

CHEMOTHERAPY DILUTION CLASS ACTION

ONTARIO AND NEW BRUNSWICK

SETTLEMENT AGREEMENT

Made as of [August 4](#), 2016

<p>LISA ARLENE HUNT, RYAN WESLEY HUNT, TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-LYNN BOUDREAULT and JOHN CHESLEY PRINCE</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">- and -</p> <p>MEZENTCO SOLUTIONS INC. c.o.b as MARCHESE HOSPITAL SOLUTIONS, MEZENTCO INC., c.o.b. AS MARCHESE HEALTH CARE and MEDBUY CORPORATION</p> <p style="text-align: right;">Defendants</p>	<p style="text-align: center;">PROVINCE OF ONTARIO</p> <p style="text-align: center;">Ontario Superior Court of Justice Windsor, Ontario</p> <p style="text-align: center;">Court File No.: CV-13-19436</p>
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PREAMBLE

The Representative Plaintiffs, Lisa Arlene Hunt, Ryan Wesley Hunt, Tina Marie Wells, Pamela Worts, Kevin Worts, the Estate of Cher-Lynn Boudreault and John Chesley Prince (together, the “**Plaintiffs**”), the defendants Mezentco Solutions Inc. c.o.b as Marchese Hospital Solutions and Mezentco Inc., c.o.b. as Marchese Health Care (together, “**Mezentco**”), and the defendant Medbuy Corporation (“**Medbuy**”) (together the “**Defendants**”), and Windsor Regional Hospital, London Health Sciences Centre, Lakeridge Health, Peterborough Regional Health Centre and and Regional Health Authority B (Saint John Regional Hospital) (together, the “**Hospitals**”) (collectively, the “**Parties**”), hereby enter into this agreement providing for the settlement of actual and potential claims arising out of or relating to, without limitation, the compounding, dispensing, supply and labelling of gemcitabine and cyclophosphamide (the “**Chemotherapy Drugs**”) from February 6, 2012, to and including April 2, 2013 (the “**Class Period**”), pursuant to the terms and conditions set out herein and subject to the approval of the Ontario Superior Court of Justice (the “**Ontario Court**”) (the “**Settlement Agreement**”).

RECITALS

A. WHEREAS the Plaintiffs commenced a proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “**Act**”), Court File No. CV-13-19436, against Mezentco (the “**Class Action**”), and subsequently added Medbuy as a Defendant to the Class Action;

B. AND WHEREAS the Class Action alleges that the negligence of Mezentco and Medbuy caused and/or contributed to approximately 1200 cancer patients in Ontario and New Brunswick, all receiving cancer treatment at one or more of the Hospitals (the “**Class Members**”) receiving lower than intended dosages of the Chemotherapy Drugs during the Class Period (the “**Dosing Incident**”) as further defined below;

C. AND WHEREAS the Class Action asserts claims on behalf of the Class Members and their family members who were entitled to claim pursuant to the *Family Law Act*, R.S.O. 1990, F.3 (the “**Family Class Members**”);

D. AND WHEREAS the provincial health insurers of Ontario and New Brunswick, being the Ontario Health Insurance Plan (“**OHIP**”) and New Brunswick Medicare (“**Medicare**”), respectively, may assert subrogated claims against Mezentco, Medbuy and the Hospitals in relation to or arising from the Dosing Incident or the matters that were the subject of the Class Action;

E. AND WHEREAS the Class Action has not yet been certified pursuant to section 5 of the Act, and Mezentco and Medbuy have not served a Statement of Defence;

F. AND WHEREAS Mezentco and Medbuy deny the allegations made in the Class Action, have not conceded or admitted any liability, deny that any damages are payable, and have defences to all of the claims in the Class Action;

G. AND WHEREAS the Hospitals agree to be made a party to the Class Action for the sole purpose of participating in this Settlement Agreement, and agree to not raise a limitation defence to oppose their addition for that sole purpose;

H. AND WHEREAS the Parties intend by this Settlement Agreement to resolve all past, present and future claims of Class Members and Family Class Members in any way arising from or relating to the Dosing Incident in Ontario and New Brunswick, known or unknown;

I. AND WHEREAS the Parties have engaged in extensive, arms-length negotiations through counsel with substantial experience in complex class proceedings that have resulted in this Settlement Agreement;

J. AND WHEREAS the Plaintiffs and Plaintiffs' counsel, namely McKenzie Lake Lawyers LLP and Sutts Strosberg LLP ("**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 burden and expense of prosecuting the Class Action, 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 Class Members and Family Class Members they represent;

K. AND WHEREAS despite their belief that they are not liable in respect of the allegations made in the Class Action and have good defences thereto, Mezentco, Medbuy and the Hospitals are entering into this Settlement Agreement in order to achieve a final resolution of all current and potential claims asserted against them by the Plaintiffs on behalf of the Class Members and the Family Class Members, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and it is acknowledged that Mezentco, Medbuy and the Hospitals would not have entered into this Settlement Agreement were it not for the foregoing;

L. AND WHEREAS the Parties therefore wish to, and hereby do, fully and finally resolve, without admission of liability on the part of the Defendants or the Hospitals, the Class Action;

M. AND WHEREAS Mezentco, Medbuy and the Hospitals, in entering into the Settlement Agreement, intend to resolve and release all claims between and amongst themselves arising from or relating to the events that are the subject of the Class Action, including all claims for contribution and indemnity;

N. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to the certification of a class, defined below, in the Class Action;

O. AND WHEREAS Mezentco, Medbuy and the Hospitals expressly reserve their rights to contest certification of other related or unrelated proceedings in Ontario and New Brunswick and assert that the action herein would not be appropriately certified in the absence of the Settlement Agreement and that this Settlement Agreement does not constitute in any way a precedent to support the certification of classes of this nature;

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 are hereby acknowledged, it is hereby agreed by the Parties that the Class Action be settled and that the Parties shall consent to the Court(s)' Order(s) finally approving the settlement in Ontario, on the following terms and conditions:

ARTICLE 1: DEFINITIONS

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

- (a) **Account** means an interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Class Members. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the monies are not paid when due they will accrue interest until paid at a rate of 5% per annum;
- (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 notice and the fees and expenses of the Claims Administrator but excluding Class Counsel Fees;
- (c) **Chemotherapy Drugs** means gemcitabine and/or cyclophosphamide, prepared, combined, mixed, compounded, packaged, labelled and/or sold to the Hospitals by Mezentco during the Class Period;
- (d) **Claims Administrator** means the entity appointed by the Ontario Court to administer the Settlement Agreement pursuant to the terms outlined in Schedule “A” herein;
- (e) **Class Action** means Lisa Arlene Hunt *et al.* v. Mezentco Solutions Inc. c.o.b as Marchese Hospital Solutions *et. al.*, Court File No.: CV-13-19436;
- (f) **Class Counsel** means McKenzie Lake Lawyers LLP and Sutts Strosberg LLP;
- (g) **Class Counsel Fees** means the fees, disbursements, costs, HST, and/or other applicable taxes or charges of Class Counsel;
- (h) **Class or Class Members** means all persons, or their estates, who attended at the Hospitals for treatment during the **Class Period** and who were administered **Chemotherapy Drugs** affected by the **Dosing Incident**;
- (i) **Class Period** means the period commencing on February 6, 2012, to and including April 2, 2013;
- (j) **Conditional Certification** means the certification of the Class Action for the purpose of settlement approval, notice approval and the commencement of an opt-out period;
- (k) **Costs** means a payment toward Class Counsel Fees;
- (l) **Defendant(s)** means Mezentco and/or Medbuy;

- (m) *Dosing Incident* means the lower than prescribed dosages of Chemotherapy Drugs delivered to **Class Members** during the Class Period;
- (n) *Effective Date* means the date on which the right to terminate the Settlement Agreement has expired and the orders approving, recognizing and/or enforcing this Settlement Agreement have become Final Orders, whichever is later;
- (o) *Eligible Class Members* has the meaning set out in article 3.4;
- (p) *Family Class or Family Class Members* means the living partner, spouse, children, grandchildren, parents, grandparents or siblings of a **Class Member**;
- (q) *Final Order* means the final judgment, approval, entered by the Ontario Court in respect of the certification of the Class Action as a class proceeding and in respect of this Settlement Agreement, and the expiration of the time to appeal or to seek permission to appeal such final judgment or approval, without any appeal being taken, or if an appeal from any of the above is taken, the affirmance of such final judgment, approval order in its/their entirety, without modification, by the Ontario Court;
- (r) *Hospitals* means Windsor Regional Hospital, London Health Sciences Centre, Lakeridge Health, Peterborough Regional Health Centre and Regional Health Authority B (Saint John Regional Hospital);
- (s) *Medbuy* means Medbuy Corporation;
- (t) *Mezentco* means Mezentco Solutions Inc. c.o.b as Marchese Hospital Solutions, and Mezentco Inc. c.o.b. as Marchese Health Care;
- (u) *Ontario Court* means the Ontario Superior Court of Justice;
- (v) *Opt-Out* means a person who would have been a **Class Member** except for his/her timely and valid request for exclusion. Such exclusion will be by the timely submission of an Opt-Out Form as attached hereto as Schedule “B”;
- (w) *Opt-Out Notice* means the Notice published pursuant to Schedule “H”, advising **Class Members** of the pending Settlement Approval hearing date and the opt-out and objection deadlines;
- (x) *Opt-Out Notice Administrator* means the entity appointed by the Ontario Court to publish the Opt-Out Notice and create the Opt-Out Report pursuant to the terms outlined in Schedule “A” herein;
- (y) *Parties* means the Plaintiffs, Mezentco, Medbuy and the Hospitals;
- (z) *Plaintiffs* means Lisa Arlene Hunt, Ryan Wesley Hunt, Tina Marie Wells, Pamela Worts, Kevin Worts, the Estate of Cher-Lynn Boudreault and John Chesley Prince;

- (aa) **Provincial Health Insurers** means the Ontario and New Brunswick health insurance plans, namely OHIP and Medicare, respectively;
- (bb) **Released Claims** means any and all manner of claims, demands, actions, suits and causes of action alleged or which could have been asserted in the Class Action, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, including for damages whenever incurred and liabilities of any nature whatsoever, including interest, costs, expenses, penalties and lawyer fees that the Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against any or all of the Releasees, whether known or unknown, relating in any way to any act or omission by the Releasees prior to the execution of this Settlement Agreement concerning the Dosing Incident;
- (cc) **Releasees** means, jointly and severally, Mezentco, Medbuy and the Hospitals, and their respective present and former partners, subsidiaries, affiliates, officers, directors, employees, physicians, pharmacists, insurers, agents, lawyers, servants, representatives, and assigns, and their affiliated, predecessor, successor and related companies;
- (dd) **Releasors** means, jointly and severally, individually and collectively, the **Class Members** who are not Opt-Outs and their **Family Class Members**, and their Representative Claimants, and the Provincial Health Insurers;
- (ee) **Representative Claimants** means personal representatives, executors, administrators, heirs, assigns and trustees of **Class Members**;
- (ff) **Settlement Agreement** or **Settlement** means this agreement, including the Recitals and Schedules hereto; and
- (gg) **Settlement Amount** means \$2,375,000.

ARTICLE 2: CONDITION PRECEDENT, COURT APPROVAL

- 2.1 Subject to Article 6 below, this Settlement Agreement shall be null and void and of no force or effect, unless: (a) the Ontario Court approves this Settlement Agreement; (b) the Order so given has become a Final Order; and (c) the Effective Date has occurred.
- 2.2 Motions for Approval
 - (a) The Plaintiffs shall first file a motion before the Ontario Court for an order:
 - (i) adding the Hospitals as parties to the Class Action for settlement purposes only;

- (ii) conditionally certifying the Class Action;
 - (iii) that Cancer Care Ontario and the New Brunswick Cancer Network provide contact information for Class Members to the Opt-Out Notice Administrator, for the purposes of providing the Opt-Out/Settlement Approval Hearing Notice,
 - (iv) approving the Opt-Out/Settlement Approval Hearing Notice; and
 - (v) approving the dissemination plan thereof, the publication of which will trigger an opt-out period
- (the “Conditional Certification”);
- (b) Cancer Care Ontario and the New Brunswick Cancer Network will be given notice of the first motion;
 - (c) The Plaintiffs shall file a second motion, following the end of the opt-out period, for approval of this Settlement Agreement (“Approval Hearing”);
 - (d) The Orders referred to in paragraph 2.2(a) and (c) shall be in a form substantially similar to those attached hereto as Schedules “D” and “E”, as agreed upon by Class Counsel and counsel for Mezentco, Medbuy and the Hospitals, and approved by the Ontario Court.

ARTICLE 3: SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (a) Contingent on the dismissal, as against Mezentco, Medbuy and the Hospitals, of the claims of the Eligible Class Members and Family Class Members, and on the approval of the Settlement Agreement in Ontario, Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) have agreed to pay the Settlement Amount as follows:
 - (i) a total of \$75,000 towards costs of notice and claims administration, with Mezentco responsible for \$37,500 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$37,500 of that amount;
 - (ii) a total of \$100,000 to the Provincial Health Insurers, in full satisfaction of any subrogated claims that could be asserted against Mezentco, Medbuy and the Hospitals in relation to or arising from the Dosing Incident and the matters that were the subject of the Class Action, with Mezentco responsible for \$50,000 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$50,000 of that amount;

- (iii) a total of \$400,000 towards Class Counsel Fees, with Mezentco responsible for \$200,000 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$200,000 of that amount; and
 - (iv) the remainder, \$1,800,000, towards *pro-rata* payments to Eligible Class Members and any further Class Counsel Fees, with Mezentco responsible for \$900,000 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$900,000 of that amount.
- (b) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the amount set forth in paragraph 3.1(a) above as follows:
- (i) Within 15 days of the date of the Conditional Certification, Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the Claims Administrator for costs of the Notice and related claims administration in accordance with s. 3.1(a)(i) above;
 - (ii) Within 15 days of obtaining the Final Order required or contemplated by the terms of this Settlement Agreement;
 - (A) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the amounts payable under s. 3.1(a)(ii) to the Claims Administrator for distribution to the Provincial Health Insurers in amounts as outlined in Schedule “F”; and
 - (B) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay to the Claims Administrator for the benefit of Eligible Class Members the amounts payable under s. 3.1(a)(iv); and
 - (C) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the amounts payable under s. 3.1(a)(iii) to Sutts Strosberg LLP in trust towards Class Counsel Fees.
- (c) The Claims Administrator will invest the monies in a bankers acceptance issued by a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Class Members. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the monies are not paid when due they will accrue interest until paid at a rate of 5% per annum.
- (d) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) shall have no obligation in any circumstance or for any reason to pay any amount in addition to the Settlement Amount pursuant to or in furtherance of this Settlement Agreement or otherwise.

- (e) The Claims Administrator shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Ontario Court made on notice to or on consent of the Parties.
- (f) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) agree to pay the Settlement Amount in accordance with the specific requirements of this Settlement Agreement, in full satisfaction of the releases described in paragraph 4.1, below.

3.2 *Cy Pres* Distribution

- (a) Any portion of the Class Member payment referenced in paragraph 3.1(a)(iv) that is not claimed by or distributed to Eligible Class Members may be paid out on a *cy-pres* basis to a qualified donee selected by the Plaintiffs and approved by the Ontario Court.

3.3 Non-Monetary Benefits

- (a) Mezentco and Medbuy shall each file an affidavit for or in connection with the Settlement Approval attesting to the steps that each have taken to ensure that the issues or concerns giving rise to the Dosing Incident have been satisfactorily addressed.

3.4 Claims

- (a) Eligible Class Members:
 - (i) An Eligible Class Member is a Class Member, who is not an Opt-Out;
 - (ii) Payments to Eligible Class Members will be made on a *pro-rata* basis, after Class Counsel Fees have been determined (“Class Member Amount”);
 - (iii) For greater certainty Family Class Members will receive no monetary award under this proposed settlement.
- (b) Provincial Health Insurers:
 - (i) Payments to OHIP and Medicare will be made pursuant to Schedule “F”.

3.5 Taxes and Interest

- (a) All interest earned on the Settlement Amount shall become and remain part of the Account.
- (b) Class Counsel shall bear all risks related to the investment of the Settlement Amount in the Account.

- (c) All funds held by the Claims Administrator shall be deemed and considered to be in *custodial legis* of the Ontario Court, and shall remain subject to the jurisdiction of the Ontario Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Ontario Court.
- (d) Class Counsel, jointly and severally, hereby indemnifies, defends and holds harmless Mezentco, Medbuy and the Hospitals from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel or by the Claims Administrator with respect to the Settlement Amount or funds in the Account not strictly in accordance with the provisions of this Settlement Agreement, or any order of the Ontario Court.
- (e) 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 sole responsibility of the Claims Administrator. The Claims Administrator in consultation with Class Counsel 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.
- (f) Mezentco, Medbuy and the Hospitals shall have no responsibility to make any tax filings relating to the Account and shall have no responsibilities to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account.

ARTICLE 4: RELEASES AND DISMISSALS

4.1 Releases

- (a) Upon the Effective Date, the Releasers forever and absolutely release, acquit, and discharge the Releasees from the Released Claims. For the consideration provided herein, the Releasers agree not to make any claim or take, commence or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity (including, without limitation, any regulators, health care professionals, health care providers, health care facilities, pharmacies, or other distributors of the Chemotherapy Drugs) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, R.S.O. 1990, c N.1 or other comparable provincial legislation and any amendments thereto, the common law, or any other statute for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.
- (b) Upon the Effective Date, the Releasees forever and absolutely release, acquit, and discharge each other from the Released Claims and from any other claims,

demands, actions, suits and causes of action, including claims for contribution and indemnity or otherwise, relating in any way to any act or omission by the Releasees, whether known or unknown, concerning the Dosing Incident or any act or omission asserted, alleged or referenced or which could have been asserted, alleged or referenced in the Class Action, and agree not to make or continue any other claim, or take, commence or continue any proceeding against any other person, corporation or entity (including, without limitation, any regulator, health care professionals, health care providers, health care facilities, pharmacies, or other distributors of the Chemotherapy Drugs) which might claim damages and/or contribution and indemnity and/or any other relief under the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1 or other comparable legislation and any amendments thereto, the common law, or any other statute for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees;

- (c) The Parties intend that the Settlement Agreement will be approved by the Ontario Court and will result in the dismissal of all claims asserted or which could have been asserted by Class Members and Family Class Members on the terms set forth herein;
- (d) Orders will be sought at the Approval Hearing which shall include a term releasing the claims of the Provincial Health Insurers generally and in the following form:
 - (i) In consideration of the payments made to the Provincial Health Insurers set out in the Settlement Agreement, the Provincial Health Insurers will be deemed to release and forever discharge Mezentco, Medbuy and the Hospitals from any and all actions, causes of action, suits, debts, accounts, bonds, covenants, claims and demands whatsoever, known or unknown, that were asserted or which could have been asserted by or on behalf of any Class Member and Family Class Members relating to the Dosage Incident.
- (e) Without limiting any other provision herein, each Eligible Class Member and Family Class Member who did not Opt-Out whether or not he/she receives a payment, will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts and demands whatsoever, known or unknown, that were or could have been asserted in the litigation that is the subject of this Settlement Agreement.
- (f) The Parties agree that each Eligible Class Member and Family Class Member, whether or not he/she receives a payment, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other

forum, directly, representatively or derivatively, asserting against Mezentco, Medbuy and/or the Hospitals or Releasees, any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.

4.2 Dismissal of Class Action

- (a) The Parties shall, on consent, as part of the motion for approval of the Settlement Agreement in the Ontario Court, request to dismiss the Class Action with prejudice as against Mezentco, Medbuy and the Hospitals, without costs.

ARTICLE 5: OPTING-OUT

5.1 Procedure

- (a) The procedure for opting-out of the Class Action, including timing and notice requirements and the information required from the person seeking to opt-out, shall be agreed to by the Parties and approved by the Ontario Court, substantially in the form as set out in Schedule “B” hereto.

5.2 Opt-Out Notice

- (a) Class Counsel shall, as part of the motion for Conditional Certification, submit a notice in a form that is mutually agreed by the Parties and approved by the Ontario Court, substantially similar to Schedule “D” hereto, which shall include, *inter alia*, information regarding opting-out. This notice shall require that on a date 30 days prior to the Settlement Approval Hearing (the “**Opt-Out Deadline**”), claimants who do not want to participate in the Settlement Agreement must submit a timely and valid request for exclusion from Class Membership using the Opt-Out Form (Schedule “B”).

5.3 Opt-Out Report

- (a) Within fifteen (15) days after the expiration of the Opt-Out Deadline, Mezentco, Medbuy, the Hospitals and Class Counsel shall be provided with a report from the Opt-Out/Notice Administrator, advising as to the number of Opt-Outs, the reasons for their opting-out, if known, and a copy of all information provided, including the Opt-Out Form (“**Opt-Out Report**”). [

ARTICLE 6: TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right to Terminate

- (a) If more Class Members opt-out of the proceedings than provided for in a confidential agreement entered into by the Parties contemporaneously with the

execution of this Settlement Agreement (and which shall be deemed to be part of this Settlement Agreement), Mezentco, Medbuy and/or the Hospitals may, at their sole option, terminate this Settlement Agreement. For greater certainty, only opt outs by Class Members, not including related deemed Family Class Member opt outs, will be taken into consideration for the purpose of this Article.

6.2 Manner of Termination

- (a) If Mezentco, Medbuy and/or the Hospitals exercise their right to terminate this Settlement Agreement pursuant to paragraph 6.1(a), they shall give written notice of the termination to Class Counsel no later than 10 days after the receipt of the Opt-Out Report.

6.3 Effect of Termination

- (a) In the event of termination of the Settlement Agreement, all parties shall be restored to their respective positions immediately prior to the date on which this Settlement Agreement was signed by all Parties. Any order adding the Hospitals as Parties and any order made for purposes of settlement shall be rescinded on consent. All statutes of limitations and/or repose for all claims asserted shall be deemed to have been tolled from the date of the signature of this Settlement Agreement by all parties until the date of reinstatement and reactivation, or for such longer period as the law may provide without reference to this Settlement Agreement.
- (b) The Parties further agree that any certification for the purposes of settlement shall be without prejudice to any position that any of the Parties may later take on any issue in the Class Action, and that Mezentco's, Medbuy's and the Hospitals' consent to certification for the purposes of settlement shall not constitute and shall not be deemed or construed as any admission on the part of Mezentco, Medbuy and the Hospitals that the Class Action, or any other putative class proceeding, is appropriate for trial as a class proceeding.

6.4 Not Approved by the Ontario Court

- (a) If this Settlement Agreement is not approved by the Ontario Court:
 - (i) Subject to paragraph 6.4(b) below, it shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms, with the sole exception of the agreements and commitments contained in Article 10, which shall survive; and
 - (ii) All negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.

- (b) The Parties expressly reserve all of their respective rights to the extent that the Ontario Court does not approve this Settlement Agreement.

ARTICLE 7: DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

7.1 Settlement Payments

- (a) The Settlement Amount shall be held by the Claims Administrator in trust for the benefit of Eligible Class Members and, after the Effective Date, shall be paid in accordance with this Settlement Agreement and its schedules, subject to approval by the Ontario Court.
- (b) The amount being paid to OHIP and Medicare, pursuant to paragraph 3.1(a)(ii) shall be held by the Claims Administrator in trust for the benefit of OHIP and Medicare and, after the Effective Date, shall be paid in accordance with the Schedule “F” hereto, subject to approval by the Ontario Court.
- (c) The Claims Administrator shall administer payments to Eligible Class Members in accordance with paragraph 3.4(a) of this Settlement Agreement.

7.2 Monies in the Account

- (a) In no event shall Mezentco, Medbuy or the Hospitals have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use, or administration of monies in the Account, including, but not limited to, the costs and expenses of such investment, distribution, use, and administration. In no event shall Mezentco, Medbuy or the Hospitals have any responsibility, financial obligations, or liability whatsoever with respect to Administration Expenses and/or Class Counsel Fees except as otherwise provided for in Article 3 of this Settlement Agreement.

ARTICLE 8: LEGAL FEES AND DISBURSEMENTS

8.1 Motion to Approve Fees and Disbursements

- (a) Class Counsel will bring a motion to the Ontario Court for approval of Class Counsel Fees at the same time as the Approval Hearing. Such Fees and disbursements are awarded at the discretion of the Ontario Court after hearing from counsel for the Parties. Mezentco, Medbuy and the Hospitals will not take any position with respect to the amount of Fees requested by Class Counsel.
- (b) Class Counsel will apply the monies payable by Mezentco, Medbuy and the Hospitals towards Costs in respect of fees and disbursements approved by the

Ontario Court. Any legal fees and/or disbursements awarded to Class Counsel as approved by the Ontario Court in excess of the amount listed in paragraph 3.1(a)(iii) will come from the Settlement Amount and not from Mezentco, Medbuy and/or the Hospitals.

- (c) Class Counsel Fees may be paid out of the Account only after Class Counsel obtains Ontario Court approval.
- (d) Eligible Class Members and Family Class Members who have retained, or who retain lawyers, to assist them in respect of payments from this Settlement, shall be responsible for the legal fees and expenses of such lawyers.

ARTICLE 9: ADMINISTRATION AND IMPLEMENTATION

9.1 Mechanics of Administration

- (a) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Ontario Court on motion brought by the Parties, or any of them.

9.2 Notices Required

- (a) The Class Members and Family Class Members shall be given notice of:
 - (i) the Conditional Certification, the opt-out period, and the approval hearing date at which the Ontario Court will be asked to approve the Settlement Agreement;
 - (ii) any termination of the Settlement Agreement;
- (b) Class Counsel acknowledge that all notices and the plan for their dissemination must be approved by the Ontario Court. No notices shall be disseminated anywhere until such time as they are approved by the Ontario Court.
- (c) Notice to Family Class Members shall be deemed to have been given either by the general publications, as set out in Schedule “H” and/or the direct mailing to Class Members as set out in Schedule “H”. This direct mailing to Class Members shall be deemed to be notice to their respective Family Class Members;
- (d) If the costs of notice, plus the costs of claims administration exceed the monies as set out in paragraph 3.1(a)(i), the difference will be paid from the Settlement Amount.

ARTICLE 10: NO ADMISSION OF LIABILITY

10.1 No Admission of Liability Generally

- (a) The Parties agree that, whether or not this Settlement Agreement is approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussion 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 the Releasees, or of the truth of any of the claims or allegations made in the Class Action or in any other pleading filed by the Plaintiffs.
- (b) The Parties further agree that, whether or not this Settlement Agreement is approved or terminated, neither this Settlement Agreement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

10.2 Releasees Have No Liability for Administration

- (a) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

ARTICLE 11: MISCELLANEOUS

11.1 Best Efforts: the Parties shall use their best efforts to effectuate this Settlement Agreement.

11.2 Motions for Directions

- (a) The Plaintiffs, Class Counsel, Claims Administrator, Mezentco, Medbuy and the Hospitals may apply to the Ontario Court for directions in respect of the interpretation, implementation, and administration of this Settlement Agreement.
- (b) All motions contemplated by this Settlement Agreement, including applications to the Ontario Court for directions, shall be on notice to the Parties.

11.3 Timing

- (a) Class Counsel will make their best efforts to bring the motions to approve the form of Notice being provided to the Class Members and Family Class Members and to approve the Settlement Agreement as soon after the execution of the Settlement Agreement as possible.

11.4 Headings, etc. in this Settlement Agreement

- (a) The division of the Settlement Agreement into Articles 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”, “the Settlement Agreement”, “hereto”, “hereunder”, “herein” and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

11.5 Governing Law and Ongoing Jurisdiction

- (a) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (b) The Ontario Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement.

11.6 Entire Agreement

- (a) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations or promises other than as contained, or referred to, in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.
- (b) 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 Ontario Court.

11.7 Binding Effect

- (a) Once the Settlement Agreement is approved by the Ontario Court, this Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, Eligible Class Members and Family Class Members, the Releasers, Mezentco, Medbuy and the Hospitals, the Releasees, Class Counsel and the Claims Administrator.

11.8 Survival

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

11.9 Counterparts

- (a) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an

electronically scanned or facsimile signature shall be deemed an original signature for the purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, facsimile or other electronic form provided that it is duly executed.

11.10 Negotiated Agreement

- (a) This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of whom 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 or not contained in the previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.11 Dates

- (a) Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Ontario Court.

11.12 Language

- (a) 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.

11.13 French Translation

- (a) A French translation of this Settlement Agreement, all Schedules hereto, and all notices pursuant to this Settlement Agreement shall be prepared by the Opt-Out Notice Administrator and paid from the amount stated in paragraph 3.1(a)(i), and made available to Class Members upon request. In case of any conflicting interpretations, the English version shall prevail.

11.14 Confidentiality

- (a) When the notice that the Class Action has been conditionally certified is first disseminated in accordance with Schedule “H”, Class Counsel will publish a press release, (Schedule “G”). Class Counsel will be permitted to respond to inquiries from the media for the purpose of explaining the settlement and claims process.
- (b) The Parties agree that no public statements shall be made regarding the Class Action or the Settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding the Class Action will indicate clearly that the Settlement has been negotiated, agreed and approved by the Ontario Court without any admission or

finding of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the facts alleged in the Class Action, all of which are specifically denied by Mezentco, Medbuy and the Hospitals.

- (c) Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Class Action or the manner in which the Settlement was conducted. The Parties agree that any public statements that are inconsistent with the terms of this Settlement Agreement could cause irreparable harm, including harm to the business and reputation of Mezentco, Medbuy and the Hospitals.

11.15 Recitals

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

11.16 Schedules

- (a) The Schedules annexed hereto form part of this Settlement Agreement.

11.17 Acknowledgements

- (a) Each of the Parties hereby affirms and acknowledges that:
 - (i) 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 understands the Settlement Agreement;
 - (ii) 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 the Party's counsel;
 - (iii) He/she or the Party's representative, fully understands each term of the Settlement Agreement and its effects, and
 - (iv) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) or any other Party with respect to the first Party's decision to execute this Settlement Agreement.

11.18 Authorized Signatures

- (a) Each of the undersigned represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

11.19 Notice

- (a) 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 email, facsimile, or letter by overnight delivery to the representative for the Party to whom notice is being provided, as identified below:

For Plaintiffs and Class Counsel:

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Harvey T. Strosberg, Q.C.

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Sutts Strosberg LLP

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For Windsor Regional Hospital, Lakeridge Health, Peterborough Regional Health Centre, and Regional Health Authority B (Saint John Regional Hospital):

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Email: bglaspell@blg.com

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

LISA ARLENE HUNT, RYAN WESLEY HUNT, TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-LYNN BOUDREAULT and JOHN CHESLEY PRINCE

Per:

McKenzie Lake Lawyers LLP

Per:

Sutts Strosberg LLP

Lawyers for the Plaintiffs

MEDBUY CORPORATION

Per:

Lax O'Sullivan Lisus Gottlieb LLP

Lawyers for the Defendant Medbuy Corporation

LONDON HEALTH SCIENCES CENTRE

Per:

Rogers Partners LLP

Lawyers For London Health Sciences Centre

WINDSOR REGIONAL HOSPITAL,
LAKERIDGE HEALTH, PETERBOROUGH
REGIONAL HEALTH CENTRE, and
REGIONAL HEALTH AUTHORITY B (Saint
John Regional)

Per:

Borden Ladner Gervais LLP

Lawyers for Windsor Regional Hospital,
Lakeridge Health, Peterborough Regional Health
Centre, and Regional Health Authority B (Saint
John Regional Hospital)

MEZENTCO SOLUTIONS INC. c.o.b as
MARCHESE HOSPITAL SOLUTIONS,
MEZENTCO INC., c.o.b. AS MARCHESE
HEALTH CARE and MEDBUY
CORPORATION

Per:

Gowlings WLG

Per:

Blaney McMurtry, LLP

Lawyers for the Defendant Mezentco

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