

SETTLEMENT AGREEMENT

Made as of December 21, 2020

Between

LINA RIZZI

and

**DR. VIVEK (VICK) HANDA, UPPER MIDDLE DENTAL and VICK HANDA DENTISTRY
PROFESSIONAL CORPORATION**

TABLE OF CONTENTS

| | |
|--|-----------|
| RECITALS | 1 |
| SECTION 1 – DEFINITIONS | 2 |
| SECTION 2 – BEST EFFORTS TO SECURE COURT APPROVAL | 8 |
| 2.1 Best Efforts | 8 |
| 2.2 Court Approval Required..... | 8 |
| 2.3 Action in Abeyance | 8 |
| SECTION 3 – SETTLEMENT BENEFITS | 9 |
| 3.1 Payment of Settlement Amount..... | 9 |
| 3.2 Administration and Claims Adjudication Expenses..... | 9 |
| SECTION 4 – CLASS COUNSEL FEES, TAXES AND INTEREST | 10 |
| 4.1 Class Counsel Fees Approved..... | 10 |
| 4.2 Taxes and Interest | 11 |
| SECTION 5 – DISTRIBUTION OF SETTLEMENT AMOUNT | 11 |
| 5.1 Distribution of Settlement Amount..... | 11 |
| SECTION 6 – NOTICE | 12 |
| 6.1 Notices Required | 12 |
| 6.2 Form and Distribution of Notices | 12 |
| SECTION 7 – SETTLEMENT APPROVAL | 13 |
| 7.1 Motions Seeking Approval of the Notice of Hearing and Settlement Agreement | 13 |
| 7.2 Pre-Motion Confidentiality | 13 |
| 7.3 No Press Release | 13 |
| SECTION 8 – RELEASES AND DISMISSALS | 14 |
| 8.1 Release of Releasees | 14 |
| 8.2 Dismissal of the Proceedings | 15 |
| 8.3 Material Term..... | 15 |
| SECTION 9 - TERMINATION OF SETTLEMENT AGREEMENT | 15 |
| 9.1 Right of Termination..... | 15 |
| 9.2 Steps Required on Termination..... | 16 |
| 9.3 Notice of Termination..... | 17 |
| 9.4 Effect of Termination..... | 17 |
| 9.5 Disputes Relating to Termination | 18 |
| SECTION 10 – EFFECT OF SETTLEMENT | 18 |
| 10.1 No Admission of Liability | 18 |
| 10.2 Agreement Not Evidence | 18 |

| | | |
|---|------------------------------|-----------|
| 10.3 | No Further Litigation | 19 |
| 10.4 | Non-Disparagement..... | 19 |
| SECTION 11 – MISCELLANEOUS | | 19 |
| 11.1 | Motions for Directions | 19 |
| 11.2 | Headings, etc..... | 20 |
| 11.3 | Computation of Time..... | 20 |
| 11.4 | Governing Law..... | 20 |
| 11.5 | Severability | 20 |
| 11.6 | Entire Agreement..... | 21 |
| 11.7 | Amendments..... | 21 |
| 11.8 | Binding Effect..... | 21 |
| 11.9 | Survival..... | 21 |
| 11.10 | Counterparts | 21 |
| 11.11 | Negotiated Agreement | 21 |
| 11.12 | Recitals..... | 22 |
| 11.13 | Schedules..... | 22 |
| 11.14 | Acknowledgements..... | 22 |
| 11.15 | Notice | 22 |
| 11.16 | Date of Execution..... | 23 |

RECITALS

- A. WHEREAS on June 9, 2017, the Regional Municipality of Halton Public Health Department attended Dr. Handa's office and conducted an investigation. The Inspectors identified that an immediate health hazard was present due to the failure to reprocess equipment and devices used in patient care services, such that the Defendants' dental patients had been exposed to Hepatitis B, Hepatitis C and HIV ("the Exposure").
- B. AND WHEREAS the Plaintiff commenced the Action for damages in relation to the Exposure;
- C. AND WHEREAS the Defendant denies the allegations made, or which could have been made in the Action, has not conceded or admitted any liability, denies fault, liability and that any damages are payable and maintains that it has good and valid defences to the claims asserted in the Action;
- D. AND WHEREAS, with the consent of the Defendants, the Action was certified as a class proceeding in respect of a claim for negligence, as set out in the Certification Order;
- E. AND WHEREAS the opt-out period in the Action concluded on August 12, 2019;
- F. AND WHEREAS counsel for the Parties engaged in arm's length settlement discussions and negotiations over the course of two (2) years, through counsel with substantial experience in complex class proceedings, which resulted in this Settlement;
- G. AND WHEREAS the Parties are entering into this Settlement Agreement in order to achieve a full and final resolution of all claims asserted or which could have been asserted against the Defendant by the Plaintiff and the Class in the Action, and to avoid further expense and inconvenience of burdensome and protracted litigation;
- H. AND WHEREAS this Settlement Agreement embodies all of the terms and conditions of the Settlement between the Defendant and the Plaintiff, both individually and on behalf of the Class the Plaintiff represents, including the subrogated claims of the Ontario Ministry of Health in relation to the Plaintiff and Class Members, subject to approval of the Court;
- I. AND WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiff and the Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials

and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

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 Action be declared settled out of court and dismissed with prejudice without costs, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

- (1) **Action** means *Rizzi v. Dr. Vivek (Vick) Handa, Upper Middle Dental and Vick Handa Dentistry Professional Corporation*, Court File No. CV-17-577970-00CP, including the Third Party Claim commenced by the Defendants, Court File No. CV-17-577970-00A1CP.
- (2) **Agreement** means this Settlement Agreement, including the Recitals.
- (3) **Approval Motion** means the motion to be brought by the Plaintiff for the Approval Order.
- (4) **Approval Order** means an order made by the Court substantially in the form attached as **Appendix B** hereto:
 - (a) approving this Settlement;
 - (b) approving the form of the Notice of Settlement Approval;
 - (c) appointing the Claims Administrator;
 - (d) appointing the Claims Adjudicator;
 - (e) approving the Distribution Protocol; and
 - (f) dismissing the Action as against the Defendant, with prejudice and without costs, on the Effective Date.

(5) **Authorized Claimant** means any Class Member who has submitted a completed Claim which, pursuant to the terms of the Agreement and the Distribution Protocol, has been approved for compensation by the Administrator and/or Claims Adjudicator.

(6) **Certification Order** means the order of the Honourable Mr. Justice Edward Morgan dated March 20, 2019 certifying the Action as a class proceeding.

(7) **Claim** means the electronic claims process and paper claim form to be approved by the Court, either of which when completed and submitted in a timely manner to the Administrator, constitutes a Class Member's claim for compensation pursuant to the Settlement.

(8) **Claims Adjudicator** means the third party professional firm, and any employees of such firm selected at arm's length by Class Counsel, agreed upon by the Defendant, and appointed by the Court to (i) adjudicate entitlement to claim as an Infected Class Member, Cross-Infected Class Member and FLA Class Member in accordance with this Agreement and the Distribution Protocol, and (ii) report to the Parties and the Court on the adjudication of such claims.

(9) **Claims Administration and Adjudication Claims Process** means the process by which Class Members shall submit claims for compensation, including claims for recovery by the Ministry of Health for its subrogated claims, and includes an Adjudication process for claims made by members of the Infected Class, Cross-Infected Class and FLA Class.

(10) **Claims Administration and Claims Adjudication Expenses** means all reasonable fees, disbursements, expenses, costs, taxes and any other amounts associated with:

(a) Claims Administration:

(i) establishing and operating the Escrow Account;

(ii) publishing and distributing notices to the Class; and

(iii) the distribution of the Settlement Amount to the Class in accordance with the Distribution Protocol, and;

(iv) report to the Parties and the Court on the administration of all claims.

(b) Claims Adjudication:

- (i) adjudicating entitlement to claim as an Infected Class Member, Cross-Infected Class Member and FLA Class Member in accordance with this Agreement and the Distribution Protocol, and
- (ii) report to the Parties and the Court on the adjudication of such claims.

(11) **Claims Administrator** means a third-party professional firm appointed by the Court to administer the Settlement Agreement and the Distribution Protocol, and any employees of such firm.

(12) **Claims Bar Deadline** means the date by which each Class Member must file a Claim and all supporting documentation with the Claims Administrator, which date shall be ninety (90) days after the date on which the Notice of Settlement Approval is first published.

(13) **Class or Class Member** means:

- (a) Patients of Upper Middle Dental who received dental services prior to June 9, 2017, and had a positive laboratory test for Hepatitis B, Hepatitis C and/or HIV after receiving said services, and contracted Hepatitis B, Hepatitis C and/or HIV (the “Infected Class”);
- (b) All persons who had a positive laboratory test for Hepatitis B, Hepatitis C and/or HIV, and contracted Hepatitis B, Hepatitis C and/or HIV, after an Infected Class Member received dental services from Upper Middle Dental prior to June 9, 2017 (the “Cross-Infected Class”);
- (c) Patients of Upper Middle Dental who received dental services prior to June 9, 2017, and who were notified by a health authority, or were otherwise advised by a health authority that they were put at risk of contracting Hepatitis B, Hepatitis C and/or HIV, after receiving said services (the “Exposed Class”); and
- (d) All living parents, grandparents, children, siblings and spouses within the meaning of section 61 of the Family Law Act, R.S.O. 1990, c.F-3, as amended, of the persons described in paragraphs (a) and (b) above (the “FLA Class”).

but excludes any Person who has validly opted out of the Action.

- (14) **Class Counsel** means Flaherty McCarthy LLP.
- (15) **Class Counsel Fees** means the reasonable fees, disbursements and interest and any applicable taxes or charges thereon of Class Counsel in respect of the prosecution of the Action.
- (16) **Class Period** means the period prior to June 9, 2017.
- (17) **Counsel for the Defendants** means Brunner and Lundy.
- (18) **Court** means the Ontario Superior Court of Justice.
- (19) **CPA** means *the Class Proceedings Act, 1992, S.O. 1992, c. 6, as amended*.
- (20) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (21) **Defendant** means any person or entity named as a Defendant in the Action, including the Defendants' employees, sub-contractors, agents, or dental hygienists.
- (22) **Distribution Protocol** means the plan for distributing the Net Settlement Amount and accrued interest, net of any court-approved deductions, in whole or in part, to the Class as established by Class Counsel and approved by the Court, in the form attached as **Appendix A** hereto:
- (23) **Effective Date** means the date when the Final Order has been issued by the Court approving the Settlement Agreement.
- (24) **Eligible Class Members** means:
- (a) Uninfected Class Members who submit a valid claim prior to the Claims Bar Deadline, and
 - (b) Infected Class Members, Cross-Infected Class members and FLA Class members who submit a valid claim prior to the Claims Bar Deadline.
- (25) **Escrow Account** means an interest-bearing escrow account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of the Class.
- (26) **Escrow Settlement Amount** means the Settlement Funds plus any interest accruing thereon.

(27) **Exposure** means the period prior to June 9, 2017, which is the date when the Regional Municipality of Halton Public Health Department attended Dr. Handa's office and conducted an investigation and determined that the Defendants' dental patients had been exposed to Hepatitis B, Hepatitis C and HIV.

(28) **Final or Final Order** means the later of a final judgment entered by the Court approving this Settlement Agreement, the time to appeal such judgment having expired without any appeal being taken and, if an appeal is filed, the approval of this Settlement Agreement upon a final disposition of all appeals.

(29) **Infected Claims Fund** means a 70% share of the Net Settlement Amount and is intended to compensate claims by the Infected Class, the Cross-Infected Class and FLA Class, as well as directly associated subrogated claims by the Ontario Ministry of Health.

(30) **Net Settlement Amount** means the Settlement Amount minus Class Counsel fees and any approved Honorarium.

(31) **Notice of Hearing** means the form or forms of notice, as agreed by the Parties, or such other form or forms of notice as agreed by the Parties and approved by the Court, which inform(s) the Class Member of: (i) the date and location of the Settlement Approval Hearing; (ii) the principal elements of the Settlement Agreement; (iii) the process by which Class Members may object to the Settlement; and (iv) Class Counsel Fees requested by Class Counsel.

(32) **Notice of Settlement Approval** means a notice or notices in a form approved by the Court of the approval of the Settlement Agreement, including the manner in which this notice will be provided.

(33) **Party and Parties** mean the Plaintiff, including Class Members, and the Defendant.

(34) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(35) **Plaintiff** means Lina Rizzi.

(36) **Proceedings** means any actions or proceedings, other than the Action, solely advancing Released Claims commenced by a Class Member either before or after the Effective Date.

(37) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration and Claims Adjudication Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, asserted or unasserted, accrued or unaccrued and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasors ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action, including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of, in relation to or in connection with the Exposure.

(38) **Releasees** means, jointly and severally, individually and collectively, the Defendant and all of its past, present and future officers, directors, employees, agents, mandataries, attorneys, insurers, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, subrogees, heirs, executors, administrators and assigns of each of the foregoing.

(39) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members on behalf of themselves and any Person claiming by or through them or through them as a predecessor, successor, agent, attorney, heir, administrator, insurer, devisee, subrogee, assignee or representative of any kind, but, for greater certainty, excludes Opt-Out Parties.

(40) **Settlement** means the settlement provided for in this Settlement Agreement.

(41) **Settlement Agreement** means this agreement, including the recitals and schedules.

(42) **Settlement Amount** means the sum of \$1,611,500 in Canadian currency, inclusive of all expenses relating to the Action and the Settlement, including, but not limited to, interest, costs, fees, Class Counsel Fees, disbursements and taxes, other than Claims Administration and Claims Adjudication Expenses.

(43) **Settlement Approval Hearing** means the hearing for the Court's approval of the Settlement.

(44) **Settlement Approval Order** means the order of the Court to be requested by the Plaintiff, with the consent of the Defendant, approving the Settlement Agreement.

(45) **Uninfected Claims Fund** means a 30% share of the Net Settlement Amount and is intended to compensate claims by the Uninfected Class as well as claims by the Ontario Ministry of Health.

SECTION 2 – BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to fulfill this Settlement Agreement and to secure Court approval and implementation of the Settlement, including the final dismissal of the Action with prejudice and without costs.

(2) The Parties agree that, if necessary to give effect to this Settlement Agreement, they will cooperate in entering into such further documentation and agreements as required to effect the agreed-upon settlement, and in applying to the Court for directions.

(3) With the exception of the materials contemplated in Section 4.1 regarding Class Counsel Fees, the Plaintiff will provide all materials to be filed with or provided to the Court to the Defendant in advance for review and comment.

2.2 Court Approval Required

(1) With the exception of those Sections expressly stated to survive the termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless and until this Settlement Agreement is approved by the Court.

2.3 Action in Abeyance

(1) Until the Parties have obtained the Final Order or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, Class Counsel, the Plaintiff and the Class agree to hold in abeyance all other steps in the Action, other than the settlement approval motions contemplated by this Settlement Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed in writing by the Parties.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Subject to Section SECTION 9, within thirty (30) days of the Effective Date, the Defendant shall pay the Settlement Amount to Class Counsel, for deposit into the Escrow Account.

(2) The Defendant shall deposit the Settlement Amount into the Escrow Account by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel shall provide, in writing, the necessary wire transfer information to Defence Counsel.

(3) The Settlement Amount, the Claims Administration and Claims Adjudication Expenses referred to in Section 3.2(1) shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) Except with respect to the Claims Administration and Claims Adjudication Expenses referred to in Section 3.2(1), the Settlement Amount shall be all-inclusive of all amounts, including, without limitation, all expenses relating to the Action and the Settlement, interest, costs, fees, Class Counsel Fees, disbursements and taxes.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount and, subject to Section 5.1(4), the Claims Administration and Claims Adjudication Expenses referred to in Section 3.2(1), for any reason, pursuant to or in furtherance of this Settlement Agreement or the Action.

(6) Once a Claims Administrator has been appointed, Class Counsel shall transfer control of the Escrow Account, net of Class Counsel Fees, and any Honorarium, as approved by the Court, to the Claims Administrator.

(7) Class Counsel and the Claims Administrator shall maintain the Escrow Account as provided for in this Settlement Agreement. While in control of the Escrow Account, Class Counsel and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

3.2 Administration and Claims Adjudication Expenses

(1) Subject to Section 5.1(4), the following Administration and Claims Adjudication Expenses, reasonably incurred and as approved by the Court, shall be payable by the Defendant:

- (a) all costs incurred in connection with establishing and operating the Escrow Account;
- (b) all costs incurred in publishing and distributing the Notice of Hearing to the Class;
- (c) all costs incurred in publishing and distributing the Notice of Settlement Approval;
- (d) all costs incurred in connection with the adjudication of claims by the Infected Class, the Cross-Infected Class and FLA Class, as well as claims by the Ontario Ministry of Health;
- (e) all costs incurred in connection with the distribution of the Settlement Amount to the Class in accordance with the Distribution Protocol; and,
- (f) any other steps taken in respect of the administration of this Settlement Agreement, up to the date of the termination of the Settlement Agreement.

(2) Any disputes concerning Administration and Claims Adjudication Expenses shall be dealt with by a motion on notice to the Parties or by application to the Court, as necessary.

SECTION 4 – CLASS COUNSEL FEES, TAXES AND INTEREST

4.1 Class Counsel Fees Approval

(1) At the Settlement Approval Hearing, Class Counsel shall seek the approval of Class Counsel Fees. Class Counsel Fees shall be reimbursed and paid solely out of the Escrow Account after the Settlement becomes Final.

(2) The Defendant acknowledges that it is not a party to the motion concerning the approval of Class Counsel Fees. The Defendant will have no involvement in the approval process to determine the amount of Class Counsel Fees and it will not make submissions to the Court concerning Class Counsel Fees.

(3) Any order in respect of Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the Settlement as provided herein.

4.2 Taxes and Interest

(1) Except as provided hereinafter, all interest earned on the Settlement Amount in the Escrow Account shall accrue to the benefit of the Class and shall become and remain part of the Settlement Amount held in the Escrow Account.

(2) Subject to Section 4.2(3), all taxes payable on any interest which accrues on or otherwise in relation to the Settlement Amount in the Escrow Account shall be the responsibility of the Plaintiff and the Class. Class Counsel or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Escrow Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Escrow Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Escrow Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Escrow Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Escrow Account or otherwise shall be paid to Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator. The Defendant shall have no responsibility to pay any amount for the preparation and filing of any taxes by the Plaintiff, Class, Class Counsel or Claims Administrator arising from the Settlement Amount in the Escrow Account.

SECTION 5 – DISTRIBUTION OF SETTLEMENT AMOUNT

5.1 Distribution of Settlement Amount

(1) The formula and plan for distribution of the Net Settlement Amount shall be contained in the Distribution Protocol. The Distribution Protocol shall be in a form agreed upon by the Parties, acting reasonably, and approved by the Court or, if the Parties cannot agree on the form of the Distribution Protocol, the issue of the form of the Distribution Protocol shall be determined by the Honourable Justice Edward Morgan.

(2) In conjunction with the Plaintiff's motion to the Court for approval of this Settlement, on notice to the Defendant, Class Counsel shall seek an order from the Court approving the Distribution Protocol.

(3) The Defendant shall not have any responsibility, financial obligations or liability with respect to the Distribution Protocol, or the investment, distribution or administration of monies in the Escrow Account, including, but not limited to, Class Counsel Fees, except that, subject to Section 5.1(4), the Defendant shall be responsible for the payment of Administration and Claims Adjudication Expenses in accordance with Section 3.2(1).

(4) Any surplus amounts remaining in the Escrow Account following the payment of Class Counsel Fees and which are not distributed to Eligible Class Members pursuant to the Distribution Protocol shall revert to the Defendant.

SECTION 6 – NOTICE

6.1 Notices Required

(1) The Plaintiff and the Class shall be given the following notices: (i) Notice of Hearing; (ii) Notice of Settlement Approval; (iii) notice if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect; and (iv) such further notice as may be directed by the Court.

(2) The Public Guardian and Trustee and the Children's Lawyer shall be given the following notices by the Plaintiff: (i) Notice of Hearing; (ii) Notice of Settlement Approval; (iii) notice if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect; and (iv) such further notice as may be directed by the Court.

6.2 Form and Distribution of Notices

(1) The notices referred to in Sections 6.1(1) and 6.1(2) shall be in a form agreed upon by the Parties, acting reasonably, and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices referred to in Section 6.1(1) shall be disseminated by a method agreed upon by the Parties, acting reasonably, and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

SECTION 7 – SETTLEMENT APPROVAL

7.1 Motions Seeking Approval of the Notice of Hearing and Settlement Agreement

(1) As soon as practicable after the Date of Execution, the Plaintiff shall bring a motion to the Court for an order granting the following relief: (i) the Court's approval of the Notice of Hearing, (ii) the appointment of the Claims Administrator and (iii) the appointment of the Claims Adjudicator.

(2) As soon as practicable after the order referred to in Section 7.1(1) is made and the Notice of Hearing is published, the Plaintiff shall bring a motion to the Court for an order approving the terms of this Settlement Agreement, the Distribution Protocol and Class Counsel Fees.

(3) The form of orders referred to in Sections 7.1(1) and 7.1(2), and any notices attached thereto, shall be as agreed by the Plaintiff and the Defendant or in such form or manner as agreed to by the Plaintiff and the Defendant and approved by the Court.

(4) The order referred to in Section 7.1(2) shall contain a term providing that no action may be taken against the Defendant, the Plaintiff, Defence Counsel, Class Counsel or the Claims Administrator without leave of the Court with respect to any issues arising from the Settlement.

(5) The Plaintiff shall serve the Public Guardian and Trustee and the Children's Lawyer with copies of the notice of motion for approval of the Settlement as well any other materials filed on the motion referred to in Section 7.1(2).

7.2 Pre-Motion Confidentiality

(1) Until the motion referred to in Section 7.1(1) is filed with the Court, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of the other Party, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

7.3 No Press Release

(1) The Parties agree that, other than in connection with any court-approved notice arising from this Settlement Agreement, they will not issue any press release, whether joint or individual, concerning this Settlement Agreement or anything related thereto. The Parties further agree that they will not seek to obtain media coverage in relation to the Settlement Agreement.

(2) The Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. The Parties' obligations under this subsection shall not prevent them from reporting to their clients, or complying with any court order, or from making any disclosure or comment otherwise required by the Settlement Agreement, or from making any necessary disclosure or comment for the purpose of any applicable legislation or professional obligation.

(3) If comment is solicited by the press or others, Class Counsel and the Plaintiff agree and undertake to describe the Settlement and the terms of this Settlement Agreement factually and only as fair, reasonable and in the best interests of the Class and in compliance with Section 10.4(1) below.

SECTION 8– RELEASES AND DISMISSALS

8.1 Release of Releasees

(1) As of the Effective Date, and in consideration of payment of the Settlement Amount, the Administration and Claims Adjudication Expenses referred to in Section 3.2(1), subject to Section 5.1(4), and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Plaintiff and Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

(3) As of the Effective Date, and notwithstanding Section 8.1(1), for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead the Releasers covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

(4) As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assign, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit, cause of action, claim or demand against the Releasees in respect of any Released Claims or any matter related thereto.

(5) As of the date of this Settlement Agreement, Class Counsel do not and will not represent plaintiffs in any other proceeding related to any matter raised or which could have been raised in the Action as against the Releasees.

8.2 Dismissal of the Proceedings

(1) Upon the Effective Date, the Action shall be declared settled out of court and shall be dismissed with prejudice and without costs.

(2) Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation of his or her Proceedings against the Releasees.

8.3 Material Term

(1) For the avoidance of doubt and without limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 9.1(4)), the releases and reservations of rights contemplated in this SECTION 8 shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right to terminate pursuant to Section 9.1 of this Settlement Agreement.

SECTION 9 - TERMINATION OF SETTLEMENT AGREEMENT

9.1 Right of Termination

(1) The Defendant shall, in its sole discretion, have the option to terminate this Settlement Agreement in the event that:

- (a) the Plaintiff breaches any term of this Settlement Agreement the Defendant deems material;

- (b) the Court refuses to grant an order dismissing the Action with prejudice and on a without costs basis;
- (c) the Court declines to approve this Agreement or any material part thereof;
- (d) the Court approves this Settlement Agreement in a materially modified form;
- (e) the Court issues a Settlement Approval Order that is materially inconsistent with the terms of the Settlement Agreement;
- (f) the Settlement Approval Order does not become Final;
- (g) the Settlement Approval Order is reversed on appeal and the reversal becomes a Final Order; or
- (h) the Court declines to approve the releases, covenants (including the covenant not to sue), dismissals, granting of consent, and reservation of rights contemplated in SectionSECTION 8, or approves them in materially modified form.

(2) If the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate this Settlement Agreement or to move before the Courts to enforce the terms of this Settlement Agreement.

(3) If the Defendant elects to terminate the Settlement Agreement pursuant to Section 9.1(1), or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to Section 9.1(2), a written notice of termination shall be provided by the terminating Party to the other Party forthwith, and, in any event, no later than ten (10) business days after the event upon which the terminating Party relies.

(4) Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees or the Distribution Protocol 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.

9.2 Steps Required on Termination

(1) If this Settlement Agreement is terminated, either the Defendant or the Plaintiff shall, within thirty (30) days after termination, apply to the Court, on notice to the other Party, for an order:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provision in those sections listed in Section 9.4(2);
- (b) setting aside and declaring null and void and of no force or effect, *nun pro tunc*, all prior orders and judgments entered by a court in accordance with the terms of this Settlement Agreement; and
- (c) authorizing the payment of the Escrow Amount, plus all accrued interest thereon, less taxes paid on interest, to the Defendant.

(2) Subject to Section 9.4(2), the Plaintiff shall consent to the orders sought in any motion made by the Defendant under Section 9.2(1).

9.3 Notice of Termination

(1) If the Settlement Agreement is terminated, a notice of the termination will be given to the Class. Class Counsel and the Claims Administrator will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs, with such expense to be paid by the Defendant.

9.4 Effect of Termination

(1) Subject to Section 9.4(2), in the event that this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) this Settlement Agreement shall have no further force or effect and the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided herein;
- (b) no motion to approve this Settlement Agreement which has not been decided shall proceed;
- (c) the Parties will cooperate in seeking to have all prior orders and judgments entered by a court in accordance with the terms of this Settlement Agreement to be set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;
- (d) Class Counsel shall, within thirty (30) business days of the issuance of the order contemplated by Section 9.2(1)(b), return to the Defendant the Settlement Amount, plus all accrued interest, less taxes paid on interest;

(e) This Settlement Agreement shall not be introduced into evidence or otherwise referred to in any litigation against the Defendant.

(2) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, and notwithstanding Sections 9.2(1), the provisions of Sections 2.1(3), 3.2(1), 3.2(2), 4.2(2), 4.2(3), 5.1(3), 6.1(1)(iii)-(iv), 6.1(2)(iii)-(iv), 7.3(1), 7.3(2), 7.3(3), 9.2(1), 9.2(2), 9.3(1), 9.4(1), 9.5(1), 10.1(1), 10.2(1), 10.3(1), 11.2(1), 11.3(1), 11.4(1), 11.4(2), 11.5(1), 11.6(1), 11.8(1), 11.9(1), 11.10(1), 11.11(1), 11.12(1), 11.14(1), 11.15(1) and the definitions and Schedules applicable thereto (but only for the limited purpose of the interpretation of those sections) shall survive the termination and continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

9.5 Disputes Relating to Termination

(1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on a motion made by a Party on notice to the other Party.

SECTION 10 – EFFECT OF SETTLEMENT

10.1 No Admission of Liability

(1) Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, 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 as to be an admission of any violation of any statute or law, or any wrongdoing or liability by the Releasees, or of the truth of any claims or allegations contained in the Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability with respect to any of the allegations made, or which could have been made, against the Defendant in the Action.

10.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, 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 pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, as otherwise required by law, or with the written consent of all Parties.

10.3 No Further Litigation

(1) Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Releasees which relates to or arises from the Released Claims or the Exposure. Moreover, Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court.

10.4 Non-Disparagement

(1) The Parties agree not to engage in any form of conduct, or make any statements or representations, that are untruthful or disparage or otherwise harm the reputation, goodwill or interests of the other Party. This includes, but is not limited to, statements or representations to the press or other media.

SECTION 11 – MISCELLANEOUS

11.1 Motions for Directions

(1) Class Counsel, Defence Counsel, the Claims Administrator or the Claims Adjudicator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol at any time.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.2 Headings, etc.

- (1) 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.

11.3 Computation of Time

- (1) 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 as “holiday” is defined in the Rules of Civil Procedure, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

11.4 Governing Law

- (1) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (2) The Parties agree that the Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Settlement Agreement and the Settlement Approval Order.

11.5 Severability

- (1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

11.6 Entire Agreement

(1) 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.

11.7 Amendments

(1) 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 Court.

11.8 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, Class Counsel, the Defendant, 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 Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

11.9 Survival

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

11.10 Counterparts

(1) 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 or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.11 Negotiated Agreement

(1) 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.

11.12 Recitals

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

11.13 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

11.14 Acknowledgements

(1) 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 the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

11.15 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Sean A. Brown
FLAHERTY MCCARTHY LLP
Barristers and Solicitors
95 Wellington Street West, Suite 1000
Toronto, Ontario M5J 2N7
Tel: (416) 36800231 x 8230
Email: sean@fmlaw.ca

For the Defendant:

Andrew Lundy
Eric Baum
Brunner and Lundy
360 Bay Street, Suite 302
Toronto, ON M5H 2V6
Tel: (416) 966-9955
Email: ebaum@brunnerandlundy.com

11.16 Date of Execution

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

Lina Rizzi on her own behalf and on behalf of the Class that she represents, by her counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Flaherty McCarthy LLP
Counsel for the Plaintiff and the Class

**DR. VIVEK (VICK) HANDA, UPPER MIDDLE DENTAL and VICK HANDA DENTISTRY
PROFESSIONAL CORPORATION**

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Brunner and Lundy
Counsel for the Defendant

APPENDIX “A” – DISTRIBUTION PROTOCOL

THE UNINFECTED CLAIMS FUND

The Uninfected Claims Fund is defined in the Settlement Agreement as a fund to compensate claims by the Uninfected Class as well as claims by the Ontario Ministry of Health.

The Uninfected Claims Fund shall be 30% of \$1,056,050, or approximately \$316,815.

Authorized Claimants

To qualify as an Authorized Claimant, the Eligible Claimant must complete a valid eligibility form and submit it on a timely basis prior to the Claims Bar Deadline along with a copy of one or more pieces of the following government-issued proof of identification (Proof of Identification”):

- (a) driver’s license;
- (b) Ontario Health Insurance Program (OHIP) card;
- (c) birth certificate;
- (d) Liquor Control Board of Ontario (LCBO) BYID card;
- (e) Ontario Student Record (OSR); or
- (f) passport.

A valid eligibility form will require the Eligible Claimant to declare that he or she:

- (a) received dental services from the Defendant prior to June 9, 2017 and
- (b) was advised that he or she was exposed to Hepatitis B, Hepatitis C and HIV.

The manner of completing the eligibility form will be determined by the Claims Administrator in consultation with Class Counsel and Counsel for the Defendant.

The Claims Administrator shall determine if a claimant is an Eligible Claimant on the basis of the documentation produced by the claimant, applying the civil evidentiary standard of the balance of probabilities. The Claims Administrator shall provide notice to the claimant regarding whether or not he or she has been accepted as an Eligible Claimant within thirty (30) days of receipt of the claimant’s document productions (the “Decision Review Period”).

The Claims Administrator shall promptly provide a notice of ineligibility (the “Ineligibility Notice”) to:

- (a) any claimant who submitted a claims form during the Claims Period but who is not on the Class Member List; or
- (b) any claimant who is on the Class Member List and who submitted a claims form during the Claims Period, but whose claims form was invalid and/or was not accompanied by Proof of Identification.

The Ineligibility Notice shall notify the claimant that he or she is not an Eligible Claimant and shall provide a reason for that determination (either that the claimant is not on the Class Member List or that the claimant's form was invalid and/or was not accompanied by acceptable Proof of Identification). Any person who receives an Ineligibility Notice shall have thirty (30) days from the date the Ineligibility Notice is delivered to establish to the satisfaction of the Claims Administrator that he or she is an Eligible Claimant.

The Settlement Agreement provides that each Eligible Claimant who makes a proper claim prior to the Claim Deadline shall be paid a *pro rata* share of the Uninfected Claims Fund, to a maximum of \$500.00 payable to each Authorized Claimant, and the Claims Administrator shall pay this compensation to the Authorized Claimant.

Ontario Ministry of Health – Subrogated Claims

Section 31 of the *Health Insurance Act* (HIA) confirms that the Ontario Ministry of Health has a legislated right of recovery for the cost of both past and probable future care costs to be provided to class members for treatment of injuries resulting from the incident or incidents (“the Exposure”) giving rise to this claim.

The Ontario Ministry of Health advises:

- (a) Each attendance upon a family doctor or walk-in clinic doctor costs \$34.00 each;
- (b) Each blood test for Hepatitis B, Hepatitis C and HIV costs \$8.00 each;
- (c) An exposed individual would be expected to undergo three (3) blood tests;
- (d) An exposed individual would be expected to attend upon a family doctor or walk-in clinic doctor two (2) times to order the initial round of testing and to go over the results once the testing is completed.

On this basis, the total cost to the Ontario Ministry of Health for each class member who went for testing as advised by Public Health would be \$92.00 each.

The Ministry of Health has advised Class Counsel that it has no way of determining how many class members went to a doctor and/or for blood testing, unless it is provided with the names and Health Card numbers for each class member. At present, it cannot determine the exact quantum of its subrogated interest.

Class Counsel has negotiated a tentative resolution with the Ontario Ministry of Health of its subrogated interest related to doctor visits and blood testing incurred as a consequence of Class Members who were advised of their exposure to Hepatitis B, Hepatitis C and HIV. The Ontario Ministry of Health has agreed to accept \$20,000 all-inclusive to fully satisfy its subrogated claim as it relates to those class members who were only exposed to, but did not contract, Hepatitis B, Hepatitis C and HIV. This is subject to Court approval.

The payment of the \$20,000 to the Ontario Ministry of Health would reduce the Uninfected Claims Fund from \$316,815 to approximately \$296,815.

General

The decision of the Claims Administrator is a final and binding decision, and there is no right of appeal.

At no point shall the Claims Administrator assess entitlement to compensation for all Authorized Claimants and the Ontario Ministry of Health in an aggregate or total amount that exceeds 30% of the Net Settlement Amount.

THE INFECTED CLAIMS FUND

The Infected Claims Fund is defined in the Settlement Agreement as a fund to compensate claims by the Infected Class, the Cross-Infected Class and FLA Class, as well as claims by the Ontario Ministry of Health.

The Infected Claims Fund shall be 70% of \$1,056,050, or approximately \$739,235.

Authorized Claimants (Infected Class) of the Infected Claims Fund

To make a proper claim to the Infected Claims Fund, each Infected Class Member must provide to the Claims Administrator prior to the Claims Bar Deadline, and to the satisfaction of the Claims Adjudicator:

- (a) a Declaration that he or she received dental services from the Defendant prior to June 9, 2017 and was advised that he or she was exposed to Hepatitis B, Hepatitis C and HIV; and
- (b) an Ontario laboratory test report confirming that he or she was Positive for Hepatitis B, Hepatitis C or HIV on a date that follows the Class Member receiving dental services provided by the Defendant, and prior to June 9, 2017.

The Claims Administrator shall determine if a claimant is an Eligible Claimant on the basis of the documentation produced by the claimant, applying the civil evidentiary standard of the balance of probabilities. The Claims Administrator shall provide notice to the claimant regarding whether or not he or she has been accepted as an Eligible Claimant within thirty (30) days of receipt of the claimant's document productions (the "Decision Review Period").

The Claims Administrator shall promptly provide a notice of ineligibility (the "Ineligibility Notice") to:

- (a) any claimant who submitted a claims form during the Claims Period but who is not on the Class Member List; or
- (b) any claimant who is on the Class Member List and who submitted a claims form during the Claims Period, but whose claims form was invalid and/or was not accompanied by Proof of Identification.

The Ineligibility Notice shall notify the claimant that he or she is not an Eligible Claimant and shall provide a reason for that determination (either that the claimant is not on the Class Member List or that the claimant's form was invalid and/or was not accompanied by acceptable Proof of

Identification). Any person who receives an Ineligibility Notice shall have thirty (30) days from the date the Ineligibility Notice is delivered to establish to the satisfaction of the Claims Administrator that he or she is an Eligible Claimant.

The decision of the Claims Administrator is a final and binding decision, and there is no right of appeal.

Authorized Claimants (Cross-Infected Class) of the Infected Claims Fund

To make a proper claim to the Infected Claims Fund, each Cross-Infected Class Member must provide to the Claims Administrator prior to the Claims Bar Deadline, and to the satisfaction of the Claims Adjudicator:

- (a) a Declaration that the Cross-Infected Class Member was in a relationship of sufficient proximity, including but not limited to a conjugal relationship, with an Infected Class Member, and this Infected Class Member must:
 - (i) have received dental services from the Defendant prior to June 9, 2017;
 - (ii) provide an Ontario laboratory test report confirming that he or she was Positive for Hepatitis B, Hepatitis C or HIV on a date that follows the Infected Class Member receiving dental services provided by the Defendant, and prior to June 9, 2017.
- (b) an Ontario laboratory test report confirming that he or she was Positive for Hepatitis B, Hepatitis C or HIV on a date that follows the Class Member receiving dental services provided by the Defendant, and prior to June 9, 2017.

The Claims Administrator shall determine if a claimant is an Eligible Claimant on the basis of the documentation produced by the claimant, applying the civil evidentiary standard of the balance of probabilities. The Claims Administrator shall provide notice to the claimant regarding whether or not he or she has been accepted as an Eligible Claimant within thirty (30) days of receipt of the claimant's document productions (the "Decision Review Period").

The Claims Administrator shall promptly provide a notice of ineligibility (the "Ineligibility Notice") to:

- (a) any claimant who submitted a claims form during the Claims Period but who is not on the Class Member List; or
- (b) any claimant who is on the Class Member List and who submitted a claims form during the Claims Period, but whose claims form was invalid and/or was not accompanied by Proof of Identification.

The Ineligibility Notice shall notify the claimant that he or she is not an Eligible Claimant and shall provide a reason for that determination (either that the claimant is not on the Class Member List or that the claimant's form was invalid and/or was not accompanied by acceptable Proof of Identification). Any person who receives an Ineligibility Notice shall have thirty (30) days from the date the Ineligibility Notice is delivered to establish to the satisfaction of the Claims Administrator that he or she is an Eligible Claimant.

The decision of the Claims Administrator is a final and binding decision, and there is no right of appeal.

Authorized Claimants (FLA Class) of the Infected Claims Fund

To make a proper claim to the Infected Claims Fund, each FLA Class Member must provide to the Claims Administrator prior to the Claims Bar Deadline, and to the satisfaction of the Claims Adjudicator:

- (a) a Declaration that the FLA Class Member is the parent, grandparent, child, sibling or spouse within the meaning of section 61 of the Family Law Act, R.S.O. 1990, c.F-3, as amended, of an Infected Class Member, and this Infected Class Member must:
 - (i) have received dental services from the Defendant prior to June 9, 2017;
 - (ii) provide an Ontario laboratory test report confirming that he or she was Positive for Hepatitis B, Hepatitis C or HIV on a date that follows the Infected Class Member receiving dental services provided by the Defendant, and prior to June 9, 2017.

The Claims Administrator shall determine if a claimant is an Eligible Claimant on the basis of the documentation produced by the claimant, applying the civil evidentiary standard of the balance of probabilities. The Claims Administrator shall provide notice to the claimant regarding whether or not he or she has been accepted as an Eligible Claimant within thirty (30) days of receipt of the claimant's document productions (the "Decision Review Period").

The Claims Administrator shall promptly provide a notice of ineligibility (the "Ineligibility Notice") to:

- (a) any claimant who submitted a claims form during the Claims Period but who is not on the Class Member List; or
- (b) any claimant who is on the Class Member List and who submitted a claims form during the Claims Period, but whose claims form was invalid and/or was not accompanied by Proof of Identification.

The Ineligibility Notice shall notify the claimant that he or she is not an Eligible Claimant and shall provide a reason for that determination (either that the claimant is not on the Class Member List or that the claimant's form was invalid and/or was not accompanied by acceptable Proof of Identification). Any person who receives an Ineligibility Notice shall have thirty (30) days from the date the Ineligibility Notice is delivered to establish to the satisfaction of the Claims Administrator that he or she is an Eligible Claimant.

The decision of the Claims Administrator is a final and binding decision, and there is no right of appeal.

Ontario Ministry of Health – Subrogated Claims

Section 31 of the *Health Insurance Act* (HIA) confirms that the Ontario Ministry of Health has a legislated right of recovery for the cost of both past and probable future care costs to be provided

to class members for treatment of injuries resulting from the incident or incidents (“the Exposure”) giving rise to this claim. Consequently, the Ministry of Health:

- (a) Shall be advised by the Claims Adjudicator of the names and Health Card Numbers of each Authorized Claimant at the conclusion of the Claims Bar Deadline;
- (b) Shall be provided the opportunity to determine its actual costs incurred to date in relation to diagnosing and treating the Authorized Claimant’s Hepatitis B, Hepatitis C or HIV infection;
- (c) Shall be provided the opportunity to determine its probable future care costs in relation to treating the Authorized Claimant’s Hepatitis B, Hepatitis C or HIV infection;
- (d) Shall submit a claim to the Claims Adjudicator for such past and probable future care costs;

Claims Adjudication Process for Infected Class, Cross-Infected Class and FLA Class

The Claims Administrator shall provide the Claims Adjudicator with each Eligible Claim made by Infected Class Members, Cross-Infected Class Members and FLA Class Members, as the Claims and supporting information is received, prior to the Claims Bar Deadline.

At any time prior to the Claims Bar Deadline, and thereafter as required by the Claims Adjudicator, the Claims Adjudicator may require and request that additional information be submitted by a Class Member who submits a Claim. Such Class Members shall have until the later of thirty (30) days from the date of the request from the Claims Adjudicator or the Claims Bar Deadline to provide the requested information. Any person who does not respond to such a request for information within this period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any Order of the Court to the contrary but will in all other respects be subject to and bound by the provisions of this Agreement and the releases contained herein.

The Claims Adjudicator may, at his or her sole discretion, convene a hearing with the Class Member to consider additional information or receive oral submissions in addition to the materials provided by the Class Member.

The Claims Adjudicator shall consider all the information and evidence provided by or on behalf of the Class Member and shall make a decision regarding entitlement to compensation from the Infected Claims Fund.

If the Claims Adjudicator is persuaded that a Class Member is an Authorized Claimant, the Claims Adjudicator shall assess and determine entitlement to compensation from the Infected Claims Fund and shall direct the Claims Administrator to pay this compensation to the Authorized Claimant.

After the Claims Bar Deadline, and after all claims are considered and determined by the Claims Adjudicator, including claims by the Ontario Ministry of Health, the Claims Adjudicator shall assess entitlement to compensation for all Authorized Claimants and the Ontario Ministry of Health in an aggregate or total amount that shall not exceed 70% of the Net Settlement Amount.

Right of Reversion

Any residual funds maintained in the Escrow Account, after all payments are made in accordance with the Distribution Protocol, shall revert to and be paid to the Defendant.

Reporting

The Claims Administrator shall report to Class Counsel, Counsel for the Defendant and the Court regarding the disposition of the Net Settlement Amount to Eligible Class Members, including the number of Eligible Class Members to whom payments were made, the results of any determinations regarding Ineligibility Notices, and the distribution of any remaining amounts in the Escrow Account. The report to the Court shall be delivered to Class Counsel, Defence Counsel and to the Court as soon as practicable after the completion of the Settlement administration.

SCHEDULE "B" – SETTLEMENT AND FEE APPROVAL ORDER