



Court File No.: CV-20-00639799-00CP

**ONTARIO**

***SUPERIOR COURT OF JUSTICE***

THE HONOURABLE )

THURSDAY, THE 30<sup>th</sup>  
DAY OF MAY, 2024

JUSTICE C. BOSWELL )

B E T W E E N:

JONATHAN A. CALLOWHILL

Plaintiff

- and -

AIRBOSS OF AMERICA CORP., P. GREN SCHOCH, FRANK IENTILE and  
PATRICK CALLAHAN

Defendants

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

**ORDER**

**(Motion for certification pursuant to the *Class Proceedings Act, 1992* for  
settlement purposes only and to set a date for the settlement approval motion)**

**THIS MOTION**, made by the Plaintiff for, *inter alia*, an Order granting the Plaintiff leave of the Court for settlement purposes only pursuant to s. 138.8(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “*OSA*”), certifying this action as a class proceeding for settlement

purposes only pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “*CPA*”), fixing the date for the hearing of the representative plaintiff’s motion for settlement approval and approval of Class Counsel fees and ancillary relief (the “**Approval Motion**”), and approving the form, content, and method of dissemination of the Notices of Certification and Settlement Approval Hearing (the “**Notices**”), was heard via videoconference this day at the courthouse located at 50 Eagle St. W., Newmarket, Ontario.

**ON READING** the materials filed, including the Settlement Agreement attached to this Order as Schedule “A” (without schedules) (the “**Settlement Agreement**”),

**AND ON HEARING** the submissions of counsel for the parties,

**AND ON BEING ADVISED** that the Defendants consent to this Order for the purposes of settlement only,

1. **THIS COURT ORDERS AND DECLARES** that, except as otherwise stated, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Notices, being a Phase I Long-Form Notice of Certification and Settlement Approval Hearing (the “**Long Form Notice**”), and a Phase I Google/Stockhouse Notice are hereby approved substantially in the forms attached hereto as Schedule “B”.
3. **THIS COURT ORDERS** that the Plan of Notice as generally set out in Schedule “C” is hereby approved.
4. **THIS COURT ORDERS** that leave of the Court is granted, pursuant to s. 138.8 of the *OSA*, for settlement purposes only, to commence an action under s. 138.3 of the *OSA* as against the Defendants.
5. **THIS COURT ORDERS** that this action is certified as a class proceeding, for settlement purposes only, pursuant to sections 2, 5 and 27.1 of the *CPA*, for a “**Class Period**” from and including November 10, 2021 to and including the close of trading

on September 6, 2022.

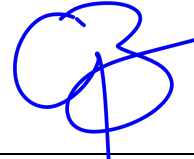
6. **THIS COURT ORDERS** that the certified cause of action for settlement purposes against all of the Defendants is under section 138.3 of the *OSA*.
7. **THIS COURT ORDERS** that the class that is certified, for the purposes of settlement only (the “**Class**”), is defined as all persons and entities, wherever they may reside or be domiciled, who acquired AirBoss securities during the Class Period, other than “**Excluded Persons**”, meaning the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any member of the families of the defendants who are natural persons.
8. **THIS COURT ORDERS** that Jonathan A. Callowhill is appointed as the representative plaintiff for the Class.
9. **THIS COURT ORDERS** that any Class Members who wish to exclude themselves from this Action can do so by submitting to Claims Administrator an approved Opt-Out Form, substantially in the form attached hereto as Schedule “D”, received by email on or before the date that is thirty (30) days from the date of the first publication of the Long-Form Notice on Class Counsel’s website (the “**Opt-Out Deadline**”).
10. **THIS COURT ORDERS** that the method of dissemination for the Opt-Out Form shall be consistent with the Plan of Notice substantially in the form attached as Schedule “C”.
11. **THIS COURT ORDERS** that any putative Class Members who validly opt out of the Action by the Opt-Out Deadline, in accordance with paragraph 9 of this Order, are not bound by the Agreement and shall no longer participate in or have the opportunity in the future to participate in this Action or the Agreement.
12. **THIS COURT ORDERS** that, after the Opt-Out Deadline and prior to the hearing of the Approval Motion, Class Counsel shall report to the Court and provide counsel for the Defendants with a report containing the names of each person who has validly opted out of the Action, the reason for the opt-out (if known), a summary of the information

delivered by such persons, and any supporting documentation.

13. **THIS COURT ORDERS** that this Order is binding upon each Class Member who does not validly opt-out from this Action on or prior to the Opt-Out Deadline in accordance with paragraph 9 of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04 and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
14. **THIS COURT ORDERS** that the hearing of the Approval Motion shall take place on Monday, July 29, 2024, at 10:00 a.m. in-person at the Newmarket Courthouse and via Zoom video conference.
15. **THIS COURT ORDERS** that any Class Members who wish to file with the Court an objection to, or comment on, the proposed settlement or the request for approval of Class Counsel fees and ancillary relief, shall email a statement to Claims Administrator in the form described in Schedule “B” of this Order at the address indicated in the approved Notices by no later than Friday, July 19, 2024.
16. **THIS COURT ORDERS** that only Class Members who email a statement indicating an objection to or comment on the proposed settlement or the request for approval of Class Counsel fees and ancillary relief, in accordance with paragraph 15, may participate in the hearing of the Approval Motion.
17. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed, until further order of the Court, Claims Administrator to manage the Escrow Account in accordance with the terms of the Agreement, and shall account to the Court and to the Parties for all payments it makes from the Escrow Account in accordance with the Agreement.
18. **THIS COURT DECLARES** that the Parties may apply to this Court for directions in respect of the implementation of this Order or of the hearing of the Approval Motion, if necessary.
19. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void,

and be of no force and effect on a subsequent motion made on notice to the Parties in the event that the Agreement is terminated in accordance with its terms.

Date: May 30, 2024

A handwritten signature in blue ink, consisting of a large, stylized 'B' with a vertical line extending downwards from its center.

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(Signature of judge, officer or registrar)

**SCHEDULE A**

**SETTLEMENT AGREEMENT**

Made as of the 2<sup>nd</sup> day of May, 2024

Between

**Jonathan A. Callowhill**

(the “Plaintiff”)

and

**AirBoss of America Corp. (“AirBoss”)**

**P. Gren Schoch (“Schoch”)**

**Frank Ientile (“Ientile”)**

**Patrick Callahan (“Callahan”)**

(the “Defendants”)

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# SETTLEMENT AGREEMENT

## SECTION 1 – RECITALS

### WHEREAS:

A. The Plaintiff commenced the Action alleging, among other things, that the Defendants made misrepresentations within the meaning of the *OSA*, with those misrepresentations alleged to have caused AirBoss' Securities to trade at artificially inflated prices during the Class Period;

B. The Plaintiff moved to certify the Action as a class proceeding pursuant to the *CPA* and sought leave to proceed under the *OSA*;

C. The Defendants have denied, and continue to deny, each and every allegation of wrongdoing in the Action, or at all, and any and all claims in the Action, or at all, that the Plaintiff or any Class Member (i) has suffered any damage whatsoever; (ii) has been harmed in any way; or (iii) is entitled to any relief as a result of any conduct on the part of the Defendants, and the Defendants have pursued and would have continued to actively and diligently pursue affirmative defences and other defences had this Action not been settled (and will resume so doing in the event that this Agreement is terminated);

D. Both the Plaintiff and the Defendants recognize the inherent uncertainty and cost associated with litigation, and in particular proposed class proceedings under the *OSA*;

E. The Plaintiff and the Defendants, through counsel, have engaged in arm's-length settlement discussions and negotiations, including with the assistance of The Honourable Russell Juriansz as mediator, which culminated in an agreement to settle this Action, subject to Court approval;

F. As a result, the Defendants and the Plaintiff have entered into this Agreement, which embodies all of the terms and conditions of the Settlement between the Defendants and the Plaintiff (individually and on behalf of the Class) subject to the approval of the Court;

G. The Plaintiff, with the benefit of advice from Class Counsel, has concluded that this Agreement, which resolves finally and completely the Action against all of the Defendants, is fair, reasonable and in the best interests of the Class based upon an analysis of the facts and law

applicable to the issues in this Action, and taking into account factors including the burdens, complexities, risks and expense of continued litigation, including the determination of damages alleged to have been suffered by the Class, any potential appeals, and the potential risks to recovery in continuing the Action;

H. Defendants similarly have concluded that this Agreement is desirable in order to avoid the time, risk and expense, including the executive time and expense, of continuing with the litigation, including any potential appeals and any other present or future litigation arising out of the facts that gave rise to this Action, and to resolve finally and completely the claims advanced or that could have been advanced against them in this Action;

I. The Plaintiff and Class Counsel confirm that neither this Agreement, including its recitals, terms or provisions, nor the negotiations, discussions, documents or proceedings connected to this Agreement, nor any action taken to carry out this Agreement, shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiff's allegations against the Defendants;

J. The Plaintiff asserts that he is a suitable representative for the Class and will seek to be appointed as the representative plaintiff for the certified Class in this Action for settlement purposes;

K. The Parties intend to, agree to, and hereby do finally resolve this Action and all claims that were or could have been asserted in this Action, subject to the approval of the Court, without any admission of liability or wrongdoing whatsoever by the Defendants;

**NOW THEREFORE** in consideration of the agreements and releases in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, subject to the approval of the Court, that the Action be settled and dismissed on the merits with prejudice as against the Defendants, without costs to the Plaintiff, or to the Class he seeks to represent, or the Defendants, on the following terms and conditions:

## SECTION 2 – DEFINITIONS

For the purposes of this Agreement, including the Recitals and Schedules hereto, the following definitions shall have the meanings indicated below:

- (1) **Action** means the action *Callowhill et al. v. AirBoss of America Corp. et al.* brought in the Ontario Superior Court of Justice under Court File No. CV-22-00004044-00CP (Newmarket).
- (2) **AirBoss** means AirBoss of America Corp.
- (3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff or Class Counsel relating to the approval, implementation and administration of this Agreement, the costs of notices and claims administration of the Settlement, including the costs of publishing and delivering notices and the fees, disbursements and taxes paid to the Claims Administrator, but excluding Class Counsel Fees.
- (4) **Agreement** means this agreement, including the Recitals and Schedules hereto.
- (5) **Authorized Claimant** means any Class Member who has been approved for compensation by the Claims Administrator pursuant to the terms of the Agreement and in accordance with the Plan of Distribution.
- (6) **Claims Administrator** means the third-party firm selected at arm's length by Class Counsel and appointed by the Court to administer the Agreement and the Plan of Distribution, and any partners and employees of such firm.
- (7) **Claim Form** means the electronic form or forms to be approved by the Court which, when completed and submitted in a timely manner to the Claims Administrator, constitutes a Class Member's claim for compensation pursuant to the Agreement.
- (8) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Claims Administrator, which date shall be one hundred and twenty (120) days after the date on which the Phase II Notice (Settlement Approval) is first published.

- (9) **Class** or **Class Members** means, all persons, wherever they may reside or be domiciled, who acquired AirBoss's Securities during the Class Period, other than Excluded Persons and Opt-Out Persons.
- (10) **Class Counsel** means Soheil Karkhanechi of SMK Law P.C. ("SMK Law"), and Paul J. Bates and Mahdi Hussein, c/o SMK Law P.C.
- (11) **Class Counsel Fees** means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel, as approved by the Court.
- (12) **Class Period** means the period from and including November 10, 2021 to the close of trading on September 6, 2022.
- (13) **Common Issues** means the common issues set out in Schedule "A"– Common Issues to this Agreement.
- (14) **Court** means the Ontario Superior Court of Justice.
- (15) **CPA** means the *Class Proceedings Act, 1992*, S.O. 1992. c. 6, as amended.
- (16) **Defendants** means AirBoss and the Individual Defendants.
- (17) **Defendants' Counsel** means Davies Ward Phillips & Vineberg LLP ("Davies") for AirBoss, Schoch, and Ientile, and Crawley MacKewn Brush LLP ("Crawley") for Callahan.
- (18) **Effective Date** means the date on which the Phase II Order (Settlement Approval) becomes a Final Order.
- (19) **Eligible Securities** means Securities purchased or otherwise acquired by a Class Member or Opt-Out Person during the Class Period.
- (20) **Escrow Account** means the interest-bearing trust account with one of the Canadian Schedule 1 banks in Ontario initially under the control of Class Counsel and then transferred to the control of the Claims Administrator within ten (10) days of the Effective Date.

(21) **Escrow Settlement Amount** means the Settlement Amount plus any interest accruing thereon after payment of all Non-Refundable Expenses.

(22) **Excluded Persons** means:

(a) the Defendants;

(b) AirBoss' past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; and

(c) any family member of an Individual Defendant.

(23) **Final Order** means any order of the Court contemplated by this Agreement from which no appeal lies or in respect of which any right of appeal has been exhausted or expired without the initiation of proceedings in respect of that appeal, such as the delivery of a notice of appeal.

(24) **Individual Defendants** means Schoch, Ientile, and Callahan.

(25) **Non-Refundable Expenses** means certain Administration Expenses stipulated in section 4.1(1) of the Agreement to be paid from the Settlement Amount.

(26) **Opt-Out Deadline** means the date sixty (30) days after the date on which the Phase I Notice is first published on the Class Counsel or Claims Administrator website, and this Deadline shall be identified on the Class Counsel or Claims Administrator's website.

(27) **Opt-Out Form** means the document, as approved by the Court, that if properly completed by a Class Member and submitted to Class Counsel or Claims Administrator before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class, the Action, and participation in the Settlement, as set out in section 8.2, and shall generally be in accordance with the form at Schedule "E" – Opt-Out Form.

(28) **Opt-Out Person** means any and all corporate entities or individual investors who would otherwise be Class Members and who submit a valid Opt-Out Form to Class Counsel or Claims Administrator by the Opt-Out Deadline.

(29) ***Opt-Out Period*** means the period up to and including the Opt-Out Deadline during which Opt-Out Forms may be submitted by Class Members who wish to opt-out of the Class, the Action and the Settlement.

(30) ***OSA*** means the *Securities Act*, R.S.O. 1990, c. S.5, as amended.

(31) ***Parties*** means the Plaintiff and the Defendants.

(32) ***Phase I Motion (Certification and Notice)*** means the motion brought by the Plaintiff before the Court for the Phase I Order:

- (i) granting leave to proceed and certification of the Action as against the Defendants, for settlement purposes only; and
- (ii) approving the form and dissemination of the Phase I Notice, including the procedure for submitting an Opt-Out Form.

(33) ***Phase I Notice (Certification and Notice)*** means the forms of notice in English, in long form and in a form for Google/Stockhouse to be provided to the Class advising of the Phase II Hearing and the procedure for submitting an Opt-Out Form, as approved by the Court at the Phase I Motion, which shall generally be in accordance with the forms of notice at Schedule “D”– Phase I Notice.

(34) ***Phase I Order (Certification and Notice)*** means the order that will be issued at the hearing of the Phase I Motion, as approved by the Court on the Phase I Motion (Certification and Notice), which shall generally be in accordance with the order at Schedule “B” – Phase I Order.

(35) ***Phase II Hearing (Settlement Approval)*** means the hearing of the motion to approve the Settlement.

(36) ***Phase II Motion (Settlement Approval)*** means the motion brought by the Plaintiff in the Court for the Phase II Order (Settlement Approval) approving the Settlement and the Phase II Notice (Settlement Approval);

(37) **Phase II Notice (Settlement Approval)** means notices in English to the Class of the Phase II Order (Settlement Approval), as approved by the Court on the Phase II Motion (Settlement Approval), which shall generally be in accordance with the notice at Schedule “F” – Phase II Notice.

(38) **Phase II Order (Settlement Approval)** means the order made by the Court approving the **Settlement**, as approved by the Court on the Phase II Motion (Settlement Approval), which shall generally in the form of the order at Schedule “C”– Phase II Order **Plaintiff** means Jonathan A. Callowhill.

(39) **Plan of Distribution** means the plan, as approved by the Court, which shall generally be in accordance with the plan at Schedule “H” – Plan of Distribution.

(40) **Plan of Notice** means the plan for disseminating the Phase I Notice (Certification and Notice) and Phase II Notice (Settlement Approval) to the Class, in a form satisfactory to the Plaintiff and the Defendants, all acting reasonably, and as approved by the Court, which shall generally be in accordance with the plan attached as Schedule “I” – Notice Plan.

(41) **Released Claims** (or **Released Claim** in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, derivative or otherwise in nature, whether personal or subrogated, including assigned claims, existing now or arising in the future, in respect of damages whenever incurred, and liabilities of any nature whatsoever, whether known or unknown, asserted or unasserted, regardless of the legal theory, arising from, related to, or based on any allegations, transactions, facts, matters, occurrences, representations or omissions that were or could have been asserted in the Action including, without limitation, all claims relating in any way to the purchase, acquisition, sale, pricing, marketing or distribution of the Eligible Securities, to the misrepresentations alleged by the Plaintiff in the Action, or to any conduct alleged, or that could have been alleged, in the Action, including claims for damages, compensation, interest, costs, expenses, administration expenses (including Administration Expenses), penalties, Class Counsel Fees and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees or any one or more of the Releasees



without limitation and any such claims that have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Eligible Securities during the Class Period.

(42) **Releasees** means the Defendants, their insurers and their respective past and present affiliates, subsidiaries, and all of their respective past and present directors, officers, partners, trustees, employees, servants, representatives, successors, assigns and their heirs, executors, administrators, successors and assigns, as the case may be, as well as their legal counsel in the Action.

(43) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff, the Class Members, including any person having a legal and/or beneficial interest in the Eligible Securities purchased or acquired by these Class Members, and their respective past and present directors, officers, employees, agents, trustees, servants, consultants, underwriters, advisors, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be.

(44) **Schedules** mean the schedules to this Agreement.

(45) **Securities** means the securities of AirBoss, which shall be interpreted to include without limitation the definition of “security” in the *OSA*.

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

(47) **Settlement Amount** means C\$9,250,000, inclusive of the Administration Expenses, Class Counsel Fees, and all other costs or expenses related to the Action or the Settlement.

### **SECTION 3 – APPROVAL AND NOTICE PROCESS**

#### **3.1 Parties’ Best Efforts to Implement Agreement; Steps Held in Abeyance**

(1) The Parties shall use their best efforts to implement the Agreement and to secure the prompt, complete and final dismissal of the Action with prejudice and without costs.

(2) Until the Phase II Order (Settlement Approval) becomes a Final Order or the termination of this Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Action, other than the motions provided for in this Agreement and such other matters required to implement the terms of this Agreement.

### **3.2 Phase I Motion (Certification and Notice) and Phase I Notice (Certification and Notice)**

(1) The Plaintiff shall bring the Phase I Motion (Certification and Notice) as soon as reasonably possible following the execution of the Agreement. The Defendants shall consent to the Phase I Order (Certification and Notice) provided that it is consistent with the terms of this Agreement, and for the purposes of Settlement only. The Phase I Order shall be substantially in the form attached as Schedule “B” – Phase I Order to this Agreement.

(2) Following the determination of the Phase I Motion (Certification and Notice), Class Counsel or the Claims Administrator shall cause the Phase I Notice (Certification and Notice) to be published and disseminated in accordance with the directions of the Court in the Phase I Order (Certification and Notice). All expenses for publishing the Phase I Order (Certification and Notice) shall be Non-Refundable Expenses to be paid from the Settlement Amount as provided in section 4.1(1).

### **3.3 Phase II Motion (Settlement Approval) and Phase II Notice (Settlement Approval)**

(1) The Plaintiff shall thereafter bring the Phase II Motion (Settlement Approval) before the Court in accordance with its directions in the Phase I Order (Certification and Notice). The Defendants shall consent to the Phase II Order (Settlement Approval) sought in the Phase II Motion (Settlement Approval) except as to Class Counsel Fees, on which the Defendants shall take no position, provided that it is consistent with the terms of this Agreement, and for the purposes of Settlement only. The Phase II Order shall be substantially in the form attached as [Phase II order] to this Agreement.

(2) Upon the Phase II Order (Settlement Approval) becoming a Final Order, Class Counsel or the Claims Administrator, as the case may be, shall cause the Phase II Notice (Settlement Approval) to be published and disseminated in accordance with the directions of the Court in the

Phase II Order (Settlement Approval). Any expenses for publishing the Phase II Notice (Settlement Approval) shall be Non-Refundable Expenses to be paid from the Settlement Amount as provided in section 4.1(1).

(3) The Plaintiff and the Defendants agree that the only common issues that the Plaintiff will seek to certify as against the Defendants are the Common Issues and the only class that the Plaintiff will assert is the Class.

### **3.4 Certification and Leave to Proceed Without Prejudice**

(1) The Parties agree that the granting of leave to proceed and certification of the Action as a class proceeding in accordance with sections 3.2 through 3.3 hereof is for the sole purpose of effecting the Settlement. If this Agreement is terminated as provided herein, the Phase I Order (Certification and Notice) shall be vacated or set aside to the extent of that Order granting leave to proceed and certifying this Action as a class proceeding for the purposes of implementing this Agreement, without prejudice to any position that any of the Parties may later take on any issue in the Action, including in subsequent leave to proceed and certification motions. In particular, the fact of the Defendants' consent to leave to proceed and certification for settlement purposes shall not be referenced in any way in the further prosecution of the Action, nor shall such consent be deemed to be an admission by the Defendants, or any of them, that the Plaintiff has met any of the requisite criteria for granting leave to proceed or certification of the Action as a class proceeding.

### **3.5 Attornment**

(1) The Plaintiff, individually and on behalf of all Class Members, hereby attorns to the jurisdiction of the Court in the Action, regardless of their province or territory or country of residence or where he/she/it purchased their Securities during the Class Period.

### **3.6 Notice of Termination**

(1) If this Agreement is terminated after the Phase I Notice (Certification and Notice) has been published and disseminated, a notice of termination will be given to the Class. In such case, Class Counsel or the Claims Administrator will cause the notice of termination, in a form approved by

the Court, to be published and disseminated as the Court directs. Any third-party costs for publishing a notice of termination shall be paid as directed by the Court.

### **3.7 Report to the Court**

(1) After publication and dissemination of the Phase I Notice (Certification and Notice) and the Phase II Notice (Settlement Approval) as required by this section, Class Counsel shall file with the Court an affidavit confirming publication and dissemination in accordance with the operative Court Orders.

## **SECTION 4 – NON-REFUNDABLE EXPENSES**

### **4.1 Payments**

(1) Any expenses reasonably incurred for the following purposes shall be Non-Refundable Expenses, and shall be payable from the Settlement Amount, as and when incurred:

- (a) the costs incurred in connection with establishing and operating the Escrow Account;
- (b) the costs incurred in publishing and distributing the Phase I Notice (Certification and Notice), including the associated mailing expenses as may be applicable;
- (c) the costs incurred in publishing and distributing the Phase II Notice (Settlement Approval), including the associated mailing expenses as may be applicable; and
- (d) if necessary, the costs incurred in publishing notice to the Class that the Agreement has been terminated;

(2) if the Courts appoints the Claims Administrator and thereafter the Agreement is terminated, the costs reasonably incurred by the Claims Administrator for performing the services required to prepare to implement the Settlement, including any mailing expenses, to a maximum of \$50,000, whether or not a claim has been filed or reviewed, as approved by the Courts.

(3) For greater certainty, Class Counsel Fees shall not constitute Non-Refundable Expenses.

(4) In the event that this Agreement is terminated, Class Counsel and Claims Administrator shall account to the Courts and the Parties for all payments it makes from the Escrow Account by no later than thirty (30) days after such termination.

#### **4.2 Disputes Concerning Non-Refundable Expenses**

(1) Any dispute concerning the entitlement to or quantum of Non-Refundable Expenses shall be dealt with by a motion to the Courts on notice to the Parties.

### **SECTION 5 – THE SETTLEMENT AMOUNT**

#### **5.1 Payment of Settlement Amount**

(1) Within thirty (30) days following the determination of the Phase I Motion, the Defendants shall cause the Settlement Amount to be paid to Class Counsel for deposit into the Escrow Account, in full satisfaction of all of the Released Claims against the Releasees (inclusive of all amounts, including interest and costs). The Settlement Amount shall be held for the benefit of the Class Members, subject to such deductions as may be made in accordance with the terms of this Agreement or an order of the Court made on notice to the Parties.

(2) Neither the Defendants nor the Defendants' insurers or reinsurers shall have any obligation to pay any amount to the Plaintiff, the Class Members, the Claims Administrator, or Class Counsel other than the Settlement Amount with respect to this Agreement or the Action for any reason whatsoever, including any amount for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Action, including as described in sections 3.2(2) and 3.3(2), the Released Claims, the Settlement and Administration Expenses, if any.

#### **5.2 Escrow Account**

(1) Class Counsel, and then the Claims Administrator after the Settlement becomes final, shall hold the Escrow Settlement Amount in the Escrow Account and shall not pay out any amount from the Escrow Account, except in accordance with the terms of this Agreement, or pursuant to an order of the Courts made on notice to the Parties.

(2) The Claims Administrator shall provide an accounting to the Court for all payments made from the Escrow Account.

### **5.3 Taxes on Interest**

(1) Except as expressly provided in this Agreement, any interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the Escrow Account.

(2) Except as provided in section 5.3(3), all taxes payable on any interest which accrues in relation to the Settlement Amount shall be the responsibility of the Class and shall be paid by Class Counsel or the Claims Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Claims administrator considers appropriate.

(3) The Defendants shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Agreement is terminated, in which case the taxes payable on the interest portion of the returned amount shall be the responsibility of AirBoss or its insurers or reinsurers, as the case may be.

(4) Class Counsel and the Claims Administrator shall be responsible for fulfilling all applicable tax reporting and payment requirements arising from the Settlement Amount in the Escrow Account, including any obligation to report taxable income and make tax payments.

## **SECTION 6 – DISTRIBUTION OF THE SETTLEMENT AMOUNT**

### **6.1 Distribution of the Settlement Amount**

(1) In conjunction with the Phase II Motion (Settlement Approval), Class Counsel will seek an order from the Court as to the distribution of the Escrow Settlement Amount in accordance with the Plan of Distribution. Such distribution shall be net of any Court-approved deductions including Class Counsel Fees and Administration Expenses.

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

## **SECTION 7 – EFFECT OF SETTLEMENT**

### **7.1 No Admission of Liability**

(1) The Plaintiff and Defendants expressly reserve all of their rights if this Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs and the Defendants further agree that, whether or not this Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be deemed, construed, or interpreted to be an admission of any fault, omission, liability or wrongdoing by any of the Defendants, including without limitation in connection with any statement (oral or written), release, document or financial report, or of the truth of any of the claims or allegations contained in the Action, and in fact the Defendants continue to vigorously dispute, deny and contest the allegations made in the Action.

### **7.2 Agreement Not Evidence**

(1) Whether or not the Agreement is terminated, not approved, or otherwise fails to take effect for any reason, neither the Agreement, nor anything contained herein, nor any of the negotiations, documents, discussions, or proceedings associated with the Agreement, nor any related document, nor any other action taken to carry out the Agreement, shall be referred to, offered as evidence or received in evidence in any pending or future civil or other action or proceeding.

(2) Notwithstanding section 7.1(1), the Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

### **7.3 Restrictions on Further Litigation**

(1) Class Counsel, and anyone currently or hereafter employed by, or a partner with, Class Counsel (including without limitation Bates Barristers and MMH Law) agree not to, directly or indirectly, participate or be involved in, or in any way assist with respect to any claim or action commenced by any person, including but not limited to any putative class member who opts-out of the Settlement, in relation to any claim they have or may in the future assert, which relates to or arises from the Released Claims.

(2) Class Counsel is prohibited from divulging to anyone for any purpose any information obtained in the course of the negotiation, preparation or execution of this Agreement, without the prior written consent of the Defendants or unless ordered to do so by a court.

## **SECTION 8 – OPTING OUT**

### **8.1 Awareness of any Potential Opt-Outs**

(1) The Plaintiff and Class Counsel represent and warrant that:

- (a) they are unaware of any Class Member who has expressed an intention to opt-out of the Class;
- (b) they are unaware of any Class Member who has expressed an intention to object to this Settlement; and
- (c) they will not encourage or solicit any Class Member to opt-out of the Class or object to this Settlement.

### **8.2 Opt-Out Procedure**

(1) Each Class Member who wishes to exclude him-, her-, them- or itself from the Class must submit a properly completed Opt-Out Form along with all required supporting documents to Class Counsel or Claims Administrator on or before the Opt-Out Deadline. An Opt-Out form shall consist of:



- (a) a statement of intention to opt out of the Action, signed by the Class Member or a person authorized to bind the Class Member;
- (b) a listing of all purchases and sales of Eligible Securities during the Class Period;
- (c) the total number of Eligible Securities held at the end of the Class Period;
- (d) supporting documents to evidence such transactions, in the form of trade confirmations, brokerage statements, or other transaction records or suitable alternative documentation as may be agreed between the Class Member and Class Counsel or Claims Administrator; and
- (e) contact information for the Class Member, including name, address, telephone number and email address.

(2) In order to remedy any deficiency in the completion of an Opt-Out Form, Class Counsel or Claims Administrator may require and request that additional information be submitted by a Class Member who submits an Opt-Out Form.

(3) If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to Class Counsel or Claims Administrator, or fails to remedy any deficiency, by the Opt-Out Deadline, the Class Member shall not have opted out of the Action, subject to any order of the Court to the contrary, and will in all other respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein.

(4) The Opt-Out Deadline will not be extended unless the Court orders otherwise. Opt-Out Persons will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt-out shall be bound by the Settlement and the terms of this Agreement.

## **SECTION 9 – TERMINATION OF THE AGREEMENT**

### **9.1 General**

(1) The Agreement shall, without notice, be automatically terminated if the Settlement is not approved by the Court or if the Phase II Order (Settlement Approval) is reversed on appeal and the reversal becomes final.

(2) The Defendants may terminate this Agreement, on notice to the Plaintiff and the Claims Administrator, in the event that:

(a) the Court declines to grant the Phase I Order (Certification and Notice) and such order becomes a Final Order;

(b) the Court grants the Phase I Order (Certification and Notice) but such order is reversed on appeal and the reversal order becomes a Final Order; or the Phase II Order (Settlement Approval) does not finally dismiss the Action against all Defendants with prejudice and without costs.

(3) The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate this Agreement.

(4) In the event the Agreement is terminated in accordance with the terms of this section:

(a) the Plaintiff and the Defendants will be restored to their respective positions in the Action prior to the execution of the Agreement;

(b) the Agreement will have no further force and effect and no effect on the rights of the Plaintiff or the Defendants except as specifically provided for herein;

(c) the Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants;

(d) the Plaintiff and the Defendants shall consent to an Order vacating or setting aside the Phase I Order (Certification and Notice) to the extent of the order granting leave

to proceed and certifying this Action as a class proceeding for the purposes of implementing this Agreement, and such order shall include a declaration that:

- (i) the prior consent granting of leave to proceed and certification of this Action for settlement purposes shall not be deemed to be an admission by the Defendants that the Action met any of the criteria for granting leave to proceed or certification as a class proceeding; and
  - (ii) no Party to this Action and no other person may rely on upon the fact of the prior consent to granting of leave to proceed and certification for any purpose whatsoever; and
- (e) the Escrow Settlement Amount will be returned to the Defendants, in accordance with section 9.2(2)(e).

(5) Notwithstanding the provisions of section 9.1(4)(b), if the Agreement is terminated, the provisions of this section and Section 2, 3.4, 3.6, 3.7, 4.1(2), 4.1(3), 5.3(3), Section 7, and Section 15 and the recitals and Schedules applicable thereto shall survive termination and shall continue in full force and effect.

## **9.2 Distribution of Monies in the Escrow Account Following Termination**

(1) The Claims Administrator shall account to the Court and the Parties for the amounts maintained in and disbursed from the Escrow Account. If the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

(2) If the Agreement is terminated, the Defendant shall, within thirty (30) days after termination, apply to the Court, on notice to the Plaintiffs and the Claims Administrator, for an order:

- (a) declaring this Agreement null and void and of no force or effect except for the provisions of those sections listed in section 9.1(5);
- (b) requiring the notice of termination to be sent out to the Class Members and, if so, the form and method of disseminating such a notice;

- (c) requesting an order setting aside, *nunc pro tunc*, all prior orders or judgments entered by the Court in accordance with the terms of this Agreement;
  - (d) authorizing the payment of all costs incurred by the Claims Administrator or Class Counsel reasonably and in accordance with this Agreement for performing the services required to implement the Settlement; and
  - (e) authorizing the payment of the Escrow Settlement Amount to AirBoss's insurers, in such manner as AirBoss shall direct.
- (3) Subject to section 9.4, the Parties shall consent to the orders sought in any motion made pursuant to section 9.2(2).

### **9.3 Disputes Relating to Termination**

- (1) If there are any disputes about the termination of the Agreement, the Court shall determine any dispute by motion on notice to all Parties.

### **9.4 No Right to Terminate**

- (1) For greater certainty, no dispute or disagreement among the Plaintiff and/or members of the Class or any of them about the proposed or ordered distribution of the Settlement Amount or the Escrow Settlement Amount shall give rise to a right to terminate this Agreement.

## **SECTION 10 – DETERMINATION THAT THE SETTLEMENT IS FINAL**

### **10.1 The Effective Date**

- (1) The Settlement shall be considered final on the Effective Date.

### **10.2 Transfer of the Escrow Account**

- (1) Within ten (10) days after the Effective Date, Class Counsel shall transfer the Escrow Account to the Claims Administrator.

### **10.3 Dismissal of Action**

(1) On the Effective Date, the Action shall be dismissed without costs and with prejudice.

### **10.4 Media**

(1) The Plaintiff shall be entitled to issue a single press release after the Effective Date in the form attached as Schedule “G” – Phase II Press Release. No notice of the fact of the Settlement, the terms of the Settlement or the Settlement Amount, shall otherwise be communicated by the Plaintiff or Class Counsel until that date other than in Court filings or as authorized by the Court.

## **SECTION 11 – RELEASES AND JURISDICTION OF THE COURT**

### **11.1 Release of Releasees**

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

### **11.2 No Further Claims**

(1) Upon the Effective Date, the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim or any matter related thereto.

(2) The Releasers and Class Counsel acknowledge that they may subsequently discover facts in addition to, or different from those they now know, but nonetheless agree that section 11.1(1) applies regardless of the subsequent discovery of facts different from those they are aware of on the Effective Date. By means of the Settlement, the Releasers waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the release and

discharge of the unknown claims for any reason whatsoever and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Releasers agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

(3) For greater clarity, nothing herein shall be taken as, or shall constitute, a release by any insured or insurer of rights he, she, they, or it may have or choose to assert under any applicable policies of insurance.

## **SECTION 12 – ADMINISTRATION**

### **12.1 Appointment of the Claims Administrator**

(1) The Court will appoint the Claims Administrator to serve until further order of the Court, to implement the Agreement and the Plan of Distribution, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Distribution.

(2) If the Agreement is terminated, the Claims Administrator's fees, disbursements and taxes will be paid as set out in section 9.2(2)(d).

(3) If the Agreement is not terminated, the Court will approve and fix the Claims Administrator's compensation on motion by the Plaintiff.

### **12.2 Claims Process**

(1) In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to the Claims Administrator, in accordance with the provisions of the Plan of Distribution, on or before the Claims Bar Deadline, and any Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Distribution unless the Court orders otherwise. Class Members shall be bound by the terms of this Agreement regardless of whether they submit a completed Claim Form or receive payment from the Settlement Amount.

### **12.3 Conclusion of the Administration**

(1) Upon the conclusion of the administration, or at such other time(s) as the Court directs, on motion by Class Counsel, on notice to the Defendants, the Claims Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed including a full accounting of its own invoices and obtain an order from the Court discharging it as Claims Administrator.

## **SECTION 13 – THE PLAN OF DISTRIBUTION**

### **13.1 The Plan of Distribution**

(1) At the hearing of the motion for the Phase II Order (Settlement Approval), the Plaintiff shall seek the Court's approval of the Plan of Distribution. The approval of the Plan of Distribution is not a condition of the Settlement and the Parties agree that its approval shall be considered separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement provided for herein.

(2) The Defendants shall have no obligation to consent to, but shall not oppose, the Court's approval of the Plan of Distribution.

(3) Unless directed to do so by the Court, the Defendants will not make submissions to the Court about the Plan of Distribution.

## **SECTION 14 – THE FEE AGREEMENT AND CLASS COUNSEL FEES**

### **14.1 Motion for Approval of Class Counsel Fees**

(1) At the Phase II Hearing (Settlement Approval), Class Counsel may seek the approval of Class Counsel Fees to be paid from the Escrow Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for additional Class Counsel Fees incurred thereafter as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Escrow Settlement Amount.

(2) The Defendants acknowledge that they will be served with the motion materials for the approval of Class Counsel Fees and the Defendants and Defendants' Counsel are entitled to attend any motion for approval of Class Counsel Fees, but they will not take any position with respect to Class Counsel Fees and, except as requested by the Court, will not make any submissions to the Court concerning Class Counsel Fees.

(3) The procedure for and the allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Escrow Settlement Amount are not part of the Settlement provided for herein and the Parties agree that they shall be considered by the Court separately from its consideration of the fairness, reasonableness and adequacy of the Settlement provided for herein.

(4) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the finality of the Phase II Order (Settlement Approval) and the Settlement of the Action as provided herein.

#### **14.2 Payment of Class Counsel Fees**

(1) Class Counsel Fees and Administration Expenses may only be paid out of the Escrow Settlement Amount, and shall be paid only after the Effective Date.

(2) The Defendants shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiff's, the Claim Administrator's, or Class Members' respective lawyers, experts, advisors, agents, or representatives.

### **SECTION 15 – MISCELLANEOUS**

#### **15.1 Motions for Directions**

(1) Any one or more of the Parties, Class Counsel, or the Claims Administrator may apply to the Court for directions in respect of any matter in relation to the Agreement and the distribution of the Settlement Amount.



(2) All motions contemplated by the Agreement shall be on notice to the Parties. For certainty, notice need not be provided to Class Members in the event of a motion unless so required by the Court.

### **15.2 Defendants Have No Responsibility or Liability for Administration**

(1) Except for the obligation to pay the Settlement Amount, the Defendants shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of the Agreement, including, without limitation, the distribution of the Settlement Amount and the processing of claims by the Claims Administrator.

### **15.3 Headings, etc.**

(1) In the Agreement:

- (a) the division of the Agreement into sections and the insertion of section headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;
- (b) the terms “the Agreement”, “herein”, “hereto” and similar expressions refer to the Agreement and not to any particular section or other portion of the Agreement;
- (c) all dollar amounts referred to are in lawful money of Canada; and
- (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

(2) In the computation of time in the Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they 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.

#### **15.4 Governing Law**

(1) The Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties agree that the Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Agreement.

#### **15.5 Severability**

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

#### **15.6 Entire Agreement**

(1) The Agreement, including the Schedules, 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 the Agreement, unless expressly incorporated herein.

(2) The Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

(3) The Agreement and the underlying Settlement have been the subject of arm's-length negotiations and many discussions among the Parties. Each of the undersigned 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 drafters of the Agreement shall have no force or effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Agreement.

### **15.7 Binding Effect**

(1) If the Settlement is approved by the Court and becomes final, the Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendants, the Releasees, the Releasors and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

### **15.8 Survival**

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

### **15.9 Recitals**

(1) The recitals to the Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.

### **15.10 Acknowledgements**

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) he, she, or its representative has the authority to bind the Party with respect to the matters set forth herein and has read the Agreement;
  - (b) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and
  - (c) he, she, or its representative fully understands each term of the Agreement and its effect.
  - (d) he, she, or it agrees to use best efforts to satisfy all conditions precedent to the Effective Date in accordance with the terms of this Agreement.

### **15.11 Authorized Signatures**

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the Party for whom he or she is signing.

### **15.12 Counterparts**

(1) The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Agreement, and a signature delivered by email or other electronic means, shall be deemed an original signature for purposes of executing the Agreement.

### **15.13 Confidentiality and Communications**

(1) In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about this Agreement, the Plaintiff and Class Counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Class.

(2) Without limiting the generality of the foregoing, the Parties specifically agree that the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process.

(3) The Parties' obligations under this section shall not prevent them, or any of them, from: (i) complying with any order of the Court; (ii) complying with this Agreement; (iii) dealing with their insurer; (iv) complying with applicable law, including applicable securities or tax legislation; (v) communicating with the Courts for the purposes of any proceedings as between the Releasees.

### **15.14 Notice**

(1) Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with the Agreement, or any other report or document to be given by any of the Parties to any of the other Parties, shall be in writing and delivered personally, by e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

**For the Plaintiff and Class Counsel, to:**

Soheil Karkhanechi

SMK Law P.C.  
99 Yorkville Ave., Suite 200  
Toronto, ON M5R 1C1

Telephone: 416.551.7346

Email: [soheil@smklawyers.ca](mailto:soheil@smklawyers.ca)

**For AirBoss of America Corp., Schoch, Ientile, to:**

Matthew Milne-Smith

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7

Telephone: 416.863.5595

Email: [MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)

**For Callahan, to:**

Robert Brush

Crawley MacKewn Brush LLP  
179 John St #800  
Toronto, ON M5T 1X4

Telephone: 416.217.0822

Email: [rbrush@cmblaw.ca](mailto:rbrush@cmblaw.ca)


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

**Jonathan A. Callowhill**

*Jonathan Callowhill*

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**AirBoss of America Corp.**

By: 

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Name: Chris Figel

Title: EVP & General Counsel

**P. Gren Schoch**

*P. Gren Schoch*

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**Frank Ientile**



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**Patrick Callahan**

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**Jonathan A. Callowhill**

**AirBoss of America Corp.**

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By: \_\_\_\_\_

Name:

Title:

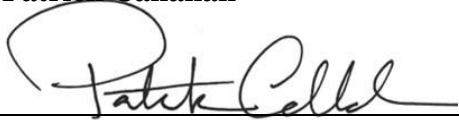
**P. Gren Schoch**

**Frank Ientile**

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**Patrick Callahan**



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## **SCHEDULE B**

### **PHASE I NOTICE**

#### **PHASE I LONG FORM NOTICE**

##### **PROPOSED SETTLEMENT OF AIRBOSS OF AMERICA CORP CLASS ACTION**

### **DID YOU ACQUIRE AIRBOSS OF AMERICA CORP. SECURITIES BETWEEN NOVEMBER 10, 2021 AND SEPTEMBER 6, 2022?**

**A proposed settlement may affect you. Please read this notice carefully.**

A proposed class action was commenced against AirBoss of America Corp., P. Gren Schoch, Frank Ientile, and Patrick Callahan on behalf of all persons who acquired securities of AirBoss of America Corp. between November 10, 2021 and September 6, 2022.

The parties have reached a settlement of the class action which is subject to approval by the Court. This notice provides information about this settlement and related matters and how to opt out of the class action.

Your legal rights are affected even if you do nothing. Please read this notice carefully.

#### ***YOUR LEGAL RIGHTS AND OPTIONS IN THIS PROPOSED SETTLEMENT***

**OPT OUT:** Submit an opt out form to exclude yourself from the class action and the settlement. You will be unable to participate in the proposed settlement if you opt out.

**OBJECT:** Remain in the class action but write to the court to express your views if you do not like the proposed settlement.

**GO TO A HEARING:** Ask to speak by Zoom Videoconference in the Ontario Superior Court of Justice about the proposed settlement on ●.

**DO NOTHING:** Remain in the class action, do not object to or opt out of the proposed settlement, and receive benefits in the settlement if entitled.

These rights and options and the deadlines to exercise them are explained in this notice.



## What This Notice Contains

### **BASIC INFORMATION**

1. Why did I get this notice?
2. What is a class action lawsuit?
3. What does this lawsuit complain about?
4. Why is there a proposed settlement?

### **WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?**

5. Who is included in the proposed settlement?
6. What if I am not sure whether I am included in the proposed settlement?
7. How do I exclude myself from the class action and the proposed settlement?

### **PROPOSED SETTLEMENT BENEFITS?**

8. What does the proposed settlement provide?
9. How will the lawyers be paid?
10. When will I receive my payment?
11. What am I giving up in the class action and the proposed settlement?

### **HOW TO RECEIVE A PAYMENT?**

12. How can I receive a payment?
13. How will payments be calculated?
14. What if my claim is denied?

### **THE LAWYERS REPRESENTING YOU**

15. Who are the lawyers for the plaintiff?

### **SUPPORTING OR OBJECTING TO THE PROPOSED SETTLEMENT**

16. How do I tell the court if I do not like the proposed settlement?

## **THE APPROVAL HEARING**

17. When and where will the court decide whether to approve the proposed settlement?
18. Do I have to attend the hearing?
19. May I speak at the hearing?
20. What if I do nothing?

## **GETTING MORE INFORMATION**

21. How do I get more information?

## **BASIC INFORMATION**

### **Why did I get this notice?**

The Ontario Superior Court of Justice authorized this notice to let you know about the certification of the class action against AirBoss of America Corp., the settlement, and ancillary matters, and about all of your options before the court decides whether to give final approval to the settlement. This notice explains the class action lawsuit, the proposed settlement, and your legal rights.

### **What is a class action lawsuit?**

In a class action, one or more people called the “Representative Plaintiff(s)” sue on behalf of people who have similar claims. All of these people are collectively called the “Class” or “Class Members.” The court resolves the issues for everyone affected, except for those who exclude themselves from the lawsuit by opting out (explained in question 7 below).

### **What does this lawsuit complain about?**

This lawsuit complains that AirBoss of America Corp. made misrepresentations in its public disclosure, and that when these misrepresentations were publicly corrected, persons who acquired securities of AirBoss of America Corp. between November 10, 2021 and September 6, 2022 suffered damages. None of these claims have been proven in court. The Defendants do not admit any wrongdoing or liability.

### **Why is there a settlement?**

The Representative Plaintiff and AirBoss of America Corp., P. Gren Schoch, Frank Ientile, and Patrick Callahan have agreed to a settlement agreement. By agreeing to the settlement, the parties avoid the costs and uncertainty and delay of proceeding to a trial, and Class Members receive the benefits described in this notice and in the agreement. It also means that the Class Members will not need to testify in court. The Representative Plaintiff and his lawyers think the proposed settlement is in the best interests of all Class Members.

## **WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?**

### **Who is included in the settlement?**

The settlement includes:

All persons who acquired AirBoss of America Corp. securities between November 10, 2021 and September 6, 2022 (the “Class Members”)

If the settlement is approved, all Class Members, except those who validly opt out of the class action, will benefit from and be bound by the settlement and will be covered by the releases in the proposed settlement. If you do not wish to be included in the class action and the settlement, you can opt out of the class action. More information about opting out of the class action is set out below.

### **What if I am not sure whether I am included in the class action and the settlement?**

If you are not sure whether you are included in the settlement, you may email [Administrator email].

### **How do I exclude myself from the class action and the proposed settlement?**

You can exclude yourself from the class action and from the settlement by “opting out”. Opting out means you will not be bound by any order made in this class action and will not be eligible for compensation from the settlement. You will be able to hire and pay for your own lawyer and commence your own lawsuit. If you want to commence your own lawsuit, you must Opt Out. If you Opt Out, you must abide by all applicable limitation periods and should consult a lawyer. You can opt out of the class action by filling out an Opt Out Form and providing all required information and documentation. The deadline for opting out of this class action is ●. A copy of the Opt Out Form is available here: ●.

## **PROPOSED SETTLEMENT BENEFITS**

### **What does the proposed settlement provide?**

If approved, the settlement provides compensation of CAD\$9.25 million. More details are in a document called the Settlement Agreement, which is available at [Administrator website].

### **How will the lawyers be paid?**

Class counsel is seeking court approval to be paid legal fees of 33.3% of the settlement fund plus disbursements made during the lawsuit, plus applicable tax. These fees will not be paid until the Ontario Superior Court of Justice declares that the proposed legal fees are fair and reasonable. Class counsel will also ask for deductions to be made from the settlement fund for a small separate payment (an “honorarium”) to the Representative Plaintiff.

## **When will I receive my payment?**

If the settlement is approved, a claims administrator approved by the court will be selected to process Class Member claims to a share of the settlement fund, after deductions approved by the Court. Class Members will be asked to submit an electronic claim form and other documentation confirming their acquisition of AirBoss of America Corp. securities, as discussed below. Once the deadline for claim form submissions has passed, the claims administrator will calculate each Class Member's entitlement on a pro rata basis up to the value of their calculated loss, and make payment. If approved, each Class Member's entitlement will be calculated in accordance with a plan of distribution. The proposed plan of distribution is available here: [Administrator website]

## **What am I giving up in the class action and the settlement?**

If you do not opt out of the class action, you will give up your right to sue AirBoss of America Corp., P. Gren Schoch, Frank Ientile, and Patrick Callahan for alleged misrepresentations in AirBoss of America Corp's public disclosure between November 10, 2021 and September 6, 2022. If the proposed settlement is approved, you will be "releasing" AirBoss of America Corp., P. Gren Schoch, Frank Ientile, and Patrick Callahan, which means you cannot sue them for anything at all related to misrepresentations in their public disclosure during this time. The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions, you can talk to the law firms listed below or you can talk to your own lawyer if you have questions about what this means.

## **HOW TO RECEIVE A PAYMENT**

### **How can I receive a payment?**

You can only make a claim under the proposed settlement if the proposed settlement is approved by the Ontario Superior Court of Justice. To ask for a payment you will need to complete and submit the required Claim Form and provide supporting documentation. All claims will be assessed by the claims administrator. Claim Forms are available at [Administrator website].

### **How will payments be calculated?**

The claims administrator will review your Claim Form and determine if you qualify for a payment. If you do, the claims administrator will determine the amount of your payment based on the process described above.

### **What if my claim is denied?**

If your claim is denied, you will receive a notice of the decision.

## **THE LAWYERS REPRESENTING YOU**

### **Who are the lawyers for the Plaintiff?**

The law firm representing the Plaintiff is SMK Law P.C.

If you want to be represented by or receive advice from another lawyer, you may hire one to appear in court for you at your own expense.

## **SUPPORTING OR OBJECTING TO THE PROPOSED SETTLEMENT**

### **How do I tell the court if I like, or do not like, the proposed settlement?**

You can participate in the hearing to voice your support for the proposed settlement, or, you can object to the proposed settlement if you do not like some part of it. The Court will consider your views. If you object to the proposed settlement, you must complete an objection form and email it to [Administrator email] by ●.

The objection form must include the following information: (a) your name, address, and telephone number; (b) your trading records showing that you purchased AirBoss of America Corp. shares between November 10, 2021 and September 6, 2022; (c) the reason you object to the proposed settlement or ancillary matters, along with any supporting materials; and (d) your signature. If you file a Notice of Objection, you can also attend at the settlement approval hearing before the Ontario Superior Court of Justice to make an oral objection. The settlement approval hearing will be conducted by Zoom videoconference. The Zoom videoconference coordinates will be posted here: [Administrator website].

## **THE APPROVAL HEARING**

### **When and where will the Court decide whether to approve the settlement?**

The Ontario Superior Court of Justice will hold an approval hearing by Zoom Videoconference on ●. The hearing date and coordinates may be moved without additional notice, so it is a good idea to check [Administrator website] in advance if you are planning to attend. At the hearing, the Ontario Superior Court of Justice will consider whether the proposed settlement, class counsel legal fees and disbursements, the plaintiff's proposed honorarium of \$15,000, and the plan of distribution are fair, reasonable, and in the best interests of the Class. If there are objections, the Ontario Superior Court of Justice will consider them and will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. It is not known how long these decisions will take.

### **Do I have to attend the hearing?**

No. Class counsel will answer questions the Court may have. However, you or your own lawyer are welcome to attend at your own expense to participate in the hearing – either to show your support for, or to object to, the settlement. If you send an objection, you do not have to come to the Court to

talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also have your own lawyer attend, but it is not necessary.

**May I speak at the Approval Hearing?**

Yes, you may ask the Court for permission to speak at the approval hearing. To do so you must submit an objection form and indicate that you wish to speak at an approval hearing.

**What if I do nothing?**

If you do nothing, you are choosing not to object to the settlement. The approval hearing will proceed and the Court will consider whether the settlement is fair, reasonable, and in the best interests of the Class without your views on the matter.

**GETTING MORE INFORMATION**

**How do I get more information?**

More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [Administrator website]. You can send your questions to [Administrator email].

DO NOT send any questions to or otherwise contact the Court directly.

## **PHASE I GOOGLE/STOCKHOUSE NOTICE**

AirBoss of America Corp. Class Action Certification and Settlement [hyperlinked to Administrator website]

[Administrator email]

Did you purchase securities of AirBoss of America Corp. between November 10, 2021 and September 6, 2022? If so, the settlement of a class action lawsuit brought on behalf of such investors may affect your rights. Please click [Administrator here] to learn more.

[This notice will be amended as necessary to accord with Google/Stockhouse requirements]

## **SCHEDULE “C”**

### **NOTICE PLAN**

#### **The Phase I Notice shall be disseminated as follows:**

- (a) Class Counsel or Claims Administrator shall issue a press release containing the content of the Phase I Notice over Canada Newswire;
- (b) Class Counsel or Claims Administrator shall post the Phase I Notice in English and French on their website;
- (c) Class Counsel or Claims Administrator shall e-mail the Phase I Notice to Class Members for whom they have current e-mail addresses; and
- (d) Class Counsel or Claims Administrator shall mail the Phase I Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.

#### **The Phase II Notice shall be disseminated as follows:**

- (a) Class Counsel or Claims Administrator shall issue a press release containing the content of the Phase II Notice over Canada Newswire;
- (b) Class Counsel or Claims Administrator shall provide the Class Counsel or Claims Administrator to all brokerage firms in its proprietary database;
- (c) Class Counsel or Claims Administrator shall post the Phase II Notice in English and French on their website;
- (d) Class Counsel or Claims Administrator shall e-mail the Phase II Notice to Class Members for whom they have current e-mail addresses; and
- (e) Class Counsel or Claims Administrator shall mail the Phase II Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.



**SCHEDULE “D”**

**AirBoss Class Action Opt-Out Form**

To: AirBoss of America Corp. c/o  
[Claims Administrator]  
[email]

This is **NOT** a claim form. Completing this **OPT-OUT FORM** will exclude you from receiving any compensation arising out of the settlement in this class proceeding. The following persons are entitled to opt out:

All persons who acquired securities of AirBoss of America Corp. between November 10, 2021 and September 6, 2022.

**I understand that by opting out of this class action, I am confirming that I do not wish to participate in this class action or receive any settlement proceeds.**

I understand that there may be a limitation period that applies to my individual claim, and that I may have to commence my individual claim within a specified time period or it may be legally barred. I understand that the commencement of this class action suspended the running of any applicable limitation periods from the time the class action was filed. Any applicable limitation periods will resume running against me if I opt out of this class action. I understand that by opting out, I take full responsibility for taking all necessary legal steps to protect any claim I may have, despite the resumption of the running of any applicable limitation period, at my own expense.

First and last name: \_\_\_\_\_

Current address: \_\_\_\_\_

City: \_\_\_\_\_

Prov./State: \_\_\_\_\_

Postal Code/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Total number of AirBoss of America Corp. securities purchased during the Class Period  
(November 10, 2021 to September 6, 2022):

\_\_\_\_\_

**You must also accompany your Opt-Out Form with brokerage statements, or other transaction records, listing all of your purchases of AirBoss of America Corp. securities during the Class Period (November 10, 2021 to September 6, 2022).**

**SIGNATURE:** \_\_\_\_\_

**DATE SIGNED:** \_\_\_\_\_

CALLOWHILL  
Plaintiff

v.

AIRBOSS OF AMERICA CORP. et al.  
Defendants

Court File No.: CV-22-00004044-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at  
Newmarket

*Proceeding under the Class Proceedings Act, 1992*

**ORDER**

**SMK LAW P.C.**

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