s)].
5. [*\* if appropriate*] **THIS COURT ORDERS** that the fees and disbursements payable to Class Counsel, as fixed in paragraph 3 of this Order, are a first charge upon the Settlement Fund in favour of Class Counsel.
6. [*\* if appropriate*] **THIS COURTS ORDERS** that the Plaintiffs are each awarded honoraria of $[*amount*] for the contributions that they made to the prosecution of this action for the benefit of the Class as a whole, and that these amounts shall be paid [from the Settlement Fund]/[by the Defendants]/[by Class Counsel from their legal fee award as fixed in paragraph 3 of this Order].
7. [*\* if appropriate*] **THIS COURT ORDERS** that the Class Proceedings Fund of the Law Foundation of Ontario (“Fund”) shall be paid a levy in the amount of 10% of the net settlement amount to which one or more Class Members is entitled (the “**Levy**”)[[2]](#footnote-2) plus the amount of any financial support provided to the Plaintiff under s. 59.3 of the *Law Society Act*, R.S.O. 1990, c. L.8,which has not been repaid to the Fund, in accordance with s. 10(3) of O. Reg. 771/92 (“**Outstanding Disbursements**”).[[3]](#footnote-3) For greater certainty, the Fund is entitled to a payment of:
   1. $[*amount*] from the Settlement Fund, in respect of Outstanding Disbursements [to date]; and
   2. $[*amount*] from the Settlement Fund in respect of the Levy.
8. [*\* if appropriate*] **THIS COURT ORDERS** that no amounts shall be distributed to any Class Members until the Law Foundation of Ontario has had an opportunity to review and confirm the calculation of the Levy in paragraph 7.[[4]](#footnote-4) If there is any dispute or question as to the calculation of the levy to the Fund, Class Counsel and counsel for the Fund shall arrange an appearance before the class action case management judge to resolve the issues [and that, pending any appearance, no amounts shall be distributed to any Class Members].
9. [*\* if appropriate*] **THIS COURT ORDERS** that the [*third-party litigation funder*] is entitled be paid $[*amount*], in accordance with the terms of the Litigation Funding Agreement, dated [*date*].

|  |  |  |
| --- | --- | --- |
| Date: |  |  |
|  |  | THE HONOURABLE JUSTICE [LAST NAME] |

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| --- | --- | --- | --- | --- | --- |
|  | - and - |  | |  | CV-[#]-00CP |
| Plaintiff(s) |  | Defendant(s) | | Court File No. |
|  | | | ***ONTARIO***  **SUPERIOR COURT OF JUSTICE**  PROCEEDING COMMENCED AT | | |
| **ORDER**  **(Motion For Approval of Class Counsel Fees)** | | |

|  |  |
| --- | --- |
|  | [FIRM NAME]  [Address]  [Name] (LSO No.: )  [Email]  Tel: [ ]  Fax: [ ]  Class Counsel |

1. Prepared by the Ontario Class Action Bench-Bar Liaison Committee as a guide for courts and practitioners. This template can be tailored to suit the particular circumstances of each case. [↑](#footnote-ref-1)
2. The 10 per cent Fund levy is calculated to be 10 per cent of the net settlement amount, after payment of administration expenses, Class Counsel fees and disbursements. Please see [Martin v. Barret*t*, [2008] O.J. No. 3813](https://lawfoundation.on.ca/download/martin_v-_barrett_2008_o-j-_no-_3813/). [↑](#footnote-ref-2)
3. As the model order contemplates that the litigation funder consent to the order, the Fund requires that the draft fee approval order be provided to it in advance of it being submitted to the Court, so that Fund counsel can review and, as appropriate provide the Fund’s consent and/or arrange for an appearance to speak to any dispute. [↑](#footnote-ref-3)
4. This provision may not be required if footnote 3 is adhered to by providing the draft to the Fund in advance or if the Fund attends to speak to a dispute. [↑](#footnote-ref-4)