

No. L013383
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Carl Kuhnke

Plaintiff

and:

**Johnson & Johnson,
Lifescan Canada Ltd. and Lifescan, Inc.**

Defendants

Proceeding under the *Class Proceedings Act*, RSBC 1996, c. 50

ORDER MADE AFTER APPLICATION

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))	
BEFORE)	THE HONOURABLE JUSTICE)	<i>January 14, 2011</i>
)	MASUHARA)	
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))	

ON THE APPLICATION of the plaintiff:

x coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, BC on 14/01/2011 and on hearing Sharon D. Matthews, counsel for the plaintiff and Warren B. Milman, counsel for the defendants;

THIS COURT ORDERS that:

1. BY CONSENT, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order;
2. BY CONSENT, the Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class;

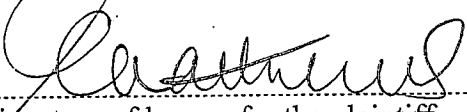
3. BY CONSENT, the Settlement Agreement attached as **Schedule "A"** is approved, with the exclusion of clauses 2.3, 12.5(3) and 12.5(4), pursuant to s.35 of the *Class Proceedings Act*, R.S.B.C. 1996, c.50 and shall be implemented in accordance with its terms;
4. BY CONSENT, distribution to or on behalf of the Settlement Class as set out in the following chart is approved:

Item		Amount
1.	Distribution of Diabetic product (meters, strips, associated paraphernalia)	\$1,250,000
2.	Settlement Funds	\$1,250,000
	(a) Administration of CDA Compassionate Use Programme	270,000
	(b) Public Awareness Campaign	700,000
	(c) Diabete	185,000
	(d) Fonds	15,000
	(e) CPF Levy	80,000
3.	Class Counsel Fees (including \$26,360.01 owed to CPF)	\$1,500,000
Total		\$4,000,000

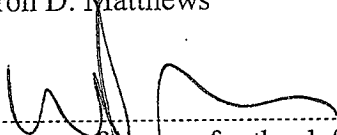
5. BY CONSENT, upon the Effective Date, each BC Settlement Class Member who has not validly opted-out of this action shall consent and is deemed to have consented to the dismissal as against the Releasees of any other actions he, she or it has commenced, without costs and with prejudice;
6. BY CONSENT, upon the Effective Date, each Releasor who has not validly opted-out of this Action has released and is conclusively deemed to have forever and absolutely released the Releasees from the Released Claims;
7. BY CONSENT, each Release 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, clam or demand against any Releasee or any other person who may clam contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim;
8. BY CONSENT, for the purposes of enforcement of this Order, this court will retain an ongoing supervisory role solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement;
9. BY CONSENT, except as aforesaid, this action is hereby dismissed against the defendants without costs and with prejudice;

10. BY CONSENT, the approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court of the Settlement agreement, excluding clauses 2.3, 12.5((3) and 12.5(4), and this Order shall have no force and effect of if such approval is not obtained in Ontario and Quebec;
11. BY CONSENT, this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms;
12. Class Counsels fees are approved in the amount of \$1.5 million, inclusive of disbursements, taxes and inclusive of the \$26,360.01 payable to the Class Proceedings Fund for reimbursement of monies advanced; and
13. a discretionary payment in the amount of \$3,000.00 to be made out of BC Counsel's portion of the Class Counsel Fees, to the representative plaintiff, Carl Kuhnke; is approved.

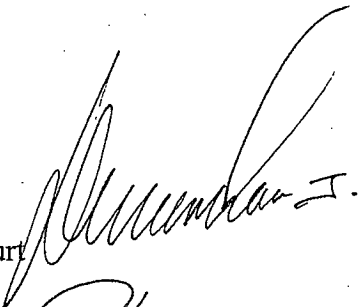
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS THAT ARE INDICATED ABOVE AS BEING BY CONSENT:




Signature of lawyer for the plaintiff
Sharon D. Matthews



Signature of lawyer for the defendants
Warren B. Milman

By the Court 

Registrar 

SCHEDULE 'A'

**CANADIAN SURESTEP CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of September 10, 2010

Between

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON, deceased,
By Her Trustee without a will, BRUCE ALLEN GAGNON,
CARL KUHNKE and FRÉDÉRIC BISSON

(the "Plaintiffs")

and

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

(the "Defendants")

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**CANADIAN SURESTEP CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

A. WHEREAS the Plaintiffs have commenced the Proceedings in the Courts which allege that the Defendants knowingly marketed defective SureStep Meters and Strips;

B. AND WHEREAS the Defendants deny liability in respect of the claims as alleged in the Proceedings, and believe that they have good and reasonable defences in respect of the merits in the Proceedings;

C. AND WHEREAS the Defendants assert that they would actively pursue these defences in respect of the merits at trial if the Plaintiffs continued the Proceedings against them;

D. AND WHEREAS, the parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation arising out of the facts that gave rise to this litigation and achieve final resolutions of all claims asserted or which could have been asserted against the Defendants by the Plaintiffs on their own behalf and on behalf of the classes they represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;

E. AND WHEREAS counsel for the Defendants and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations in respect of this Settlement Agreement;

F. AND WHEREAS as a result of these settlement discussions and negotiations, the Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendants and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of the Courts;

G. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Product and the amount of the Settlement Funds to be provided by the

Defendants under this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;

H. AND WHEREAS the Defendants do not admit, through the execution of this Settlement Agreement, any of the conduct alleged in the Proceedings;

I. AND WHEREAS the Plaintiffs, Class Counsel and the 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 Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Defendants;

J. AND 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, 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 classes they seek to represent;

K. AND WHEREAS the Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

L. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Defendants;

M. AND WHEREAS the Ontario Proceeding was certified on July 4, 2004, the opt-out period has expired and no one opted out;

N. AND WHEREAS the BC Proceeding was certified on August 15, 2008, the opt-out period has expired and no one opted out;

O. AND WHEREAS the parties will seek a consent order authorizing the Quebec Proceeding;

P. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Proceedings against the Defendants;

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 on the merits with prejudice as to the Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

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

- (1) *Administration Expenses* mean the costs to CDA for administering the Compassionate Use Program.
- (2) *Approval Hearings* mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) *Associated Paraphenalla* means the lancets and contact solution sold by Defendants for use in conjunction with the SureStep Meter and Strips.
- (4) *BC Counsel* means Camp Fiorante Matthews.
- (5) *BC Court* means the Supreme Court of British Columbia.
- (6) *BC Proceeding* means the proceeding commenced by Carl Kuhnke in the B.C. Court (Vancouver registry), Court File No. L013383, filed on November 30, 2001.
- (7) *BC Settlement Class* means (i) all persons in British Columbia who acquired a SureStep Meter on or after February 1, 1996; and (ii) all persons in British Columbia who used a Strip on or after February 1, 1996.

- (8) **CDA** means the Canadian Diabetes Association, a non-share capital corporation registered as a registered charity under the *Income Tax Act* (Canada) under #118830744RR001.
- (9) **CDA Contract** means the agreement between LifeScan Canada Ltd., the CDA and Class Counsel as represented by Sutts, Strosberg LLP;
- (10) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel who act as class counsel in the Proceedings.
- (11) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.
- (12) **Courts** mean the Ontario Court, the Quebec Court and the BC Court.
- (13) **CPF** means the Class Proceedings Fund.
- (14) **Defendants** mean Johnson & Johnson, LifeScan Canada and LifeScan, Inc.
- (15) **Diabète** means Diabète Québec, a non-share capital corporation registered as a registered charity under the *Income Tax Act* (Canada).
- (16) **Effective Date** means the latest date on which any of the Final Orders in Ontario, British Columbia or Québec take effect.
- (17) **Final Order** means a final order entered by a Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.
- (18) **Fonds** means the Fonds d'aide aux recours collectifs.
- (19) **LifeScan Canada** means LifeScan Canada Ltd..

- (20) **Notice of Approval Hearings** means the form of notice, agreed to by the Plaintiffs and the Defendants, or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the dates and locations of the Approval Hearings; (ii) the principal elements of this Settlement Agreement; and (iii) the process by which they may object to the Settlement.
- (21) **Notice of Settlement Approval** means the form of notice, agreed to by the Plaintiffs and the Defendants, or such other form as may be approved by the Courts, which informs the Settlement Class of the approval of this Settlement Agreement.
- (22) **Notices** mean the Notice of the Approval Hearings and the Notice of Settlement Approval.
- (23) **Ontario Counsel** means Sutts, Strosberg LLP, Koskie Minsky LLP and Pape Barristers Professional Corporation.
- (24) **Ontario Court** means the Ontario Superior Court of Justice.
- (25) **Ontario Proceeding** means the proceeding commenced on August 9, 2001 by Ahmed Serhan and Beverley Gagnon, as continued by their Estate Trustees, Court File No. CV-04-CV-278809CP00 (Toronto).
- (26) **Ontario Settlement Class** means all persons in Ontario and elsewhere in Canada, except British Columbia and Quebec, who acquired a SureStep Meter on or after February 1, 1996 and/or who used a Strip on or after February 1, 1996.
- (27) **Opt Out Form** means the form that enables a Quebec Class Member to exclude himself from the Class authorized by the Quebec Court;
- (28) **Parties** mean the Plaintiffs, the Settlement Class Members and the Defendants.
- (29) **Plaintiffs** mean the individuals named as representative plaintiffs in the Proceedings.

- (30) *Proceedings* mean the Ontario Proceeding, the Quebec Proceeding and the BC Proceeding.
- (31) *Product* means 5000 kits or packages of home glucose monitors, strips, lancets and instructions which have a total wholesale value of approximately \$1,250,000.
- (32) *Quebec Contract* means the agreement between LifeScan Canada Ltd., Diabète and Class Counsel as represented by Siskinds Desmeules s.e.n.c.r.l.;
- (33) *Quebec Counsel* means Siskinds Desmeules s.e.n.c.r.l.
- (34) *Quebec Court* means the Superior Court of Quebec.
- (35) *Quebec Opt Deadline* means 90 days following the publication of the Approval Order;
- (36) *Quebec Proceeding* means the proceeding commenced by Frédéric Bisson in the form of an application for authorization (la Requête pour obtenir l'autorisation d'exercer un recours collectif) in the Quebec Superior Court (Québec City registry), Court File No. 200-06-000022-015, filed on December 7, 2001.
- (37) *Quebec Settlement Class* means those members of the Class defined in the Quebec Approval Order who do not exclude themselves in accordance with the procedure prescribed by that Order.
- (38) *Released Claims* mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, for damages whenever incurred, damages of any kind, including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class 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 that 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, relating in any way to any conduct occurring anywhere, in respect of the purchase and use of SureStep Meters

and Strips, or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly.

- (39) **Releasees** mean, jointly and severally, individually and collectively, the Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, trustees, servants and representatives and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (40) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs, and the Settlement Class Members and their respective successors, heirs, executors and administrators.
- (41) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (42) **Settlement Funds** means the sum of two million, seven hundred and fifty thousand dollars (\$2.75 million).
- (43) **Settlement Class** means all persons included in the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.
- (44) **Settlement Class Member** means a member of the Settlement Class.
- (45) **Strip** means a SureStep test strip manufactured before March 1, 1998 and distributed on or after February 1, 1996.
- (46) **SureStep Meter** means a SureStep blood glucose meter manufactured before August 1, 1997, bearing a serial number the first five digits of which were in the series L6000 to L7205 or a serial number in the series L7206-GA-0001 to L7206-GA-01128.

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effect this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Defendants.

2.2 Motions Approving Notice

(1) At a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs shall bring motions before the Courts for orders approving the Notice of the Approval Hearings described in section 2.3.

(2) The Ontario order, the British Columbia order and the Quebec order approving the Notice of the Approval Hearing shall be generally in the form attached hereto respectively, in Schedule "A1", Schedule "A2" and Schedule "A3".

2.3 Motions for Approval of the Settlement

(1) As soon as practicable after the orders referred to in section 2.2(2) are granted, after the Notice of the Approval Hearings has been published, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(2) The Ontario order approving this Settlement Agreement referred to in section 2.3(1) shall be generally in the form attached hereto as Schedule "B1".

(3) The Quebec and British Columbia orders approving the Settlement Agreement referred to in section 2.3(1) shall be generally in the form attached hereto respectively in Schedule "B2" and "B3". The Quebec and British Columbia orders shall mirror the substance and, where possible, the form of the Ontario order, except that the Quebec order shall deal with the matters necessary for authorization of the proceeding and the procedure for opt-outs.

(4) The form and content of the orders approving this Settlement Agreement contemplated in this Section 2.3 shall be considered a material term of this Settlement Agreement and the failure

of any Court to approve the orders contemplated herein shall give rise to a right of termination pursuant to Section 11 of this Settlement Agreement.

2.4 Sequence of Motions

(1) The Plaintiffs in Quebec and British Columbia shall not proceed with a motion to approve this Settlement Agreement unless and until the Ontario Court approves the Settlement Agreement. The approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec and BC Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision on the settlement approval motion. The Defendants may agree to waive this provision.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Provision of Product and Payment of Settlement Funds

(1) LifeScan Canada, LifeScan, Inc. or Johnson & Johnson shall provide or cause one of its affiliates to provide the Product to the CDA and pay or cause one of its affiliates to pay the Settlement Funds in accordance with the terms of this Settlement Agreement, the CDA Contract and the Quebec Contract, both of which are attached to this Settlement Agreement as Schedules “C” and “D”.

SECTION 4 – OBJECTIONS AND EXCLUSIONS

4.1 Procedure to Object

(1) A Settlement Class Member may object to the approval of the settlement by sending a written objection by pre-paid mail, courier or fax to Caroline Zayid at McCarthy Tétrault LLP, 53rd Floor, Toronto Dominion Tower, 66 Wellington Street West, Toronto, ON M5K 1E6, fax (416) 868-0673.

(2) A Settlement Class Member who wishes to object to the approval of the Settlement will be asked to provide the following:

- (a) the full name, current address and telephone number of the person who is objecting;
- (b) a brief statement of the nature of and reasons for the objection;
- (c) a declaration that the person believes he or she is a member of the Settlement Class and the reason for that belief; and
- (d) whether the person intends to appear at the appropriate Approval Hearing or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.

4.2 Procedure for Quebec Class Member to Exclude Themselves

(1) Quebec Class Members who do not wish to be bound by the Agreement may exclude themselves from the Class. Class Members who want to exclude themselves must do so by giving notice to the Clerk of the Superior Court of Quebec by the Exclusion Deadline and in the manner prescribed by the Code of Civil Procedure of Quebec, as well as complete the Exclusion Form, attached as Schedule "D," and file it with Donald Bisson at McCarthy Tétrault, Suite 2500, 1000 De La Gauchetiere Street West, Montreal QC H3B 0A2 by the Opt Out Deadline.

SECTION 5- THE DEFENDANTS' SETTLEMENT OBLIGATIONS

5.1 Settlement Obligations

(1) On and following the Effective Date, the Defendants will comply with the settlement obligations in the manner required by the provisions of this Settlement Agreement and directions of the Courts.

5.2 Product and Settlement Funds

(1) One of the Defendants shall provide, or cause one of its affiliates to provide, the Product valued at about \$1,250,000 to the CDA for distribution by the CDA to persons with diabetes across Canada in accordance with the CDA Contract and the Compassionate Use Program described therein.

(2) One of the Defendants shall pay, or cause one of its affiliates to pay, Settlement Funds in the amount of \$1,250,000 which will be allocated and paid as follows:

- (a) to the CDA, \$270,000 to administer the CDA Compassionate Use Program.
- (b) to the CDA, \$700,000 to fund a Public Awareness Program to make people aware of diabetes, the effects thereof and the benefits of self-monitoring.
- (c) to Diabète, \$185,000 to use in accordance with the provisions of the Quebec Contract.
- (d) to the Fonds, \$15,000 which it has agreed to accept.
- (e) to the CPF, \$80,000 in payment of the statutory levy for the Ontario Proceeding.

In determining this amount, the costs of Administration Expenses, Class Counsel Fees and the amount paid to Diabète, the Fonds and a notional allocation of \$200,000 to the BC Class have been deducted from the Settlement Funds.

(3) One of the Defendants shall pay, or cause one of its affiliates to pay to Sutts, Strosberg LLP, in trust, \$1.5 million or such lesser sum as the Court fixes for Class Counsel Fees.

(4) Any amount not approved in accordance with the allocations described in 5.2(2) and (3) hereof will be paid to the CDA for the administration of the Compassionate Use Program, with any surplus thereafter to be used by the CDA at its discretion for the benefit of persons in Canada living with diabetes.

SECTION 6- RELEASES AND DISMISSALS

6.1 Release of Releasees

Upon the Effective Date, and in consideration of the delivery of Product and the payment of the Settlement Funds 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 No Further Claims

The Releasors 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 Releasees or against any other person who may claim contribution or indemnity from any Releasees in respect of any Released Claim or any matter related thereto.

6.3 Dismissal of the Proceedings

The Proceedings shall be dismissed with prejudice and without costs as against the Defendants.

6.4 Releases

The releases contemplated in this section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 10 of this Settlement Agreement.

SECTION 7-- EFFECT OF SETTLEMENT

7.1 No Admission of Liability

The Plaintiffs and the Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, the Plaintiffs and the Defendants 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, the negotiations, 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 Defendant or by any Releasee, 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.

7.2 Agreement Not Evidence

The Plaintiffs and the Defendants agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, 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 present, 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.

SECTION 8- NOTICE TO SETTLEMENT CLASS

8.1 Notice Required

The proposed Settlement Class shall be given the following Notices: (i) Notice of the Approval Hearings; and (ii) Notice of Settlement Approval.

8.2 Form and Distribution of Notice

The form of the Notices referred to in section 8.1 and the manner of publication and distribution shall be as agreed to by the Plaintiffs and the Defendants and approved by the Courts.

SECTION 9- ADMINISTRATION AND IMPLEMENTATION

9.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be as set out in the CDA Contract and the Quebec Contract.

SECTION 10- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. The Defendants shall not oppose Class Counsel's motions for payment of Class Counsel Fees.

SECTION 11-TERMINATION OF SETTLEMENT AGREEMENT

11.1 Right of Termination

(1) The Defendants, the Plaintiffs and Class Counsel shall respectively have the right to terminate this Settlement Agreement, in the event that:

- (a) any Court declines to approve this Settlement Agreement or any material term or part thereof;
- (b) any Court approves this Settlement Agreement in a materially modified form; or
- (c) any orders approving this Settlement Agreement made by the Ontario Court, BC Court or the Quebec Court do not become Final Orders; or
- (d) the form and content of any of the Final Orders approved by the Ontario Court, the BC Court and the Quebec Court fail to comply with Section 2.3(4) of this Settlement Agreement.

(2) To exercise a right of termination under Section 11.1(1), a terminating party shall deliver a written notice of termination pursuant to Section 12.18 of this Settlement Agreement. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 11.3, 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.

(3) Any order, ruling or determination made by any Court that is not substantially in the form of its respective order annexed as Schedule "A1", "A2", "A3", "B1", "B2" or "B3" shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for

the termination of this Settlement Agreement, provided however that the Defendants may agree to waive this provision.

(4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

11.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

11.3 Survival of Provisions After Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 7.1, 7.2, 12.2, 12.5 and 12.6 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 7.1, 7.2, 12.2, 12.5 and 12.6 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.

SECTION 12 - MISCELLANEOUS

12.1 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration other than to provide the Product and pay the Settlement Funds in accordance with the provisions of Section 5.1 of the Settlement Agreement.

12.2 Motions for Directions

- (1) Class Counsel or the Defendants may apply to the Courts for directions in respect of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the Defendants.

12.3 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; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

12.4 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, the act may be done on the next day that is not a holiday.

12.5 Ongoing Jurisdiction

- (1) Subject to Section 12.5(4), each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Proceeding.
- (2) Subject to Section 12.5(4), the Plaintiffs and the Defendants agree that no Court shall make any order or give a 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(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding the above but subject to Section 12.5(4) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, the Settlement Class and the Defendants submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the settlement provided for in this Settlement Agreement. Issues related to the administration of this Settlement Agreement and other matters not specifically related to the claim of a BC Settlement Class Member or a Quebec Settlement Class Member shall be determined by the Ontario Court.
- (4) The Plaintiffs and the Defendants may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

12.6 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

12.7 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.

12.8 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.

12.9 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Defendants, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

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

12.11 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.

12.12 Language

(1) 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.

12.13 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.

12.14 Recitals

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

12.15 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

12.16 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

12.17 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.

12.18 Notice

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Proceedings:

Harvey T. Strosberg, Q.C.
SUTTS, STROSBERG LLP
Barrister and Solicitors
600-251 Goyeau Street
Windsor, ON N9A 6V4
Tel: 519-258-9333
Fax: 519-258-9527
Email: harvey@strosbergco.com

J. J. Camp, Q.C.
CAMP FIORANTE MATTHEWS
4th Floor
856 Homer Street
Vancouver, BC V6B 2W5
Tel: 604-689-7555
Fax: 604-689-7554
Email: jjcamp@cfmlawyers.ca

Simon Hébert
SISKINDS DESMEULES S.E.N.C.R.L.
Les promenades du Vieux-Quebec
43 rue Beadle, bureau 320
Quebec City, QC G1R 4A2
Tel: 418-694-2009
Fax: 418-694-0281
Email: simon.hebert@siskindsdesmeules.com

For the Settling Defendants:

Caroline Zayid
MCCARTHY TÉTRAULT LLP
53rd Floor, Toronto Dominion Tower
66 Wellington Street West
Toronto, ON M5K 1E6

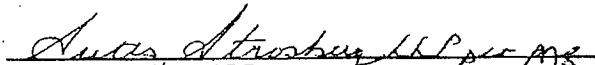
Tel: 416-601-7768
Fax: 416-868-0673
Email: czayid@mccarthy.ca

12.19 Date of Execution

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

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:


Anita Strosberg LLP per me
Stuts, Strosberg LLP
Counsel in the Ontario Proceedings

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

Camp Fiorante Matthews
Counsel in the BC Proceedings

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
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GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

Siskinds Desmeules, s.e.n.c.r.l.
Counsel in the Quebec Proceedings

For the Settling Defendants:

Caroline Zayid
MCCARTHY TÉTRAULT LLP
53rd Floor, Toronto Dominion Tower
66 Wellington Street West
Toronto, ON M5K 1E6

Tel: 416-601-7768
Fax: 416-868-0673
Email: czayid@mccarthy.ca

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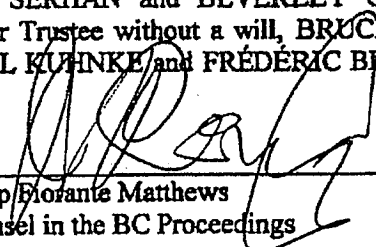
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their counsel

By:

Sutts, Strosberg LLP
Counsel in the Ontario Proceedings

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their counsel

By:



Camp Fiorante Matthews
Counsel in the BC Proceedings

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By:

Siskinds Desmeules, s.e.n.c.r.l.
Counsel in the Quebec Proceedings

For the Settling Defendants:

Caroline Zayid
MCCARTHY TÉTRAULT LLP
53rd Floor, Toronto Dominion Tower
66 Wellington Street West
Toronto, ON M5K 1E6

Tel: 416-601-7768
Fax: 416-868-0673
Email: czayid@mccarthy.ca

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GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

Sutts, Strosberg LLP
Counsel in the Ontario Proceedings

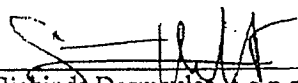
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GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

By:

Camp Fiorante Matthews
Counsel in the BC Proceedings

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON,
deceased, By Her Trustee without a will, BRUCE ALLEN
GAGNON, CARL KUHNKE and FRÉDÉRIC BISSON, by
their counsel

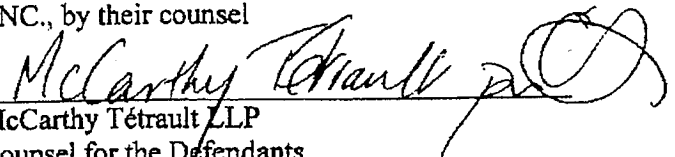
By:



pour Siskinde Desmeules, s.e.n.c.r.l.
Counsel in the Quebec Proceedings

JOHNSON & JOHNSON, LIFESCAN CANADA LTD. and
LIFESCAN, INC., by their counsel

By:



McCarthy Tétrauld LLP
Counsel for the Defendants

SCHEDULE "A1"

Court File No. CV-04-CV-278809CP00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable Madam) day, the day
Justice Horkins) of , 2010

BETWEEN:

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON, deceased,
By Her Trustee without a will, BRUCE ALLEN GAGNON

Plaintiffs

and

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

ORDER

THIS MOTION made by the Plaintiffs for an Order approving the Notice of the Approval Hearing to Ontario Settlement Class Members and approving the method of dissemination of the said notice, was heard this day at the Court House, 361 University Avenue, Toronto, Ontario.

ON READING the materials filed, including the Affidavit of Kirk Baert and on hearing the submissions of counsel for the Plaintiffs and counsel for the Defendants,

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the proposed Notice of the Approval Hearing, substantially in the form attached hereto as Schedule "A," is hereby approved.
3. **THIS COURT ORDERS** that the plan of dissemination for the Notice of the Approval Hearing, in the form attached hereto as Schedule "B," is hereby approved.
4. **THIS COURT ORDERS** that Caroline Zayid be and is hereby appointed to receive objections.
5. **THIS COURT ORDERS** that class members may indicate their objections to the proposed settlement by sending a written statement of their objections, with their name and address to be received no later than 10 days before the Ontario hearing date to Caroline Zayid, McCarthy Tétrault, Suite 5300, Toronto Dominion Bank Tower, Toronto, ON M5K 1E6.

The Honourable Madam Justice Horkins

BETWEEN:

AHMAD SERHAN ET AL

- and -

JOHNSON & JOHNSON ET AL

Court File No. CV-04-CV-278809CP00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

ORDER

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Caroline R. Zayid LSUC#: 30928C
Tel. (416) 601-7768
Fax (416) 868-0673

Solicitors for the Defendants
#1440926

DRAFT

SCHEDULE "A2"

CANADA

(recours collectif)
COUR SUPÉRIEURE

PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC
NO: 200-06-00022-015

FRÉDÉRIC BISSON
Plaintiff;
C./
•
Respondents

- [1] WHEREAS the Parties are involved in class action proceedings;
- [2] WHEREAS the Petitioner also seeks approval of the form of notice and method of dissemination of notice pursuant to the Settlement Agreement entered into between the Petitioner and the Defendants;
- [3] WHEREAS having taken cognizance of the materials filed in relation to the Motion herein, including the Settlement Agreement and schedules thereto (the "Settlement Agreement");
- [4] WHEREAS on being advised that the Petitioner and the Defendants consent to this Judgment;
- [5] WHEREAS on hearing the submissions of counsel for the Petitioner and counsel for the Defendants;
- [6] CONSIDERING the Motion before the Court;

[7] **CONSIDERING** that this Motion is appropriate in this case;

[8] **CONSIDERING** Article 1025, of the *Code of Civil Procedure* ("C.C.P.") and Article 63 of the *Rules of Practice of the Superior Court of Quebec in Civil Matters* ("R.P.S.C.");

[9] **AFTER REVIEW**, it is in order to grant the Motion of the Petitioner in respect of the Defendants;

FOR THESE REASONS, THE COURT:

[10] **DECLARES** that the definitions contained in the Settlement Agreement shall be used in this Judgment and accordingly shall be deemed to form an integral part of the Judgment;

[11] **APPROVES** the form and content of the Notice of the Approval Hearings as found at exhibit ●;

[12] **APPROVES** the proposed plan of dissemination for the Notice of the Approval Hearings as found at exhibit ●;

[13] **ORDERS** that the hearing for approval of the Settlement Agreement shall be heard by this Court at:

Quebec Courthouse
300, boul. Jean-Lesage
Quebec, Quebec G1K 8K6

•, beginning at •, in room •.

[14] **ORDERS** that the class members have the right to exclude themselves from the Class as provided in the Settlement Agreement, and fixes the deadline to do so as •.

[15] **DESIGNATES** Donald Bisson to receive objections;

[16] **THE WHOLE**, without costs, except those payments specifically contemplated by the Settlement Agreement.

•, J.C.S.

Mtre Simon Hébert
SISKINDS, DESMEULES, ADVOCATES
43, rue de Buade, Suite 320
Quebec, Quebec G1R 4A2
Lawyer for the Petitioner

Donald Bisson
MCCARTHY TÉTRAULT LLP
Suite 2500
1000 De La Gauchetière Street West
Montreal, QC H3B 0A2

1440931 v2

DRAFT

SCHEDULE "A3"

No. L013383
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

CARL KUHNKE

Plaintiff

and:

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

ORDER

BEFORE THE HONOURABLE) , THE •TH DAY OF
)
JUSTICE MASUHARA) , 2010.

THE APPLICATION of the Plaintiff coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, B.C., on the •th day of •, 2010, and on hearing J.J. Camp, Q.C., counsel for the Plaintiff, and Warren Milman, counsel for the Defendants;

AND ON READING the material filed including the settlement agreement attached to this Order as Schedule "A" (the "Settlement Agreement"):

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the proposed Notice of the Approval Hearing, substantially in the form attached hereto as Schedule "B," is approved.

3. **THIS COURT ORDERS** that the proposed plan of dissemination of the Notice of the Approval Hearing, substantially in the form attached hereto as Schedule "C, is approved.

4. **THIS COURT ORDERS** that Caroline Zayid is hereby appointed to receive objections.

BY THE COURT

DISTRICT REGISTRAR

APPROVED AS TO FORM:

J.J. Camp, Q.C.
Counsel for the Plaintiff, Carl Kuhnke

Warren Milman
Counsel for the Defendants

DRAFT

SCHEDULE "B1"

Court File No. CV-04-CV-278809CP00

ONTARIO SUPERIOR COURT OF JUSTICE

The Honourable) , the day
Justice) of , 2009

BETWEEN:

AHMAD SERHAN, deceased By His Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON, deceased,
By Her Trustee without a will, BRUCE ALLEN GAGNON

Plaintiffs

and

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs in the Ontario Proceeding for an Order approving the settlement agreement entered into with the Defendants, was heard this day at Toronto, 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 Defendants;

AND ON BEING ADVISED that: (a) the Plaintiffs in the Ontario Proceeding consent to this Order; and (b) the Defendants consent to this Order:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act*, 1992 and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all Ontario Settlement Class Members.
5. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Ontario Settlement Class Member 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.

6. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any Ontario Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
7. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member including those persons who are minors or 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 this action.
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 each Releasor 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.
10. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role solely for the purpose of implementing, administering and enforcing the Settlement Agreement.

11. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, this action be and is hereby dismissed against the Defendants without costs and with prejudice.
12. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the British Columbia Court and this Order shall have no force and effect if such approval is not obtained in Quebec and British Columbia.
13. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

Date:

The Honourable Justice

DRAFT

SCHEDULE "B2"

CANADA

(recours collectif)
COUR SUPÉRIEURE

PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC
NO: 200-06-000022-015

FRÉDÉRIC BISSON

Plaintiff;

C./

•
Respondents

- [1] WHEREAS the Parties are involved in class action proceedings;
- [2] WHEREAS the Petitioner has brought this Motion seeking a judgment of this Court approving the Settlement Agreement entered into between the Petitioner and the Respondents;
- [3] WHEREAS having taken cognizance of the materials filed in relation to the Motion herein, including the Settlement Agreement and schedules thereto attached to this Judgment as Schedule "A" (the "Settlement Agreement");
- [4] WHEREAS on being advised that the Petitioner and the Defendants consent to this Judgment;
- [5] WHEREAS on hearing the submissions of counsel for the Petitioner and counsel for the Respondents;
- [6] CONSIDERING Article 1025, 1045 and 1046 of the *Code of Civil Procedure*;

[7] **AFTER REVIEW**, it is in order to grant the Motion of the Petitioner in respect of the Respondents;

FOR THESE REASONS, THE COURT:

[8] **GRANTS** the Petitioner's Motion for Approval of the Settlement Agreement;

[9] **ORDERS AND DECLARES** that for the purposes of this Judgment, the definitions set out in the Settlement Agreement apply to and are incorporated into this Judgment and shall form an integral part thereof;

[10] **DECLARES** that Settlement Agreement entered into between the Petitioner and the Respondents is valid, fair, reasonable and in the best interests of the Quebec Settlement Class Members, and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Quebec*;

[11] **ORDERS** that the Settlement Agreement is hereby approved pursuant to Article 1025 of the *Code of Civil Procedure* and shall be implemented in accordance with its terms, subject to the terms of this Judgment;

[12] **ORDERS AND DECLARES** that the Settlement Agreement attached to this Judgment as Schedule "A", in its entirety (including the preamble, the definitions and schedules), shall form an integral part of this Judgment and shall be binding on all Parties and all Quebec Settlement Class Members described therein;

[13] **DECLARES** that the English version of the Settlement Agreement constitutes the agreement among the Parties, which they have consented to, and that the French version is just a translation, such that in the event of a discrepancy between the English version and the French version, the former shall supersede the latter, subject to the terms of this Judgment;

[14] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;

[15] **ORDERS** that every class member who has not excluded himself as provided by the Settlement Agreement and within the time prescribed by the Court is bound by the Settlement Agreement and by its approval by the Court in the present judgment;

[16] **DECLARES** that any Quebec Settlement Class Member shall be deemed to have irrevocably consented to the full and final dismissal of all other actions he or she instituted against the Releasees, without costs and without reservation;

[17] **ORDERS AND DECLARES** that each other action commenced in Quebec by any Quebec Settlement Class Member shall be and is hereby dismissed against the Releasees, with costs and without reservation;

[18] **ORDERS** that the Releasers shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, either on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand, or participate in any proceedings related in any manner whatsoever to the Released Claims;

[19] **DECLARES** that this Court retains an ongoing supervisory role for purposes of executing this judgment for the purposes of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement;

[20] **NOTES** that the Settlement Agreement states that approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the BC Court and this Judgment shall have no force and effect if such approval is not obtained in Ontario and British Columbia;

[21] **THE WHOLE** without costs and without reservation.

•, J.C.S.

Mtre Simon Hébert
SISKINDS, DESMEULES, ADVOCATES
43, rue de Buade, Suite 320
Quebec, Quebec G1R 4A2
Lawyer for the Petitioner

Donald Bisson
MCCARTHY TÉTRAULT LLP
Suite 2500
1000 De La Gauchetiere Street West
Montreal, QC H3B 0A2

1440963 v3

DRAFT

SCHEDULE "B3"

No. L013383
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

CARL KUHNKE

Plaintiff

and:

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

ORDER

BEFORE THE HONOURABLE) , THE •TH DAY OF
)
JUSTICE MASUHARA) , 2010.

THE APPLICATION of the Plaintiff coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, B.C., on the •th day of •, 2010, and on hearing J.J. Camp, Q.C., counsel for the Plaintiff, and Warren Milman, counsel for the Defendants;

AND ON READING the material filed including the settlement agreement attached to this Order as Schedule "A" (the "Settlement Agreement"):

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
3. **THIS COURT ORDERS** that the attached Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.
4. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each BC Settlement Class Member who has not validly opted-out of this action 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.
5. **THIS COURT ORDERS AND DECLARES** that instead of releasing the claims against the Releasees, upon the Effective Date, each Releasor resident in British Columbia covenants not to sue 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 Release Claims. The use of the terms "Releasors", "Releasees" and "Released Claims" in this Order is a matter of form only for consistency with the Settlement Agreement.

6. **THIS COURT ORDERS** that each Releasor 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, or other claims over relief, from any Releasee in respect of any Released Claim.

7. **THIS COURT ORDERS** that for the purposes of enforcement of this Order, this court will retain an ongoing supervisory role solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.

8. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.

9. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court of the same Settlement Agreement and this Order shall have no force and effect if such approval is not obtained in Ontario and Quebec.

10. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

BY THE COURT

DISTRICT REGISTRAR

APPROVED AS TO FORM:

J.J. Camp, Q.C.
Counsel for the Plaintiff, Carl Kuhnke

Warren Milman
Counsel for the Defendants

SCHEDULE "C"

AGREEMENT

THIS AGREEMENT made as of the day of November, 2010

BETWEEN:

LIFESCAN CANADA LTD. ("LifeScan")

- and -

CANADIAN DIABETES ASSOCIATION, a non-share capital corporation which is registered as a registered charity under the *Income Tax Act (Canada)* under #118830744RR001 ("CDA")

- and -

SUTTS, STROSBURG LLP on behalf of Class Counsel in the Action ("Class Counsel")

WHEREAS CDA is a national non-profit charitable organization which works in communities across Canada except Quebec to promote the health of Canadians and eliminate diabetes;

AND WHEREAS approximately three million Canadians have diabetes today, and more than four million Canadians are projected to have diabetes in the next decade;

AND WHEREAS many Canadians living with diabetes have difficulty affording the out-of-pocket cost for medications, devices and supplies required to manage diabetes;

AND WHEREAS, Johnson & Johnson, LifeScan Canada Ltd. and LifeScan Inc. have entered into a Settlement Agreement with the Plaintiffs to settle the Ontario Proceeding with Court File No. CV-04-278809CP00, the BC Proceeding with Court File No. L013383, and the Québec Proceeding with Court File No. 200-06-0000222-015, (the "Settlement Agreement") which contemplates certain contributions being made to the CDA;

AND WHEREAS the purpose of this Agreement is to provide for a binding agreement between LifeScan and the CDA concerning the use to be made by the CDA of those contributions.

CONTRIBUTIONS BY LIFESCAN

1. LifeScan shall provide, or cause one of its affiliates to provide, to the CDA blood glucose monitoring supplies (blood glucose meters, lancets and strips) having a total sales value to LifeScan of \$1.25 million (the "Supplies") to be distributed in a Compassionate Use Program.

2. LifeScan shall pay, or cause one of its affiliates to pay \$970,000 to the CDA.

COMPASSIONATE USE PROGRAM

3.1 CDA shall establish a Compassionate Use Program ("the Program") intended to distribute the blood glucose monitoring supplies referred to in paragraph 1 to Canadians living with diabetes and experiencing financial hardship.

3.2 The Program shall be accessible to individuals in all provinces and territories in Canada.

3.3 The Program shall be administered by the CDA national office.

3.4 The Program shall commence on a date selected by the CDA which is no later than 45 days after the date that the latest of the Orders is issued ("Program Launch date")

3.5 The CDA shall develop an application process to allow individuals residing anywhere in Canada to seek to receive a meter, strips and lancets from the Program. Application forms, in French and English, shall be made available on line as well as at all offices of the CDA.

3.6 The existence of the Program and criteria for eligibility shall be communicated on the CDA's website (www.diabetes.ca), through regional and area offices of the CDA, and through the CDA's diabetes education section members and clinical and scientific section members.

3.7 Eligibility criteria shall be determined by the CDA based on demonstrated medical and financial need.

3.8 Provided demand permits, all Supplies shall be distributed within 12 months of the Program Launch Date.

Where demand for the Supplies from the Program does not support the distribution of all Supplies within 12 months, the CDA will continue to operate the Program until all Supplies have been distributed.

3.9 At six month intervals, and at the completion of the Program, the CDA shall complete a program report to LifeScan and Class Counsel detailing uptake and results of the Program. The report will include:

- The number of applicants from each province
- The number of individuals who received products and their province of residence
- To the extent available, and in a manner which would not individually identify recipients, the profile of recipients, based on health status, age, income, and province of residence.

3.10 Following completion of the Program, Class Counsel shall provide a copy of CDA's final report to the Courts.

3.11 CDA shall pay costs related to the administration of the Program out of the funds received pursuant to paragraph 2 above. Such administrative costs may include additional

staffing requirements necessary to manage the Program (if any), development and preparation of application materials, marketing and communication related to the Program, warehousing, shipping and handling of supplies, and any expenses directly related to the Program.

3.12 If requested by the CDA, LifeScan shall arrange for its external suppliers of customer support services and/or shipping services to provide services to CDA for the delivery of the Program, and the direct costs associated with those services shall be paid by the CDA, as part of the administration costs described in section 3.11. Those services may include:

- (a) Contacting individuals approved by the CDA to determine specific meter needs;
- (b) Shipping the meter product and associated materials to individuals approved by the CDA;
- (c) Providing education and training in meter use and glucose monitoring to approved individuals.

PUBLIC AWARENESS CAMPAIGN

4.1 CDA will apply \$700,000 of the funds received under section 2 to a public awareness campaign ("the Public Awareness Campaign").

4.2 The content of the Public Awareness Campaign will be solely at the discretion of the CDA, but will focus on making Canadians (in all provinces except Quebec) aware of the dangers of undiagnosed or untreated diabetes.

4.3 The CDA will place Public Awareness Campaign items on television, radio, electronic or in print media, which will direct a recipient to a micro site. That micro site will provide additional information and resources to allow readers to access health information and appropriate diabetes management.

4.4 Following completion of the Public Awareness Campaign, the CDA shall deliver a report to LifeScan and to Class Counsel detailing the costs incurred to execute the campaign, the placement of campaign materials, and available information about the coverage received and the number of Canadians who have accessed the microsite.

BALANCE OF FUNDS

5.1 To the extent that any of the funds described in section 2 are not required to deliver the Compassionate Use Program or the Public Awareness Campaign, as a result of savings in administrative costs or otherwise, the CDA may apply the remaining funds to its other programs or services, for the benefit of persons in Canada who are living with diabetes.

PRIVACY

6.1 Where the CDA employs external service providers to assist in delivering products or providing support services, it shall enter into agreement with those service providers to ensure that confidentiality is maintained with respect to any personal information concerning the applicants to the Program or recipients of Supplies.

PUBLICITY

7.1 Unless LifeScan directs otherwise, LifeScan will be referred to as the sponsor of the Compassionate Use Program in any program materials or associated public communication.

7.2 Unless LifeScan directs otherwise, LifeScan will be referred to on the micro site as a partner of CDA in the Public Awareness Campaign, along with other sponsors or donors.

7.3 In all applicable communications, CDA will ensure that LifeScan's brand and visual identity standards are respected and will work with LifeScan to determine the application of such standards. CDA will obtain LifeScan's prior written consent before printing or broadcasting, for all marketing, media, promotional or other materials that refer to LifeScan in any manner. CDA will provide LifeScan with a minimum of three business days to consider any such material.

LICENSE

8. LifeScan and CDA grant to the other, for the term of the Agreement, a non-transferable, non-exclusive, royalty-free license to use, reproduce and publicly display the logo, trademark and/or trade name of the other solely for the purpose of promoting, carrying out, or advertising the existence of the Compassionate Use Program and the Public Awareness Campaign or LifeScan's relationship with CDA pursuant to this Agreement. No party shall obtain any right, title or interest in or to the other's logo, image, trademark and/or trade name except the right of use specified herein.

INDEMNITY

9. Each of LifeScan and CDA hereby indemnify and hold harmless the other and its parents, subsidiaries and affiliates and any of that party's employees or agents thereof against all liability, costs, damage or expense resulting from such party's breach of its obligation under this Agreement. This section survives the termination of the Agreement.

NOTICE OR DIRECTION

10. Any notice or direction to be given pursuant to or concerning this Agreement shall be in writing and may be hand-delivered or sent by personal mail or sent by prepaid registered mail to the respective parties at the address below, and if so mailed from anywhere in Canada shall be deemed to have been received three business days after such mailing except in the event of postal interruption:

If to CDA:	If to LifeScan Canada	If to Class Counsel
Canadian Diabetes Association 1400 – 522 University Avenue Toronto, ON M5G 2R5 T: 416.408.● Attention: ●	Wendy Hurlburt, LifeScan Canada Ltd. 300-4170 Still Creek Drive Burnaby, British Columbia V5C 6C6 AND TO: Caroline Zayid McCarthy Tétrault LLP 5300 Toronto Dominion Bank Tower Toronto, ON M5K 1E6	Harvey T. Strosberg, Q.C. Sutts Strosberg LLP Barristers and Solicitors 600 – 251 Goyeau Street Windsor, ON N9A 6V4 T: 519.258.9333 F: 519.258.9527 E: harvey@strosbergco.com

ENTIRE AGREEMENT AND SEVERABILITY

11. This Agreement together with the Orders constitutes the entire agreement between the parties and replaces all prior communication, undertakings and agreements, written or oral, related to the subject matter of this Agreement. If it is found by a Court that any portion of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected.

GOVERNING LAW

12. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and Canada, without regard to its conflict of laws provisions. CDA or LifeScan or Class Counsel may apply to the Ontario Superior Court of Justice on notice for advice and directions in connection with any questions relating to the interpretation of this Agreement or arising in, or from, its implementation.

GENERAL

13. This Agreement may be terminated by any party hereto in the event that:
- (a) Any Court declines to approve the Settlement Agreement or any material term or part thereof;
 - (b) Any Court approves the Settlement Agreement in a materially modified form;
 - (c) Any orders approving the Settlement Agreement made by the Ontario Court, BC Court or the Québec Court do not become final Orders; or
 - (d) The Settlement agreement is terminated by any party in accordance with its terms.

14. The terms of this Agreement are not to be inconsistent, nor to be interpreted inconsistently, with the terms of the Orders and, in the event of an inconsistency, the terms of the Orders govern.

15. The terms of this Agreement may be amended by further order of the Court by way of motion brought by LifeScan, CDA or Class Counsel on notice to the others.

16. This Agreement shall enure to the benefit of and be binding upon the parties and each of their respective successors and assigns in accordance herewith.

17. This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF each of the parties has executed this Agreement.

Canadian Diabetes Association

LifeScan Canada Ltd.

BY:

BY:

•

•

SCHEDULE "D"

AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2010

BETWEEN:

LIFESCAN CANADA LTD. ("LifeScan")

- and -

DIABÈTE QUÉBEC (DQ), a non-share capital corporation which is registered as a registered charity under the *Income Tax Act (Canada)*

- and -

SISKINDS DESMEULES, s.e.n.c.r.l., Quebec Counsel, on behalf of Class Counsel

WHEREAS DQ is a Quebec non-profit charitable organization which works in the Province of Quebec to inform and promote awareness about diabetes;

AND WHEREAS approximately 650,000 Quebecers have diabetes today, and this figure is expected to double by 2025;

AND WHEREAS approximately 200,000 Quebecers have diabetes without even knowing it;

AND WHEREAS, Johnson & Johnson, LifeScan Canada Ltd. and LifeScan Inc. have entered into a Settlement Agreement with the Plaintiffs to settle the Ontario Proceeding with Court File No. CV-04-278809CP00, the BC Proceeding with Court File No. L013383, and the Québec Proceeding with Court File No. 200-06-0000222-015, (the "Settlement Agreement") which contemplates certain contributions being made to the DQ;

AND WHEREAS the purpose of this Agreement is to provide for a binding agreement between LifeScan and DQ concerning the use to be made by DQ of those contributions.

CONTRIBUTION BY LIFESCAN

1. LifeScan shall pay, or cause one of its affiliates to pay, \$185,000 to DQ.

PUBLIC AWARENESS CAMPAIGN

2. DQ will apply the funds received from LifeScan to a public awareness campaign ("the Public Awareness Campaign").

3. The content of the Public Awareness Campaign will be solely at the discretion of DQ, but will focus on making Quebec residents aware of the dangers of undiagnosed or untreated diabetes.

4. DQ will place Public Awareness Campaign items on television, radio, electronic or in print media, which will direct a recipient to a micro site and to the web site of DQ. That micro site will be linked to or incorporated into the website of DQ and will provide additional information and resources to allow readers to access health information and appropriate diabetes management.

5. Upon completion of the Public Awareness Campaign, DQ will deliver a report to LifeScan and to Quebec Counsel describing the costs incurred to executed the Public Awareness Campaign, the placement of campaign items and the content of the items.

PUBLICITY

6. Unless LifeScan directs otherwise, LifeScan will be referred to on the micro site as a partner of DQ in the Public Awareness Campaign, along with other sponsors or donors.

7. In all applicable communications, DQ will ensure that LifeScan's brand and visual identity standards are respected and will work with LifeScan to determine the application of such standards. DQ will obtain LifeScan's prior written consent before printing or broadcasting, for all marketing, media, promotional or other materials that refer to LifeScan in any manner. DQ will provide LifeScan with a minimum of three business days to consider any such material.

LICENSE

8. LifeScan and DQ grant to the other, for the term of the Agreement, a non-transferable, non-exclusive, royalty-free license to use, reproduce and publicly display the logo, trademark and/or trade name of the other solely for the purpose of promoting, carrying out, or advertising the existence of the Public Awareness Campaign or LifeScan's relationship with DQ pursuant to this Agreement. No party shall obtain any right, title or interest in or to the other's logo, image, trademark and/or trade name except the right of use specified herein.

INDEMNITY

9. Each of LifeScan and DQ hereby indemnify and hold harmless the other and its parents, subsidiaries and affiliates and any of that party's employees or agents thereof against all liability, costs, damage or expense resulting from such party's breach of its obligation under this Agreement. This section survives the termination of the Agreement.

NOTICE OR DIRECTION

10. Any notice or direction to be given pursuant to or concerning this Agreement shall be in writing and may be hand-delivered or sent by personal mail or sent by prepaid registered mail to the respective parties at the address below, and if so mailed from anywhere in Canada shall be deemed to have been received three business days after such mailing except in the event of postal interruption:

If to DQ	If to LifeScan	If to Quebec Counsel
Serge Langlois President and Executive Director 8550 boul. Pie-1X Suite 300 Montréal, PQ H1Z 4G2 T: 514.259.3422	Wendy Hurlburt LifeScan Canada 300-4170 Still Creek Drive Burnaby, British Columbia V5C 6C6 AND TO: Donald Bisson McCarthy Tétrault LLP Suite 2500 1000 De La Gauchetière Street West Montréal, QC H3B 0A2	Simon Hébert SISKINDS DESMEULES S.E.N.C.R.L. Les promenades du Vieux-Quebec 43 rue Beadle, bureau 320 Quebec City, QC G1R 4A2 T: 418.694.2009 F: 418.694.0281 E: simon.hebert@siskindsdesmeules.com

ENTIRE AGREEMENT AND SEVERABILITY

11. This Agreement together with the Orders constitutes the entire agreement between the parties and replaces all prior communication, undertakings and agreements, written or oral, related to the subject matter of this Agreement. If it is found by a Court that any portion of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected.

GOVERNING LAW

12. This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and Canada, without regard to its conflict of laws provisions. DQ or LifeScan or Quebec Counsel may apply to the Superior Court of Quebec on notice for advice and directions in connection with any questions relating to the interpretation of this Agreement or arising in, or from, its implementation.

GENERAL

13. This Agreement may be terminated by any party hereto in the event that:

- (a) Any Court declines to approve the Settlement Agreement or any material term or part thereof;
- (b) Any Court approves the Settlement Agreement in a materially modified form;
- (c) Any orders approving the Settlement Agreement made by the Ontario Court, BC Court or the Québec Court do not become final Orders; or
- (d) The Settlement Agreement is terminated by any party in accordance with its terms.

14. The terms of this Agreement are not to be inconsistent, nor interpreted inconsistently, with the terms of the Orders and, in the event of an inconsistency, the terms of the Orders govern.

15. The terms of this Agreement may be amended by further order of the Superior Court of Quebec by way of motion brought by LifeScan, DQ or Quebec Counsel on notice to the others.

16. This Agreement shall enure to the benefit of and be binding upon the parties and each of their respective successors and assigns in accordance herewith.

17. This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF each of the parties has executed this Agreement.

Diabète Québec

LifeScan Canada Ltd.

BY:

BY:

Serge Langlois, president

Québec Counsel, on behalf of Class Counsel

BY:

Simon Hébert
Siskinds Desmeules

No. L013383
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Carl Kuhnke

Plaintiff

and:

**Johnson & Johnson,
Lifescan Canada Ltd. and Lifescan, Inc.**

Defendants

Proceeding under the *Class Proceedings Act*, RSBC 1996, c. 50

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS
Barristers & Solicitors
4th Floor, 856 Homer Street
Vancouver, BC
V6B 2W5