**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

ORDER[[1]](#footnote-1)

## (Litigation Funding)

**THIS MOTION** made by the Plaintiff for an Order approving the terms of a litigation funding agreement (the “Agreement”) entered into with *[name of funder]* (the “Funder”), heard this day [by judicial videoconference at *(City)*] [at (address of courthouse)], Ontario.

**ON READING** the materials filed by the Plaintiff and the complete and unredacted Agreement, and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants;

**AND ON BEING ADVISED** that the Defendants do not oppose this Order;

1. **THIS COURT ORDERS** that the Agreement is fair and reasonable, and will not diminish the rights of the plaintiff to control the litigation or otherwise impair the solicitor-client relationship.
2. **THIS COURT ORDERS** that the Agreement is approved, subject to the following terms and conditions:
   1. [*\* if posting security for costs is required*]*[[2]](#footnote-2)*the Funder shall pay into court the following amounts, as Canadian funds or irrevocable letters of credit[[3]](#footnote-3) in a form acceptable to the Defendants and to the Accountant of the Superior Court of Justice, and in accordance with Rule 72.02 of the *Rules of Civil Procedure*, as security for the Defendants’ costs of this action, on the dates specified:
      1. CAD$[*amount*] on or before [*date*], 20[*year*];
      2. an additional CAD$[*amount*] by no later than 30 days after any order certifying this action as a class proceeding under the *Class Proceedings Act, 1992*; and
      3. an additional CAD$[*amount*] by no later than 90 days before the scheduled trial date;
   2. [*\* if posting security for costs is required*]counsel for the Plaintiff shall notify counsel for the Defendants forthwith upon the posting of security in accordance with the terms of this Order;
   3. [*\* if posting security for costs is required*]if the Funder fails to provide security in accordance with the terms of this Order, as originally issued or as varied from time to time, the Defendants, or any one of them, may bring a motion to have the action stayed or dismissed;
   4. the Funder submits and attorns to the jurisdiction of the Ontario Superior Court of Justice for all purposes related to this litigation, including in relation to the enforcement of any costs order made in favour of the Defendants or any of them;
   5. [*\* if posting security for costs is required*] the Defendants, or any of them, shall be at liberty to move to vary this Order at any time to increase the amount of security required to be posted by the Funder, on notice to the Plaintiff and the Funder who may oppose the motion;
   6. nothing in this Order shall be interpreted as limiting the ability of the Defendants or any of them to seek to enforce any costs award against either the Plaintiff or the Funder;
   7. the Plaintiff may communicate any formal settlement offers made by the Defendants, or any of them, to the Funder, and those communications and their contents shall be kept confidential pursuant to section [ ] of the Agreement; and
   8. the Funder shall be bound by Rule 30.1.01 of the *Rules of Civil Procedure*;
3. **THIS COURT ORDERS** that this Order shall be without prejudice to the rights of the defendants [foreign defendants] to raise jurisdictional arguments, including *forum non conveniens*, in the action.[[4]](#footnote-4)
4. **THIS COURT ORDERS** that this Order is made without costs.

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|  |  |  |
|  |  | THE HONOURABLE JUSTICE [LAST NAME] |

1. Prepared by the Ontario Class Action Bench-Bar Liaison Committee as a guide for courts and practitioners. This template should be tailored to suit the particular circumstances of each case. [↑](#footnote-ref-1)
2. See *e.g. Drynan v. Bausch Health Companies Inc.*, 2020 ONSC 4379, paras. 22-47; see also *Musicians’ Pension Fund of Canada (Trustee of) v. Kinross Gold Corp.*, 2013 ONSC 4974, para. 41. [↑](#footnote-ref-2)
3. Letters of credit can expire so counsel should consider whether a provision to deal with that eventuality is required. One example is, "to the extent that any letter of credit referred to above expires and is not renewed, and this action remains ongoing, the Funder shall forthwith pay into court, as Canadian funds or irrevocable letter of credit in a form acceptable to the Defendants and to the Accountant of the Superior Court of Justice, an amount equal to the amount of the letter of credit that has expired and not been renewed". [↑](#footnote-ref-3)
4. To consider if there are non-Canadian defendants in the proceeding. [↑](#footnote-ref-4)