

**CANADIAN LAWN MOWER CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of August 10, 2018

Between

ROBERT FOSTER, MURRAY DAVENPORT,  
ERIC LIVERMAN AND SIDNEY VADISH

**(the “Plaintiffs”)**

and

TECUMSEH PRODUCTS OF CANADA, LIMITED, TECUMSEH  
PRODUCTS COMPANY, AND PLATINUM EQUITY, LLC

**(the “Settling Defendants”)**

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**CANADIAN LAWN MOWER CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

- A. **WHEREAS** the Proceedings have been commenced by the Plaintiffs in Ontario and Quebec which allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of lawn mowers in Canada, lessen unduly competition in the production, manufacture, sale and/or supply of lawn mowers and lawn mower engines in Canada, and/or to conduct business contrary to Part VI of the *Competition Act*, section 7 of the *Consumer Packaging and Labelling Act* and the common law;
- B. **WHEREAS** the Settling Defendants have denied, and continue to deny, each and every claim and allegation of wrongdoing and any and all allegations that the Plaintiffs have suffered any damage whatsoever, have been harmed in any way, or are entitled to any relief as a result of any conduct on the part of the Settling Defendants as alleged by the Plaintiffs in the Proceedings or at all;
- C. **WHEREAS** the Settling Defendants state the Tecumseh entities underwent a financial reorganization following the termination of their participation in the market for lawn mower engines in Canada in or about the year 2007;
- D. **WHEREAS** the Plaintiffs and the MTD Defendants entered into a settlement agreement dated September 29, 2010 which also resolved the allegations and litigation against the Sears Defendants;
- E. **WHEREAS** the Plaintiffs and the Briggs Defendants, the Electrolux Defendants, the John Deere Defendants, the Husqvarna Defendants, the Kohler Defendants and the Toro Defendants entered into a settlement agreement dated June 26, 2013;
- F. **WHEREAS** the Plaintiffs and the Honda Defendants entered into a settlement agreement dated February 25, 2015;
- G. **WHEREAS** the Plaintiffs and the Kawasaki Defendant entered into a settlement agreement dated June 4, 2018;
- H. **WHEREAS** the Ontario Proceeding was certified as against the following defendants on July 9, 2013 for settlement purposes only: the MTD Defendants, the Sears Defendants, the Briggs Defendants, the Electrolux Defendants, the John Deere Defendants, the Husqvarna Defendants, the Kohler Defendants and the Toro Defendants;
- I. **WHEREAS** the Ontario Proceeding was certified as against the Honda Defendants on July 13, 2015 for settlement purposes only;
- J. **WHEREAS** the Quebec Proceeding was authorized as against the following Defendants on September 25, 2013 for settlement purposes only: the MTD Defendants, the Sears Defendants, the Briggs Defendants, the Electrolux Defendants, the John Deere Defendants, the Husqvarna Defendants, the Kohler Defendants and the Toro Defendants;

- K. **WHEREAS** the Quebec Proceeding was authorized as against the Honda Defendants on September 24, 2015 for settlement purposes only;
- L. **WHEREAS** the motion for certification of the Ontario Proceeding and the motion for authorization of the Quebec Proceeding against the Kawasaki Defendant are pending;
- M. **WHEREAS** the MTD Settlement and the Briggs & Stratton et al. Settlement were approved on September 20, 2013 by the Ontario Court and on September 25, 2013 by the Quebec Court;
- N. **WHEREAS** the Honda Settlement was approved on October 26, 2015 by the Ontario Court and on November 17, 2015 by the Quebec Court;
- O. **WHEREAS** the Opt-Out Deadline for the Proceedings expired on September 17, 2013;
- P. **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' claims, 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 Settlement Class;
- Q. **WHEREAS** the Plaintiffs, Class Counsel and the Settling 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 Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;
- R. **WHEREAS** the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and national resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- S. **WHEREAS** the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, the Proceedings as against the Settling Defendants;
- T. **WHEREAS** counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;
- U. **WHEREAS** for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties hereby consent to certification and authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in the Proceedings;
- V. **WHEREAS** the Settling Defendants do not hereby attorn to the jurisdiction of the Ontario Court, the Quebec Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Proceedings; and

W. **WHEREAS** the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Proceedings;

**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 with prejudice as against the Settling Defendants, without costs as to the Plaintiffs (other than contingency fees which may be awarded out of the Settlement Amount to Class Counsel), the classes they seek to represent, or to the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

### ARTICLE I – DEFINITIONS

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

- (a) **Account** means an interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of Class Counsel for the benefit of Settlement Class Members.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (c) **Briggs Defendants** means Briggs & Stratton Canada Inc. and Briggs & Stratton Corporation.
- (d) **Briggs & Stratton et al. Settlement** means the national settlement agreement entered into between the Plaintiffs and Briggs & Stratton Canada Inc., Briggs & Stratton Corporation, Electrolux Canada Corp., Electrolux Home Products Inc., John Deere Canada ULC, Deere & Company, Husqvarna Canada Corp., Husqvarna Consumer Outdoor Products N.A., Inc., Kohler Canada Co., Kohler Co., The Toro Company (Canada), Inc. and The Toro Company dated June 26, 2013.
- (e) **Claims Administrator** means the person proposed by Class Counsel and appointed by the Court to administer the Settlement Amount for the benefit of the Settlement Class, and any employees of such firm.
- (f) **Class Counsel** means Ontario Counsel and Quebec Counsel.
- (g) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST, HST, QST and other applicable taxes or charges of Class Counsel.
- (h) **Class Period** means January 1, 1994 to December 31, 2012.
- (i) **Common Issue** in each Proceeding means: Did the Settling Defendants conspire to fix, maintain, raise or stabilize the prices of Lawn Mowers in Canada, to lessen unduly competition in the production, manufacture, sale and/or supply of Lawn Mowers and Lawn Mower engines in Canada, and/or to conduct business contrary to Part VI of the *Competition Act*, section 7 of the *Consumer Packaging and Labelling Act* and the common law during the Class Period?

- (j) **Courts** means the Ontario Court and the Quebec Court.
- (k) **Defendants** means the entities named as defendants in the Proceedings as set out in Schedule A.
- (l) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and approved by the Courts.
- (m) **Effective Date** means the date when Final Orders have been issued by the Courts approving this Settlement Agreement.
- (n) **Electrolux Defendants** means Electrolux Canada Corp. and Electrolux Home Products, Inc.
- (o) **Excluded Person** means (i) each Defendant, any entity in which a Defendant has a controlling interest or which has a controlling interest in any Defendant and Defendants' legal representatives, predecessors, successors and assigns; and (ii) Defendants' employees, officers, directors, agents and representatives and their family members.
- (p) **Execution Date** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendants.
- (q) **Final Order** means a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgments has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the certification or authorization of the Proceedings as a class proceeding and the approval of this Settlement Agreement in accordance with its terms upon a final disposition of all appeals.
- (r) **Honda Defendants** means Honda Canada Inc. and American Honda Motor Co., Inc.
- (s) **Honda Settlement** means the national settlement agreement entered into between the Plaintiffs and Honda Canada Inc. and American Honda Motor Co., Inc. dated February 25, 2015.
- (t) **Husqvarna Defendants** means Husqvarna Canada Corp. and Husqvarna Consumer Outdoor products N.A., Inc.
- (u) **John Deere Defendants** means John Deere Canada ULC and Deere & Company.
- (v) **Kawasaki Defendant** means Kawasaki Motors Corp., USA.
- (w) **Kawasaki Settlement** means the national settlement agreement entered into between the Plaintiffs and Kawasaki Motors Corp., USA dated June 4, 2018.
- (x) **Kohler Defendants** means Kohler Canada Co. and Kohler Co.
- (y) **Lawn Mowers** means lawn mowers designed, manufactured or labeled by any Defendant for ultimate sale, including retail sale, in Canada containing a gas combustible engine labelled at 30 horsepower or less. For greater certainty, the term Lawn Mowers includes those lawn mowers with engines manufactured by the Settling Defendants.



- (z) **MTD Defendants** means MTD Products Limited and MTD Products Inc.
- (aa) **MTD Settlement** means the national settlement agreement entered into between the Plaintiffs and MTD Products Limited, MTD Products Inc., Sears Canada Inc., Sears, Roebuck and Co., and Sears Holding Corporation dated September 29, 2010.
- (bb) **Non-Settling Defendant(s)** means any Defendant(s) without an approved settlement agreement.
- (cc) **Ontario Counsel** means Harrison Pensa <sup>LLP</sup>.
- (dd) **Ontario Court** means the Ontario Superior Court of Justice.
- (ee) **Ontario Proceeding** means Ontario Court File No. 766-2010 (London).
- (ff) **Opt-Out Deadline** means September 17, 2013, pursuant to the Orders of the Courts.
- (gg) **Other Actions** means actions or proceedings against the Settling Defendants, other than the Proceedings, to the extent that such actions or proceedings relate to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (hh) **Parties** means the Plaintiffs, Settlement Class Members and the Settling Defendants.
- (ii) **Plaintiffs** means the individuals named as plaintiffs in the Proceedings as set out in Schedule A.
- (jj) **Proceeding** means either Ontario Court File No. 766-2010 (London) or Quebec Court Action No. 500-06-000507-109 (District of Montreal) and **Proceedings** means both.
- (kk) **Proportionate Liability** means that proportion of any judgment that, had they not settled, a court or other arbiter would have apportioned to the Releasees, whether pursuant to the pro rata, proportionate fault, pro tanto, or another method.
- (ll) **Quebec Counsel** means Consumer Law Group Inc.
- (mm) **Quebec Court** means the Superior Court of Quebec.
- (nn) **Quebec Proceeding** means Quebec Court Action No. 500-06-000507-109 (District of Montreal).
- (oo) **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 whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including 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, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or individually, a "Claim") that the 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 against the Releasees, relating in any way to any conduct anywhere, from the beginning of time to the Effective Date, in or arising from

the factual predicate of the proceedings including, without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, labelling, discounting, advertising, marketing or distribution of Lawn Mowers during the Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof. For greater certainty, nothing herein shall be construed to release any claims that are not related to the allegations made in the Proceedings, including any claims arising from personal injury or bodily harm, any alleged product defect, breach of warranty (unrelated to the claims made in the Proceedings), or similar claim between the Parties or between the Settling Defendants and Settlement Class Members relating to Lawn Mowers.

- (pp) **Releasees** means jointly and severally, individually and collectively, the Settling Defendants, any and all of their subsidiaries and affiliates, and all of their respective present and former, direct and indirect parents, subsidiaries, divisions, affiliates, partners, joint ventures, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, accountants and auditors, consultants, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (qq) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.
- (rr) **Sears Defendants** means Sears Canada Inc., Sears Holdings Corporation and Sears, Roebuck and Co.
- (ss) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (tt) **Settlement Amount** means CDN \$1,550,000.00.
- (uu) **Settlement Class** means in respect of each of the Proceedings, the settlement class as defined in Schedule A.
- (vv) **Settlement Class Member** means a member of a Settlement Class who did not validly opt-out of the Proceedings.
- (ww) **Settling Defendants** means Tecumseh Products of Canada, Limited, Tecumseh Products Company and Platinum Equity, LLC.
- (xx) **Toro Defendants** means The Toro Company (Canada), Inc. and The Toro Company

## **ARTICLE II – SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

The Parties shall use their best efforts to implement this Settlement Agreement and to secure promptly settlement approval and a complete and final dismissal with prejudice of the Ontario Proceeding as against the Settling Defendants, and a complete and final declaration of settlement out of court of the Quebec Proceeding.

### **2.2 Motions for Approval**

- (a) The Plaintiffs shall bring motions before the Courts as soon as practicable after the Date of Execution for orders approving the notices described in section 10.1, certifying or authorizing each of the Proceedings as a class proceeding as against the Settling Defendants (for settlement purposes only) and approving this Settlement Agreement.
- (b) The Order approving the notice of certification and certifying the Ontario Proceeding for settlement purposes only as referred to in section 2.2(a) shall be substantially in the form attached as Schedule B. The Order approving the Settlement Agreement referred to in section 2.2(a) shall be substantially in the form attached hereto as Schedule C. The Orders authorizing the Quebec Proceeding and approving the Settlement Agreement referred to in section 2.2(a) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario Orders.

### **2.3 Settlement Agreement Is Effective**

This Settlement Agreement shall only become final on the Effective Date.

## **ARTICLE III – SETTLEMENT BENEFITS**

### **3.1 Payment of Settlement Amount**

- (a) On or before August 20, 2018, the Settling Defendants shall pay nine hundred and fifty thousand (\$950,000.00) in Canadian funds to Class Counsel for deposit into the Account by wire transfer. The balance of the Settlement Amount, namely six hundred thousand (\$600,000.00) in Canadian funds, shall be paid to Class Counsel for deposit into the Account by wire transfer by no later than February 28, 2019, in full satisfaction of the Released Claims against the Releasees. Ontario Counsel shall provide the necessary wire transfer information to counsel for the Settling Defendants with reasonable advance notice so that the Settling Defendants have a reasonable period of time to comply with section 3.1(a) of this Settlement Agreement.
- (b) The Settlement Amount shall be all-inclusive of all amounts, including interest and costs, and the Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, including any administrative expenses.

- (c) The Claims Administrator shall pay the Fonds d'aide aux actions collectives (Class Action Fund) the amount owing pursuant to the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives Chapter F-3.2.0.1.1, r. 2, with regard to the Quebec Proceeding. This amount shall be paid out of the Settlement Amount after the conclusion of the Court approved Distribution Protocol described in section 4.2.
- (d) Ontario Counsel shall maintain the Account as provided for in this Settlement Agreement. Ontario Counsel shall not pay out all or part of the monies in the Account, except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained on notice to the Settling Defendants.

### **3.2 Taxes and Interest**

- (a) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of Settlement Class Members and shall become and remain part of the Account.
- (b) Subject to section 3.2(c), all taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class Members. Class Counsel or an escrow agent or other administrator appointed by them shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the 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 Account.
- (c) The Settling Defendants shall have no responsibility to make any filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Ontario Counsel or its duly appointed agent.

## **ARTICLE IV – OPT-OUT DEADLINE HAS EXPIRED AND DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCURED INTEREST**

### **4.1 Opt-Out Deadline has Expired**

The Opt-Out Deadline expired on September 17, 2013, pursuant to Orders of the Courts. No opt-outs were received as at the opt-out deadline.

### **4.2 Distribution Protocol**

- (a) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.

- (b) The Distribution Protocol shall require the Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for further compensation.

#### **4.3 No Responsibility for Administration or Fees**

The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, Administration Expenses and Class Counsel Fees.

### **ARTICLE V – TERMINATION OF SETTLEMENT AGREEMENT**

#### **5.1 Right of Termination**

- (a) The Settling Defendants shall, in their sole discretion, have the option to terminate the Settlement Agreement in the event that:
  - (i) any Court declines to approve this Settlement Agreement;
  - (ii) any Court approves this Settlement Agreement in a materially modified form other than as amended by the parties in accordance with section 13.8 hereof;
  - (iii) any Court fails to issue orders approving this Settlement Agreement or such orders fail to become Final Orders.
- (b) If the Settling Defendants elect to terminate this Settlement Agreement pursuant to 5.1(a), this Settlement Agreement shall be terminated and, except as provided for in section 5.4, 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.

#### **5.2 If Settlement Agreement is Terminated**

- (a) If this Settlement Agreement is terminated:
  - (i) no motion to certify or authorize any of the Proceedings as a class action on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been heard, shall proceed;
  - (ii) any order certifying or authorizing the Proceedings as a class action on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and everyone shall be estopped from asserting otherwise;
  - (iii) any prior certification or authorization of the Proceedings as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the

Parties may later take on any issue in the Proceedings or any other litigation; and

- (iv) Within ten (10) days of such termination having occurred, Class Counsel shall destroy or delete all documents or other materials, including electronic information, provided by the Settling Defendants or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other person, shall recover and destroy or delete such documents or information. Class Counsel shall provide the Settling Defendants with a written certification by Class Counsel of such destruction or deletion. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy or delete any of their work product. However, any documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any person in any manner or used, directly or indirectly, by Class Counsel or any other person in any way for any reason without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel.

### **5.3 Allocation of Monies in the Account Following Termination**

If the Settlement Agreement is terminated, Ontario Counsel shall return to the Settling Defendants all monies in the Account including interest, but less one half of the amount of any costs incurred in respect of notice or any income taxes paid in respect of any interest earned on monies in the Account, within thirty (30) business days of the relevant termination event.

### **5.4 Survival of Provisions After Termination**

- (a) If this Settlement Agreement is terminated, the provisions of sections 3.2(b), 3.2(c), 5.1, 5.2, 5.3, 5.4, 8.1., 8.2, and 13.6 and the definitions and Schedules applicable thereto 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 3.2(b), 3.2(c), 5.1, 5.2, 5.3, 5.4, 8.1, 8.2 and 13.6 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.
- (b) The Settling Defendants and the Plaintiffs expressly reserve all of their respective rights if this Settlement Agreement does not become effective or if this Settlement Agreement is terminated.

## ARTICLE VI – RELEASES AND DISMISSALS

### 6.1 Release of Releasees

Upon the Effective Date, provided that payment of the Settlement Amount has been made in accordance with section 3.1(a), 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 Covenant Not To Sue

Notwithstanding section 6.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead 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.

### 6.3 No Further Claims

The Releasors and Class Counsel 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 or any matter related thereto, except for if the Proceedings are not certified or authorized.

### 6.4 Dismissal of the Proceedings

- (a) Upon the Effective Date, the Ontario Proceedings shall be dismissed with prejudice and without costs as against the Settling Defendants.
- (b) Upon the Effective Date, the Quebec Proceedings shall be settled, without costs and without reservation as against the Settling Defendants.

### 6.5 Dismissal of Other Actions

- (a) The Settling Defendants represent and warrant that as of the date of this Settlement Agreement they know of no Other Actions against them in Canada advancing allegations in respect of the Released Claims.
- (b) Any Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (c) Subject to art. 580 C.C.P. as it relates to Quebec resident Class Members, all Other Actions commenced in any province or territory of Canada by any Settlement Class Member, who did not opt-out, shall be dismissed against the Releasees, without costs and with prejudice.

## ARTICLE VII – BAR ORDERS, WAIVER OF SOLIDARITY AND OTHER CLAIMS

### 7.1 Ontario Bar Order

- (a) The Settling Defendants are the last Defendants to reach a settlement agreement with the Plaintiffs. If the settlements reached with all named Defendants are approved by the Ontario Court, the Ontario Proceeding will be resolved in its entirety and there will be no Non-Settling Defendants remaining in the Ontario Proceeding.
- (b) Notwithstanding, the Plaintiffs and the Settling Defendants agree that the Ontario order approving this Settlement Agreement must include a bar order in respect of the Ontario Proceeding which includes the following terms:
  - (i) a provision that if the Ontario Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
    - (A) all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or any other person or party against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this section;
    - (B) the Ontario Plaintiffs and the Settlement Class Members in the Ontario Proceeding shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
    - (C) the Ontario Plaintiffs and the Settlement Class Members in the Ontario Proceeding shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other person or party that is not a



Releasee to the Ontario Plaintiffs and the Settlement Class Members in the Ontario Proceeding, if any, and, for greater certainty, the Settlement Class Members in the Ontario Proceeding shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other person or party that is not a Releasee, to the extent provided by law; and

- (D) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding, whether or not the Releasees remain in the relevant Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceeding, and shall not be binding on the Releasees in any other proceeding.
- (ii) A provision that if the Ontario Court ultimately determines that the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in the Ontario orders approving this Settlement Agreement, as applicable, is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Ontario Settlement Class, as applicable, in the Ontario Proceeding.
  - (iii) A provision that a Non-Settling Defendant may, on motion to the Ontario Court, determined as if the Settling Defendant remained party to the Ontario Proceeding, and on at least ten (10) days' notice to Counsel for the Settling Defendant, and not to be brought unless and until the Ontario Proceeding against the Non-Settling Defendant has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
    - (A) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure* (Ontario);
    - (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
    - (C) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or

- (D) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (iv) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to section 7.1(b)(iii). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of information obtained from discovery in accordance with section 7.1(b)(iii). Notwithstanding any provision in the Ontario order approving this Settlement Agreement, on any motion brought pursuant to section 7.1(b)(iii), the Ontario Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
- (v) A provision that a Non-Settling Defendant may serve the motion(s) referred to in section 7.1(b)(iii) on the Settling Defendants by service on counsel for the Settling Defendants in the Ontario Proceeding.
- (c) To the extent that such an order is granted pursuant to section 7.1(b)(iii) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s), subject to compliance with the terms of any protective order obtained by the Settling Defendants described in section 7.1(b)(iv).

## **7.2 Quebec Waiver or Renunciation of Solidarity Order**

The Plaintiffs and the Settling Defendants agree that the Quebec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Quebec Proceeding which includes the following:

- (a) the Quebec Plaintiff and the Settlement Class Members in the Quebec Proceeding expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
- (b) the Quebec Plaintiff and the Settlement Class Members in the Quebec Proceeding shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

### **7.3 Claims against Other Entities Reserved**

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

## **ARTICLE VIII – EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

The Plaintiffs and Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs and the Releasees further 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, 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 to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, 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.

### **8.2 Agreement Not Evidence**

The Plaintiffs and the Releasees agree that, whether or not it is 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, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

### **8.3 No Further Litigation**

No Class Counsel, nor anyone currently or hereafter employed by, associated with, 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 which relates to or arises from the Released Claims. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

## **ARTICLE IX – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

### **9.1 Certified Class Proceeding**

The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts, and such

certification or authorization shall not be used or relied on as against the Settling Defendants for any other purpose or in any other proceeding.

## **9.2 Common Issue**

The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will seek to certify are the Settlement Classes.

## **ARTICLE X – NOTICE TO SETTLEMENT CLASSES**

### **10.1 Notices Required**

The proposed Settlement Classes shall be given notice of: (1) the certification or authorization of the Proceedings as a class proceeding and the date of the hearing at which the Courts will be asked to approve the Settlement Agreement; and (2) notice of settlement approval and claims distribution procedures.

### **10.2 Form and Frequency of Notices**

The notices required under section 10.1 shall be in a form and frequency agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form and frequency of the notices, the notices shall be in a form and frequency ordered by the Courts.

### **10.3 Method of Disseminating Notices**

The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated in a manner ordered by the Courts.

## **ARTICLE XI – ADMINISTRATION AND IMPLEMENTATION**

### **11.1 Mechanics of Administration**

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

## **ARTICLE XII – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

### **12.1 Counsel Fees and Notice Costs**

- (a) The costs of the notices referred to in section 10.1 of this Settlement Agreement shall be paid out of the Settlement Amount with approval of the Court.
- (b) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement.

- (c) Class Counsel Fees and Administration Expenses may only be paid out of the Account after the Effective Date.

## **12.2 Administration Expenses**

The Settling Defendants shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

## **ARTICLE XIII - MISCELLANEOUS**

### **13.1 Motions for Directions**

- (a) Class Counsel or the Settling Defendants may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (b) All motions contemplated by this Settlement Agreement shall be on notice to the Parties to this Settlement Agreement. For certainty, notice need not be provided to Settlement Class Members in the event of a motion unless so required by the Court.

### **13.2 Releasees Have No Liability for Administration**

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

### **13.3 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;
- (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; and
- (c) references to the masculine shall include the feminine and vice versa, and references to the singular shall include the plural and vice versa, as the context requires.

### **13.4 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 as “holiday” is defined in the *Rules of Civil Procedure* (Ontario), the act may be done on the next day that is not a holiday.

### **13.5 Ongoing Jurisdiction**

- (a) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, over the Parties thereto and over Class Counsel Fees in those Proceedings.
- (b) No Party shall ask a Court to make any order or give any 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 with which it shares jurisdiction over the matter.

### **13.6 Governing Law**

This Settlement Agreement shall be governed by, and construed and interpreted in accordance with the laws of the Province of Ontario; however, with respect to Quebec class members, this Settlement Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Quebec.

### **13.7 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.

### **13.8 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.

### **13.9 Binding Effect**

This Settlement Agreement shall be binding upon, and enure to the benefit of the Settlement Class Members, the Settling Defendants and, where applicable, Class Counsel.

### **13.10 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, PDF or e-mail

signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **13.11 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.

### **13.12 Language**

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*. Nevertheless, the Settling Defendants shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. The Plaintiffs shall provide the Settling Defendants with a copy of the French version of the Kawasaki Settlement in Microsoft Word format to facilitate the translation. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

### **13.13 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.

### **13.14 Recitals**

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

### **13.15 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

### **13.16 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) he or she is a representative of the Party with the authority to bind the Party with respect to the matters set forth herein and 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 with respect to the first Party's decision to execute this Settlement Agreement.

### 13.17 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.

### 13.18 Notice

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

For the Plaintiffs and for Class Counsel:

**Harrison Pensa** <sup>LLP</sup>  
Barristers and Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

Jonathan Foreman  
Telephone: (519) 679-9660  
Facsimile: (519) 667-3362  
E-mail: [jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)

**Consumer Law Group Inc.**  
1030 Berri St.  
Suite 102  
Montreal, Quebec H2L 4C3

Jeff Orenstein  
Telephone: (514) 266-7863  
Facsimile: (514) 868-9690  
E-mail: [jorenstein@clg.org](mailto:jorenstein@clg.org)

For the Settling Defendants:

**Torys** <sup>LLP</sup>  
79 Wellington Street West, 30<sup>th</sup> Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2

William McNamara  
Telephone: (416) 865-0040  
Facsimile: (416) 865-7380  
E-mail: [wmcnamara@torys.com](mailto:wmcnamara@torys.com)



**13.19 Date of Execution**

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

**Robert Foster and Murray Davenport**



Name: Harrison Pensa <sup>LLP</sup>  
Title: Ontario Counsel

**Eric Liverman and Sidney Vadish**



Name: Consumer Law Group Inc.  
Title: Quebec Counsel

**Tecumseh Products of Canada, Limited,  
Tecumseh Products Company, and  
Platinum Equity, LLC**



Name: Torys <sup>LLP</sup>  
Title: counsel for the Settling Defendants

**13.19 Date of Execution**

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

**Robert Foster and Murray Davenport**



Name: Harrison Pensa <sup>LLP</sup>  
Title: Ontario Counsel

**Eric Liverman and Sidney Vadish**



Name: Consumer Law Group Inc.  
Title: Quebec Counsel

**Tecumseh Products of Canada, Limited,  
Tecumseh Products Company, and  
Platinum Equity, LLC**

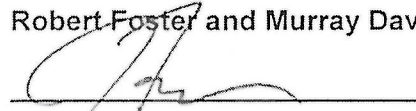
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Name: Torys <sup>LLP</sup>  
Title: counsel for the Settling Defendants

13.19 Date of Execution

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

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Name: Harrison Pensa <sup>LLP</sup>  
Title: Ontario Counsel

Eric Liverman and Sidney Vadish



Name: Consumer Law Group Inc.  
Title: Quebec Counsel

Tecumseh Products of Canada, Limited,  
Tecumseh Products Company, and  
Platinum Equity, LLC



Name: Torys <sup>LLP</sup>  
Title: counsel for the Settling Defendants

## SCHEDULE A – PROCEEDINGS

Proceeding	Plaintiffs	Defendants	Settlement Class
<p>Ontario Superior Court of Justice</p> <p>Court File No. 766-2010 CP (the “Ontario Proceeding”)</p>	<p>Robert Foster and Murray Davenport</p>	<p>Sears Canada Inc., Sears Holding Corporation, John Deere Canada ULC, Deere &amp; Company, Tecumseh Products of Canada, Limited, Tecumseh Products Company, Platinum Equity, LLC, Briggs &amp; Stratton Canada Inc., Briggs &amp; Stratton Corporation, Kawasaki Motors Corp., USA, MTD Products Limited, MTD Products Inc., The Toro Company (Canada), Inc., The Toro Company, Honda Canada Inc., American Honda Motor Co., Inc., Electrolux Canada Corp., Electrolux Home Products, Inc., Husqvarna Canada Corp., Husqvarna Consumer Outdoor Products N.A., Inc., Kohler Canada Co., Kohler Co.</p>	<p>All persons in Canada who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class.</p>
<p>Superior Court of Quebec</p> <p>Court File No. 500-06-000507-109 (the “Quebec Proceeding”)</p>	<p>Eric Liverman and Sidney Vadish</p>	<p>Deere &amp; Company, John Deere Canada ULC, Tecumseh Products Company, Tecumseh Products of Canada Limited, Briggs &amp; Stratton Corporation, Briggs &amp; Stratton Canada Inc., Kawasaki Motors Corp. USA, MTD Products Inc., MTD Products Ltd., The Toro Company, The Toro Company (Canada), American Honda Motor Company, Inc., Honda Canada Inc., Electrolux Home Products, Inc., Electrulex Canada Corp., Husqvarna Outdoor Products, Inc., Husqvarna Canada Corp., Kohler Co., Kohler Canada Co., Sears, Roebuck and Co., Sears Canada Inc., Platinum Equity LLC</p>	<p>All persons in Quebec who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons</p>

**SCHEDULE B – CERTIFICATION AND NOTICE APPROVAL**

Court File No.: 766-2010 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable Justice Leitch    )   , the   day  
   )   of   , 2018  
   )

B E T W E E N:

ROBERT FOSTER and MURRAY DAVENPORT

Plaintiffs

-and-

SEARS CANADA INC.; SEARS HOLDINGS CORPORATION; JOHN DEERE CANADA ULC;  
DEERE & COMPANY; TECUMSEH PRODUCTS OF CANADA, LIMITED; TECUMSEH  
PRODUCTS COMPANY; PLATINUM EQUITY, LLC; BRIGGS & STRATTON CANADA INC.;  
BRIGGS & STRATTON CORPORATION; KAWASAKI MOTORS CORP., USA; MTD  
PRODUCTS LIMITED; MTD PRODUCTS INC; THE TORO COMPANY (CANADA), INC.; THE  
TORO COMPANY; HONDA CANADA INC.; AMERICAN HONDA MOTOR CO., INC.;  
ELECTROLUX CANADA CORP.; ELECTROLUX HOME PRODUCTS, INC.; HUSQVARNA  
CANADA CORP.; HUSQVARNA CONSUMER OUTDOOR PRODUCTS N.A., INC.; KOHLER  
CANADA CO.; KOHLER CO.

Defendants

**Proceeding Under the *Class Proceedings Act, 1992***

**ORDER  
(Certification and Notice Approval)**

**THIS MOTION**, made by the Plaintiffs for an Order certifying this action as a class proceeding for settlement purposes as against the Settling Defendants and approving the notices of settlement approval hearings and the method of dissemination of such notices was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the Settlement Agreement attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants in the Ontario Proceeding;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that 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** that this action be certified as a class proceeding as against the Settling Defendants for settlement purposes only.
3. **THIS COURT ORDERS** that the Settlement Class be defined as:  
*"All persons in Canada who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class"*
4. **THIS COURT ORDERS** that Robert Foster and Murray Davenport be appointed as the representative Plaintiffs for the Settlement Class.
5. **THIS COURT ORDERS** that the following issue is common to Settlement Class Members:  
*"Did the Settling Defendants conspire to fix, maintain, raise or stabilize the prices of Lawn Mowers in Canada, to lessen unduly competition in the production, manufacture, sale and/or supply of lawn mowers and lawn mower engines in Canada, and/or to conduct business contrary to Part VI of the Competition Act, section 7 of the Consumer Packaging and Labelling Act and the common law during the Class Period?"*
6. **THIS COURT DECLARES** that the opt-out period provided pursuant to the order of this Court made on July 9, 2013 satisfies the requirement of section 9 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 for the purposes of this action, that no further opt-out period is necessary for the Ontario Proceeding and that the opt-out period expired on September 17, 2013.

7. **THIS COURT ORDERS** that the Short-Form and Long-Form Notice of Certification and Settlement Approval Hearing is hereby approved substantially the form attached respectively hereto as **Schedules “B”** and **“C”**.
8. **THIS COURT ORDERS** that the Plan of Dissemination of the Notice of Certification and Settlement Approval Hearing in substantially the form attached hereto as **Schedule “D”** is approved.
9. **THIS COURT ORDERS** that this Order is contingent upon a parallel order being made by the Quebec Court, and the terms of this Order shall not be effective unless and until such order is made by the Quebec Court.

Date:

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The Honourable Justice Leitch

ROBERT FOSTER, et al.  
Plaintiff

v. SEARS CANADA INC, et al.  
Defendants

Court File No. 766-2010 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER**

**(Certification and Notice Approval)**

**HARRISON PENSA** <sup>LLP</sup>  
Barristers & Solicitors  
450 Talbot Street  
London, ON N6A 4K3

**Jonathan J. Foreman (LSUC #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362  
E-mail: [jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)

Lawyers for the Plaintiffs



**SCHEDULE C - SETTLEMENT APPROVAL**

Court File No.: 766-2010 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable Justice Leitch                     )  
  )  
  )                     of                     , the                     day  
  )                     of                     , 2018

**B E T W E E N :**

**ROBERT FOSTER and MURRAY DAVENPORT**

Plaintiffs

-and-

**SEARS CANADA INC.; SEARS HOLDINGS CORPORATION; JOHN DEERE CANADA ULC;  
DEERE & COMPANY; TECUMSEH PRODUCTS OF CANADA, LIMITED; TECUMSEH  
PRODUCTS COMPANY; PLATINUM EQUITY, LLC; BRIGGS & STRATTON CANADA INC.;  
BRIGGS & STRATTON CORPORATION; KAWASAKI MOTORS CORP., USA; MTD  
PRODUCTS LIMITED; MTD PRODUCTS INC; THE TORO COMPANY (CANADA), INC.; THE  
TORO COMPANY; HONDA CANADA INC.; AMERICAN HONDA MOTOR CO., INC.;  
ELECTROLUX CANADA CORP.; ELECTROLUX HOME PRODUCTS, INC.; HUSQVARNA  
CANADA CORP.; HUSQVARNA CONSUMER OUTDOOR PRODUCTS N.A., INC.; KOHLER  
CANADA CO.; KOHLER CO.**

Defendants

**Proceeding Under the *Class Proceedings Act, 1992***

**ORDER  
(Settlement Approval)**

**THIS MOTION**, made by the Plaintiffs for an Order approving the Settlement Agreement entered into with the Settling Defendants and dismissing this action as against the Settling Defendants was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the Settlement Agreement attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants in the Ontario Proceeding;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been • objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting-out of the Ontario Proceeding has passed and there were no opt-outs;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that 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** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act*, 1992 and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference and forms part of this Order and is binding upon the Plaintiffs and each member of the Ontario Settlement Class who has not validly opted-out of this action, including those persons who are minors and 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 the Ontario Proceeding.

6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class 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.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
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, upon the Effective Date, each Releasor who has not validly opted-out of this action 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 or any matter related thereto.
10. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Release Claims, which were or could have been brought

against a Releasee, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted-out of this action.)

13. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any person or party against a Releasee, or by a Releasee are barred, prohibited and enjoined in accordance with the terms of this paragraph;
- (b) the Ontario Plaintiffs and Ontario Settlement Class Members shall not be entitled to claim or recover from any person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (c) the Ontario Plaintiffs and Ontario Settlement Class Members shall limit their claims against any person or party that is not a Releasee to include, and shall be entitled to recover from any person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of any person or party that is not a Releasee to the Ontario Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between any person or party that is not a Releasee, to the extent provided by law; and
- (d) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding, whether or not the Releasees remain in the Ontario Proceeding or appear at the trial or other

disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceeding and shall not be binding on the Releasees in any other proceeding.

14. **THIS COURT ORDERS** that if this Court ultimately determines that the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Proceeding.
  
15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court brought on at least ten (10) days' notice and to be determined as if the Settling Defendant was a party to the Ontario Proceeding, and not to be brought until the Ontario Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
  - (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;
  - (b) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
  - (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may serve the motion(s) referred to in paragraph 15 above on the Settling Defendants by service on counsel for the Settling Defendants in the Ontario Proceeding.
18. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Quebec Court, and the Quebec Proceeding has been declared settled out of court as against the defendants in the relevant proceeding by the Courts. If such orders are not secured in Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Proceeding and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
20. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.

Date:

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The Honourable Justice Leitch

ROBERT FOSTER, et al.  
Plaintiff

v. SEARS CANADA INC, et al.  
Defendants

Court File No. 766-2010 CP

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

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**ORDER  
(Settlement Approval)**

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**HARRISON PENZA** <sup>LLP</sup>  
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