Court File No. 820/17

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ERIN DAWN CHRISTIANSEN

Plaintiff/Moving Party

- and -

METTRUM LTD.

Defendant/Responding Party

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

FACTUM
(Fee Approval & Honorarium)

December 9, 2020

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PART I: OVERVIEW

1. This is a motion for an order approving the Retainer Agreement with Class Counsel and Class Counsel's fee following the successful resolution of this proceeding. This motion also seeks approval of the payment of a $10,000 honorarium to the Representative Plaintiff, Erin Christiansen, in recognition of her efforts.

2. The Retainer Agreement provides that Class Counsel will be entitled to a 30% contingency fee (plus disbursements and taxes) if this action results in a court-approved settlement benefitting the Class Members.

3. The $6.95 million settlement clearly benefits the more than 20,000 Class Members and provides an efficient means to distribute payments to the Class Members. The result achieved on this Settlement is, for the reasons set out in the Plaintiff's Settlement Approval Factum, an excellent result that is as good, and more likely better, than what the Class Members could expect to receive following a trial. The compensation is available now without the risk and delay of further litigation.

4. Class Counsel respectfully requests that the 30% contingency fee provision of the Retainer Agreement be approved by the Court (plus disbursements and taxes).

5. As discussed further below, courts in numerous fee approval decisions (e.g. *Cannon, Cassano, Marcantonio* etc.) have found sound and practical reasons[1] for awarding Class Counsel's fees by way of a percentage-based contingency fee. Indeed, our Courts have generally perceived and accepted that the percentage retainer approach is presumptively valid and fair.[2] Our Courts have approved percentages of 33% (and higher). Our Courts have approved a 30% fee in many cases. Chief Justice Strathy has noted (in a case when he was then Justice Strathy) that 30% is within the reasonable or common range of class action fee percentages.

6. Class Counsel took on significant risks when they agreed to litigate this case on a contingency fee basis. There were many risks, including the risk that the case would not be certified, the risk that even if certified the case would not succeed on the merits, the risks of appeals, etc. When this case was commenced, Class Counsel knew that they were taking on a

[1] Such reasons would include rewarding efficiency, rendering defendants' criticism about the quantum of hours and rates of class counsel moot, and avoiding unnecessary court time reviewing dockets.
[2] *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 (CanLII)

relatively smaller action (in terms of potential overall damages) against a large, well-funded defendant with access to formidable counsel, in an emerging and challenging area of the law.

7. It is respectfully submitted that the caselaw enforcing percentage fees, the excellent monetary result achieved in this action and the risks accepted by Class Counsel clearly support Class Counsel's 30% fee request. fee.

8. Class Counsel's fee (with tax) request breaks down as follows:

Total Settlement Fund:	$6,950,000.00
Minus disbursements:	$27,858.34
Balance of Settlement Fund:	$6,922,141.66
Multiplied by 30% Fee	$2,076,642.50
+ HST on Fee	$269,963.53
TOTAL REQUESTED FEE:	**$2,346,606.05**

9. Class Counsel also request payment of the disbursements (as noted above) in the amount of $27,858.34 (which is inclusive of taxes on the disbursements). This motion also seeks approval for the payment of a $10,000 honorarium to Ms. Christiansen. Ms. Christiansen's efforts and willingness to act as the Representative Plaintiff allowed this case to proceed to this successful conclusion. She was willing to identify herself as having a pre-existing medical condition and having been prescribed and using medical marijuana, with the perceived stigma that may attach to those facts and disclosures. She was willing to share her personal medical history and records in the context of this action. Ms. Christiansen was consistently involved in the progress of the litigation and travelled from Thunder Bay to prepare for and attend a mediation. Ms.

Christiansen's efforts are all the more notable given that she is on disability and does suffer from medical conditions. Respectfully, such efforts to represent and promote the interests and claims of a Class should be recognized.

PART II: THE FACTS

10. Class Counsel relies on the factual summary as set out in the plaintiff's Settlement Approval Factum dated December 9, 2020. That Settlement Approval Factum should be read in conjunction with this factum.

11. In the context of this fee approval request, Class Counsel also rely in the additional facts discussed in the paragraphs below.

12. The Plaintiff signed a formal retainer agreement with Class Counsel dated March 2, 2017[3].

13. The Plaintiff read the Retainer Agreement carefully and discussed the agreement with Class Counsel before she signed it. The Plaintiff understood and agreed with the terms of the retainer agreement when she signed it and confirms her continuing agreement with the terms now.[4] In particular, Ms. Christiansen understood and agreed that the 30% fee was reasonable in the circumstances and with the risks involved.

14. The Retainer Agreement provides that Class Counsel would only be paid its fees and disbursements upon the successful resolution of the action. Success is defined as either a final

[3] Dewar Affidavit at para. 14, Exhibit H to Dewar Affidavit, Christiansen Affidavit at para. 10
[4] Christiansen Affidavit at paras. 10 and 17, Dewar Affidavit at para. 91

judgment on the common issues in favour of some or all Class Members, or a court-approved settlement that benefits one or more Class Members.[5]

15. The Retainer Agreement further provided that, subject to the approval of the Court, Class Counsel would be entitled to a fee of 30% of any amounts recovered by the Class, and that the Counsel Fee shall be calculated after all disbursements incurred by Class Counsel have been deducted.[6]

Disbursements Incurred to Date

16. Class Counsel incurred disbursement, inclusive of taxes, totaling $27,858.34. As noted in the Settlement Approval Factum, this relatively modest level of disbursements reflects that many experts consulted by Class Counsel did not charge for their time and advice.[7]

Straight Time Incurred to Date

17. While the Retainer Agreement provides that Class Counsel will be paid a 30% fee, some courts have at times reviewed the straight hourly time actually docketed or incurred in a class proceeding as a double-check to confirm or reconfirm that the percentage fee is reasonable when compared to the implicit multiplier. The implicit multiplier is the factor by which the percentage requested fee exceeds the actual docketed time and fees.

[5] Dewar Affidavit at para. 95
[6] Dewar Affidavit at para. 92
[7] Dewar Affidavit at paras. 102

18. In this case, Class Counsel have, to the date of this factum, worked or incurred in excess of 1,890 hours totaling s $1,092,562 (excluding taxes).[8] The tasks performed by Class Counsel to achieve this Settlement include:

a. factual and documentary research (including the results of the FOIA request) and otherwise conducting research into science and technical issues underlying this action;
b. interviewing the Plaintiff and drafting her statement of claim, and affidavit in support of certification;
c. interviewing dozens of potential witnesses and drafting an affidavit from a Class Member in support of certification;
d. speaking to a number of potential experts in a number of fields including toxicology, biochemistry and regulatory affairs;
e. reviewing the Defendant's certification record;
f. preparing for and conducting cross-examinations of the Defendant's affiants;
g. researching and drafting the Related Claims;
h. preparing for and attending the mediation sessions;
i. preparing for and conducting the negotiations;
j. communicating with hundreds of the putative Class Members;
k. communicating with and obtaining the agreement to the Settlement from the PHIs;
l. drafting the Settlement Agreement and preparing material for settlement approval;
m. drafting the Notice and Notice Program;
n. attending various case management meetings; and,
o. retaining and overseeing the Settlement Administrator.[9]

[8] Dewar Affidavit at para. 98
[9] Dewar Affidavit at para. 99

19. Class Counsel will incur additional time to implement the Settlement. Class Counsel estimates that they will incur an additional $150,000 in fees to implement the settlement. Additional tasks will include arguing the Approval Motion and, if the Settlement is approved, responding to Class Member enquiries, overseeing the administration of the settlement, liaising with defence counsel and reporting (if and as necessary) to this Court.[10]

20. If this estimated future time or fees of $150,000 is added to the actual time incurred to date ($1,092,562), the fees incurred will total $1,242,562. When $1,242,562 is compared to the 30% contingency fee ($2,076,642.50), it generates an implicit multiplier of approximately 1.65. As discussed further below, a multiplier at that level is generally considered to be a relatively modest multiplier in class actions.[11]

PART III: ISSUES & THE LAW

21. There are two issues on this motion:

a. Should the Retainer Agreement and Class Counsel's fee request (plus disbursements and taxes) be approved?

b. Should the Representative Plaintiff be paid a $10,000 honorarium?

A. Approval of Retainer Agreement & Class Counsel's Fee Request

22. The first issue on this motion is whether the Retainer Agreement and Class Counsel's fee request should be approved.

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[10] Dewar Affidavit at para. 100

[11] *Gagne v. Silcorp Ltd.*, 1998 CanLII 1584 (ON CA)

23. Pursuant to section 32(2) of the *Class Proceedings Act*, a retainer agreement between the plaintiff and class counsel is not enforceable unless it is approved by the Court. The Retainer Agreement conforms to the requirements of the *Class Proceedings Act* and provides, in relevant part, for the calculation of Class Counsel's fee at 30% of the recovery for the Class.

General Principles & Benefits of Percentage Based Contingency Fees

24. Before turning to the specific factors to be addressed on a fee approval motion, Class Counsel will first discuss the benefits of a percentage-based fee analysis over that of a base fee and multiplier or lodestar approach. For the reasons discussed below, approving a percentage-based fee obviates much of the analysis required under the multiplier approach.

25. Numerous Courts have recognized that the objectives of the *Class Proceedings Act,* – namely, judicial economy, access to justice and behaviour modification – are dependent, in part, upon counsel's willingness to take on class proceedings, and that counsel's willingness to do so in turn depends on the financial incentives for assuming the risks and burdens of prosecuting a class proceeding. A premium on fees is the reward for taking on risky but meritorious class actions.[12]

26. There is general acceptance by Ontario courts that awarding fees on the basis of a percentage of gross recovery is more appropriate than the multiplier methodology. As Justice Perell wrote in *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 2324 (CanLII) at paragraph 52:

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[12] *Marcantonio v. TVI Pacific Inc.* [2009] O.J. No. 3409 (SCJ) at para. 29, *Parsons v. Canadian Red Cross Society* [2000] O.J. No. 2374 at para. 18, *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd* [2005] O.J. No. 1117 at paras. 58-62

> I also agree with the sentiment in the case law that contingency fees are an appropriate way to remunerate class counsel for taking on the risk of class proceedings and preferable to the lodestar or multiplier approach, which reward counsel based on a multiplier of their base fee. The multiplier approach has been criticized for, among other things, encouraging inefficiency and duplication and discouraging early settlement: *Cassano v. Toronto-Dominion Bank* (2009), 2009 CanLII 35732 (ON SC), 98 O.R. (3d) 543 (S.C.J.) at paras. 55, 60, 63.

27. The use of percentages avoids many of the concerns expressed by various courts and academics in respect of the use of a multiplier (including, docket padding, over-lawyering, delays in resolution as fees continue to be incurred, unnecessary steps or motions, inefficiency, etc). A percentage-based fee approach rewards efficiency, quality, practical strategies and results. As noted in *Class Actions Law & Practice* at 13:23:

> "In both the United States and Canada there has been a growing criticism of the lodestar/multiplier method and a shift towards the simpler percentage method (citation omitted). One argument generally put forward is that the time consuming lodestar/multiplier method generally produces an amount equivalent to approximately 30 per cent of the settlement or judgment fund, which could be arrived at more efficiently by using a percentage based method from the start.
>
> [...]
>
> One American Court has strongly stated that, in addition to encouraging efficient and effective legal representation, percentage calculations avoid unnecessarily involving the court in accounting and administrative processes:
>
> > Such an award is consistent with the new learning (old wine in a new bottle) ... which new learning we believe will proceed from west to east and take us back to straight contingent fee awards bereft of largely judgmental and time wasting computations of lodestars and multipliers. These ... computations, no matter how conscientious, often seem to take on the character of so much Mumbo Jumbo. They did not guarantee a more fair result or a more expeditious disposition of litigation.
> >
> > *In re Union Carbide Corp. v. Consumer Products Business Securities Litigation*, 724 F. Supp. 160 (S.D.N.Y. 1989) at 170"

28. Justice Strathy (as he then was) noted many of the same issues and concerns in various cases years ago in *Osmun v. Cadbury Adams Canada Inc* 2010 ONSC 2752 (CanLII) at paragraph 19:

> "In the context of class proceedings, a contingent fee [percentage] agreement focuses on the benefit achieved by the class: *Vitapharm Canada Ltd.* v. *F. Hoffmann-La Roche Ltd.*, above, at para. 107; *Endean* v. *Canadian Red Cross Society*, 2000 BCSC 971 (CanLII), [2000] B.C.J. No. 1254 (S.C.) at para. 74.
>
> ... [The] "multiplier" approach has been regarded by some as encouraging inefficiency and discouraging early settlement: *Martin* v. *Barrett*, [2008] O.J. No. 2105, 55 C.P.C. (6th) 377 (S.C.J.) at para. 38-39; *Cassano* v. *The Toronto-Dominion Bank* (2009), 2009 CanLII 35732 (ON SC), 98 O.R. (3d) 543, 2009 CarswellOnt 4052 (S.C.J.) at paras. 55, 60, 63.
>
> There is much to be said in favour of contingent fee [percentage] arrangements. Litigants like them. They provide access to justice by permitting the lawyer, not the client, to finance the litigation. They encourage efficiency. They reward success. They fairly reflect the considerable risks and costs undertaken by class counsel, including the risk that they will never be paid for their work, the risk that their compensation may come only after years of unpaid work and expense, and the risk that they will be exposed to substantial cost awards if the action fails. Effective class actions simply would not be possible without contingent fees. Contingent fee awards serve as an incentive to counsel to take on difficult but important class action litigation.
>
> It is appropriate to use other methods of measurement, such as time multiplied by hourly rate, or a multiplier, or the result, as a check against the reasonableness of the fees claimed; but, in my respectful view, courts should not be too quick to disallow a fee based on a percentage simply because it is a multiple – sometimes even a large multiple - of the mathematical calculation of hours docketed times the hourly rate."

29. Justice Strathy expanded on the benefits of percentage-based fee agreements in *Baker (Estate) v. Sony BMG Music (Canada) Inc.*, 2011 ONSC 7105 (CanLII), where his honour stated, after listing percentage fee approvals in various class actions ranging from 24 to 36%, that:

> [64] ...Personal injury litigation has been conducted in this province for years based on counsel receiving a contingent fee as high as 33%. In such litigation, it is generally considered to reflect a fair allocation of risk and reward as between lawyer and client. It serves as an inducement to the lawyer to maximize the recovery for the client and it is regarded as fair to the client because it is based upon the "no cure, no pay" principle. The profession and the public have for years recognized that the system works and that it is fair. It allows people with injury claims of all kinds to obtain access to justice without

risking their life's savings. The contingent [percentage] fee is recognized as fair because the client is usually concerned only with the result and the lawyer gets well paid for a good result.

[65] My second observation reflects the reality of class action litigation. Defendants tend to be well-resourced and represented by larger law firms... The Collectives [defendants] were represented by a 200 lawyer firm. These were some of the best law firms in the country, charging substantial hourly rates, with virtually unlimited resources and no incentive to roll over and play dead.

[66] Due to the nature of the work, Class Counsel are frequently associated with smaller firms and are invariably engaged on a contingent basis. Without wanting to paint all with the same brush, defendants frequently employ a strategy of wearing down the opposition by motioning everything, appealing everything and settling nothing. If class proceedings are to realize the goal of access to justice, Class Counsel must be liberally compensated to ensure that they take on challenging but difficult briefs such as this one.

[67] There must be an economic incentive to encourage lawyers to take on litigation of this kind and this is a factor to be considered in assessing the reasonableness of a fee: *[citations omitted]* If first-class lawyers cannot be assured that the Courts will support their reasonable fee requests, how can the Courts and the public expect them to take on risky and expensive litigation that can go for years before there is a resolution?

[68] My third comment, which is not original, is that this is one area where the Court should free itself from the chains of the hourly rate. The result achieved for the class should generally be the most important test of the value of counsel's services."

30. In *Helm v. Toronto Hydro-Electric System Limited,* 2012 ONSC 2602 (CanLII), Justice Strathy approved a percentage fee for a relatively early settlement and stated that:

"[25] The proposed fee represents a significant premium over what the fee would be based on time multiplied by standard hourly rates. Is that a reason to disallow it? If the settlement had only been achieved four years later, on the eve of trial, when over a million dollars in time had been expended, would the fee be any more or less appropriate? Should counsel not be rewarded for bringing this litigation to a timely and meritorious conclusion? Should counsel not be commended for taking an aggressive and innovative approach to summary judgment, ultimately causing the plaintiff to enter into serious and ultimately productive settlement discussions?

[26] Plaintiff's counsel are serious, responsible, committed and effective class action counsel. They are entrepreneurial. They will likely take on some cases that they will lose, with significant financial consequences. They will take on

> other cases where they will not be paid for years. To my mind, they should be generously compensated when they produce excellent and timely results, as they have done here."

31. As held by Justice Strathy in the quotes above, a percentage fee approach also appropriately recognizes that the overall risk for Class Counsel may be measured not in any one case but rather over an entire practice. Such an approach effectively takes into account that some cases will be lost early and some will be lost after many years of hard-fought litigation against well-funded defendants, some cases will be won or settle but the fee award may not cover the actual fees incurred, some cases will settle early and some late, and so on.[13]

32. At the same time, a percentage fee gives clients a tangible means to measure how much they will have to pay in legal fees in relation to their recovery. The application of a percentage also relieves the court from the relatively difficult and somewhat arbitrary task of scrutinizing the hours and rates of class counsel and second-guessing the manner in which class counsel has litigated the case.

33. There is general acceptance amongst judges in Ontario (and elsewhere) that the percentage set out in the retainer should be considered valid or presumptively valid, and enforceable. In the oft-cited decision of *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 (CanLII), plaintiff's counsel requested and received one-third (33.3%) of the $28.2 million

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[13] See, for example: "*It is only through a robust contingency fee system that class counsel will be appropriately rewarded for the wins and losses over many files and many years of litigation and that the class action will continue to remain viable as a meaningful vehicle for access to justice*": per Belobaba J - *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537 (CanLII), at para. 19; See also: *Ramdath v George Brown College*, 2016 ONSC 3536 (CanLII), at footnote 14.

settlement amount in a tax shelter class action. In making this award – approximately $9.4 million – Justice Belobaba found that:

a. Contingency fee arrangements that are fully understood and accepted by the representative plaintiffs (such as the Retainer Agreement in this case) should be presumptively valid and enforceable;

b. The judicial acceptance of the contingency fee agreement as presumptively valid would further the development of the class action in at least three ways:

    i. Class counsel's legal fees would be more easily understood, more principled and more "reasonable" than under the "multiplier" approach;

    ii. The percentage-based contingency fee approach would inject predictability into class counsel's compensation calculus and thereby encourage greater use of the class action vehicle, enhancing access to justice;

    iii. According presumptive validity to a one-third contingency fee, and thus making class counsel's compensation more certain would take the pressure off certification-motion costs awards as a method for forward-financing the class action lawsuit;

c. That a percentage-based contingency agreement works best in all-cash settlements (such as the within case); and,

d. The presumption of a valid contingency fee could be rebutted as follows:

    i. Where there is a lack of full understanding or true acceptance on the part of the representative plaintiff;

    ii. Where the agreed-to contingency amount is excessive; and,

iii. Where the application of the presumptively valid one-third contingency fee results in a legal fees award that is so large as to be unseemly or otherwise unreasonable.[14]

34. In a second fee approval decision in *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670 (CanLII), Justice Belobaba approved the same contingency fee in a subsequent settlement with an additional set of defendants. That subsequent approved fee totaled $5.8 million of a $17.5 million total settlement. In both *Cannon* settlements, the Class Proceedings Fund also received its 10% levy of the funds payable to the Class.

35. The presumptive enforceability of a valid contingency fee agreement has been described by Justice Belobaba as "*the most principled approach to Class Counsel compensation*" and "*best assures the future viability of the class action as a significant vehicle for access to justice*". In the recent decision of *Brown v. Canada (Attorney General)* Justice Belobaba reiterated that that the percentage approach should presumptively apply in settlements under $50 million in value.[15]

36. As far back as 2010, Justice Strathy (as he then was) expressly confirmed that a one-third percentage contingency fee was "*standard in class action litigation*" and had "*come to be regarded by lawyers, clients and the courts as fair*":

> [13] A contingency fee of one-third is standard in class action litigation and has been commonplace in personal injury litigation in this province for many years. It has come to be regarded by lawyers, clients and the courts as a fair arrangement between lawyers and

[14] *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 (CanLII) at paras 8-11.
[15] *O'Brien v. Bard Canada Inc.*, 2016 ONSC 3076 at para. 16., *Brown v. Canada (Attorney General)* 2018 ONSC 3429 (CanLII) at para. 56

their clients, taking into account the risks and rewards of such litigation. Fees have been awarded based on such a percentage in a number of class action cases.[16]

37. Further illustrative but not exhaustive examples of more recently approved class action fees of up to 33.3% (as set out in the retainer agreements in question in those cases) include the following:

a. In *Davidson v. Solomon (Estate)*, 2020 ONSC 2898 (CanLII) at paragraph 73, Justice Mew awarded a 33% fee in a comparatively small settlement ($430,000) against the estate a dentist accused of surreptitiously videotaping his patients. In that case, class counsel's docketed time exceeded their percentage-based contingency fee;
b. In *Reddock v. Canada (Attorney General)*, 2019 ONSC 7090 (CanLII) at paragraph 32, Justice Perell approved a 33.3% fee of $7,033,225.40 on a $21,120,797 settlement in a wrongful solitary confinement class action;
c. In *Brazeau v. Attorney General (Canada), 2019 ONSC 4721 (CanLII)* at paragraph 29 Justice Perell awarded Class counsel a 33.3% contingency fee in a wrongful solitary confinement class action;
d. In *Park v. Nongshim Co., Ltd.*, 2019 ONSC 1997 (CanLII) at paragraph 81, Justice Glustein adopted the "presumptive approval" of the retainer agreement as set out in *Cannon* and approved a 1/3rd (33.3%) contingency fee in a price fixing class action;
e. In *Ronald J. Valliere v. Concordia International Corp.* 2018 ONSC 5881, Justice Morawetz approved a 33.3% contingency fee as set out in the retainer agreement as applied to the portion of a $18 million securities settlement relating to non-Quebec residents (the fees for the Quebec residents would be sought separately by Quebec class action counsel);
f. In *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537 (CanLII), at paragraphs 19 and 20 Justice Belobaba approved the 33% contingency fee (plus

[16] *Abdulrahim v. Air France*, 2011 ONSC 512 (CanLII)

disbursements and taxes) as specified in the retainer agreement on a $26.5 million securities class action; and

g. In *Silver v. Imax Corp.*, 2016 ONSC 403 (CanLII), Justice Baltman approved a 33% contingency fee (plus disbursements and taxes) in a securities case (there were two co-counsel firms – the retainer with one was set at 33% and the second was set at a range of 25-33% with the second firm requesting the fee be set at 33%).

38. In addition to the foregoing decisions approving fees at 33%, numerous retainer agreements that expressly set fees at 30% have been approved as well (quite understandably in light of the approval of an even higher fees at 33.3% as noted above). Examples of such cases are set below:

a. *In Rezmuves v. Hohots*, 2020 ONSC 5595 (CanLII) at paragraphs 10 and 43 where Justice Perell approved a 30% contingency fee in a very small ($500,000) solicitors negligence class action settlement;

b. In *Vester v. Boston Scientific Ltd.*, 2020 ONSC 3564 (CanLII) at paragraphs 44 and 56 where Justice Perell approved a 30% contingency in a $21.5 million medical device class action;

c. In *Harper v. American Medical Systems Canada Inc.*, 2019 ONSC 5723 at paragraphs 14 and 54 Justice Perell approved a 30% contingency in a $20 million medical device class action;

d. In *Condon v. Canada,* 2018 FC 522 (CanLII) at paragraph 111 Justice Gagné of the Federal Court approved a 30% contingency fee as set out in the retainer agreement in a $17.5 million data breach settlement;

e. In *Cass v. WesternOne Inc.*, [2018] O.J. No. 4165, at paragraphs 125-128 Justice Glustein approved a 30% contingency fee (plus disbursements and taxes) on a $1 million securities settlement. In *Cass,* the Plaintiff was approved for Class

Proceedings Fund funding and as such, the Fund's 10% levy was deducted from the settlement as well;

f. In *Ramdath v. George Brown College of Applied Arts and Technology*, [2016] O.J. No. 2803, at paragraphs 13 and 14, Justice Belobaba approved a 30% contingency fee (plus disbursements and taxes) as specified in the retainer agreement on a $2.725 million educational negligence settlement;

g. In *Frank v. Caldwell*, [2014] O.J. No. 1028, at paragraphs 30-32 and 38-39 Justice Perell approved a 30% contingency fee (plus disbursements and taxes) as specified in the retainer agreement on a USD$3.5 million securities settlement;

h. In *Sayers v. Shaw Cablesystems Ltd.*, [2011] O.J. No. 637, at paragraphs 30 and 39 Justice Perell approved a 30% contingency fee (plus disbursements and taxes) as set out in the retainer agreement on a $337,800 employer negligence settlement;

Relevant Factors in Determining Class Counsels' Fee

39. While the percentage fee set out in a retainer is generally considered enforceable, there are other facts that the courts historically referenced (and which various judges still note or refer to in their reasons) when determining the fees of class counsel. Those factors include:

a. the factual and legal complexities of the matters dealt with;
b. the risk undertaken;
c. the degree of responsibility assumed by class counsel;
d. the monetary value of the matters in issue;
e. the importance of the matter to the class;
f. the degree of skill and competence demonstrated by class counsel;
g. the results achieved;
h. the ability of the class to pay;
i. the expectations of the class as to the amount of the fees; and,

j. the time expended by class counsel and the consequent opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement.[17]

40. Which factors were the most relevant depended on the nature of the case, with the results achieved and risks undertaken usually being principally important. The factors that Class Counsel submits may be relevant in this case are addressed below, with the discussion of some of the factors being combined to avoid unnecessary duplication of submissions.

Complexity of the Case

41. The underlying allegations in this Class Action was factually and legally somewhat complex. Class Counsel believe that this is the first class action in Canada arising from a medical marijuana producer's failure to follow Health Canada regulations to be successfully resolved.[18]

42. The medical marijuana industry in Canada is a new and evolving industry and there is a limited amount of information available about the consequences of the Defendant's actions and the presence of even trace amounts of the pesticides in question. Among other things, Class Counsel were required to review a number of detailed expert reports addressing areas of toxicology and biochemistry that are well outside an average person's day-to-day experience. Class Counsel were also required to conduct considerable research into the complex regulatory

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[17] *Park v. Nongshim Co., Ltd.*, 2019 ONSC 1997 (CanLII) at para. 79 , *Bilodeau* v. *Maple Leaf Foods Inc.* [2009] O.J. No. 1006 (SCJ) at para. 71, *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.,* [2005] O.J. No. 1117 (S.C.J.) at para. 67, *Brown supra* at para. 40

[18] Dewar Affidavit at para. 81

regime that governs the cultivation, testing, marketing, and sale of medical marijuana in Canada.[19]

Degree of Risk

43. Class Proceedings are inherently risky, and some are riskier than others. Class Counsel have collectively lost millions of dollars in time and out of pocket expenses pursuing what they believed were meritorious class actions.[20] Individually and collectively, the risks inherent in this case were highly significant to Class Counsel. While Class Counsel relies on all of the various risks are identified in the Plaintiff's Settlement Approval Factum, Class Counsel specifically note the following:

a. **Certification Risk** – there was some risk that this action would not be certified as a class proceeding or, if certified, overturned on appeal. The Defendant had prepared and served a factum resisting certification and contesting its certifiability and the very underlying basis for the action;

b. **Risk of Litigation on the Merits** – even if successful on certification, the Plaintiff still faced an uncertain case on the merits. As set out above, given the questions regarding whether or not the Recalled Products were even exposed to unapproved pesticides at more than trace levels (if at all), the Defendant could have successfully argued that any risk was *de minimus* and that no refund would be warranted (or, at least a dramatically reduced refund) because the Class got what it paid for. Alternatively, the Defendant could have argued (as indeed it was) that in complying with Health Canada's directions provided during the Recall, it had fulfilled its legal obligations to the Class Members. There were a number of

[19] Dewar Affidavit at para. 82
[20] Dewar Affidavit at paras. 83-84

other arguments available to the Defendant to resist certification and liability on the merits;

c. **Risk of Individual Assessments** – even if this action was certified as class proceeding, there was no guarantee that the Court would order an aggregate assessment of damages. Under those circumstances, it may have been difficult and costly for some individual Class Members to establish if their products actually contained unauthorized pesticides and thus prove their individual entitlement to damages. In such circumstances, it would have been even more difficult for Class Counsel to collect its contingency fee from such individual awards; and

d. **Hours/Work Required to Date** – Class Counsel invested almost 3 years of time into this case. It carried enormous fees for years. The Settlement in this case was not achieved in one or two hours, but took more than 1,890 hours from professionals to achieve.[21]

The Monetary Value & Importance of the Matter to the Class

44. This action was of significant importance to the Plaintiff and the Class for the following financial and personal reasons:

a. **Financial Reasons** – unlike many class proceedings where the monetary value of individual claims can be miniscule (e.g. credit card or gas bill overcharges amounting to pennies or a few dollars, etc.), the individual compensation payable under the Settlement for many of the Class Members will be much more significant. Depending on the amount and nature of Recalled Products purchased, compensation will range from $25.01 into the hundreds or thousands of dollars per Class Member. That amount of money may quite significant, especially in the current circumstances, to many Class Members;

[21] Dewar Affidavit at para. 84

b. **Personal Reasons** – the Recalled Products were marketed and sold to the Class Members as a treatment to alleviate the symptoms of several pre-existing health conditions. While the Defendant adduced evidence raising merit-based questions about the risk posed by the Recalled Products, the comparatively vulnerable Class Members were still advised that they had or may have consumed a marijuana product that may have come from plants on which one of two unauthorized pesticides were used. The foregoing would be of concern to any consumer but would pose a heightened concern to the Class Members (who were prescribed medical marijuana for underlying health reasons). This Settlement should represent some compensation for those concerns.[22]

Competence of Class Counsel

45. Class Counsel are nationally recognized leaders in Class Proceedings. Class Counsel's expertise and experience were brought to bear in this novel and complex case. Class Counsel expects that their efforts to drive this case forward and their reputation as effective class action counsel assisted significantly in achieving this settlement.[23]

Results Achieved

46. This Settlement is an excellent result for the Class. Class Members will receive a material refund of the purchase price of their Recalled Products without having to make an individual application or provide support for any kind of individual assessment. As set out in detail in the Plaintiff's Settlement Approval Factum, the Class Members should receive as much or more

[22] Dewar Affidavit at para. 88
[23] Dewar Affidavit at para. 89

compensation through the Settlement than they could reasonably expect at the end of a contested trial.[24]

Expectation of the Class Regarding Fees

47. The Plaintiff fully expected that, in the event this action was successful, Class Counsel would be well compensated for its work and taking on the real risks of this litigation. The Retainer Agreement provides for a 30% contingency fee for a successful outcome in this case.[25]

48. The Plaintiff is impressed with the Settlement and supports Class Counsel's fee request. According to Ms. Christiansen:

> "My understanding of my retainer agreement with Class Counsel was that it was a contingency fee agreement. I understood that to mean that the class members would not be required to pay any fees or disbursements and that Class Counsel would only get paid from amounts that they were able to secure from a successful trial or settlement of the case. The burden of the fees and disbursements would be borne by Class Counsel. I understood that if the case was successful that Class Counsel's fees would be 30% of money recovered, plus any costs recovered and disbursements. I thought the arrangement was a fair one for both the Class and for Class Counsel.
>
> I note that Class Counsel took on this large and complex case and pursued it for almost three years. Without the efforts and perseverance of Class counsel, this case would not have been brought and certainly would not have been brought to this successful resolution. I have been impressed with the work of my lawyers and have thanked them for their efforts, time and success.
>
> I believe that without a class proceeding, it would have been impossible for the Class Members to have access to justice against the Defendant. I believe that many members of the class are middle-class and/or of limited financial means. No individual Class Member could have funded the type of case necessary to litigate this action against a large, well funded corporation such Mettrum as was done by Class Counsel. Our claims were too small for any lawyer to take them on contingency and pursue them to trial without the benefit of a Class Proceeding.
>
> By taking this matter on contingency and pursuing it as a class proceeding, I believe that the efforts of Class Counsel have allowed thousands of class members (including me) to receive compensation for a significant portion of the cost of the medical marijuana they purchased and

[24] Dewar Affidavit at para, 90
[25] Dewar Affidavit at para. 91

that the class members would almost certainly not have pursued such compensation otherwise."[26]

49. Pursuant to the notification process regarding this Settlement, the Class was expressly advised in the court-approved notice of the within motion that Class Counsel would be seeking a 30% contingency fee on the $6.95 million Settlement Fund. The Court-approved notice of Certification and Settlement Approval reads in part as follows:

> "Class Members will not have to personally pay Class Counsel for the work that they have done or for the disbursements that they have carried since this case began. The proposed Representative Plaintiff entered into a contingency fee agreement with Class Counsel at the outset of the case, providing that Class Counsel are to be paid only in the event of a successful settlement or trial judgment. As provided for in that contingency fee agreement, Class Counsel will be asking that the Court approve legal fees of 30% of the settlement funds, plus disbursements and applicable taxes. Approval of the Settlement Agreement and Distribution Protocol will not be contingent upon the court approval of legal fees. Any approved legal fees and disbursements will be paid out of the $6.95 million total funds paid by the Defendant."

50. As of the date of this factum, Class Counsel have received no objections from Class Members to its proposed fee (or to the Settlement). Any objections or other submissions will, as set out in the Plaintiff's Settlement Approval Factum, be filed with the Court in advance of the Approval Hearing.[27]

Opportunity Costs to Class Counsel

51. As noted above, Class Counsel incurred more than 1,890 hours of time amounting to more than $1 million in prospective fees to bring this Settlement before the Court. That is a serious investment of time and money for any firm and a particularly serious investment for the litigation boutiques that comprise Class Counsel. Time and resources risked on this case

[26] Christiansen Affidavit at paras. 19-22
[27] Dewar Affidavit at para. 92

represent time and resources that could not be invested in either conventional paying files or other class proceedings.[28]

52. In light of the foregoing considerations, Class Counsel respectfully request that this Honourable Court approve its Retainer Agreement with the Plaintiff, its request for fees, amounting to 30% of the Settlement Fund, and its disbursements and taxes as set out above.

B. Representative Plaintiff's Honorarium

53. The second issue on this aspect of the motion is whether Ms. Christiansen should be paid a $10,000 honorarium. This amount is suggested by Class Counsel based on our general experience and knowledge of the caselaw, and not based on any request from Ms. Christiansen.

54. Where a representative plaintiff can show that he or she rendered active and necessary assistance in the preparation or presentation of the case and that such assistance resulted in monetary success for the class, the representative plaintiff may be compensated by an honorarium.

55. Compensation for a representative plaintiff may awarded where he or she has made an exceptional contribution that has resulted in success for the class. In determining whether the circumstances are exceptional, the court may consider among other things: i) active involvement in the initiation of the litigation and retainer of counsel; ii) exposure to a real risk of costs; iii) significant personal hardship or inconvenience in connection with the prosecution of the litigation; iv) time spent and activities undertaken in advancing the litigation; v) communication

[28] Dewar Affidavit at para. 93

and interaction with other class members; and vi) participation at various stages in the litigation, including discovery, settlement negotiations and trial.[29]

56. Class Counsel submits that while a number of the criteria identified above apply to Ms. Christiansen, the first criteria, the active involvement in the initiation of the litigation, is of particular significance in this case. As found by Justice Perell in *Bodnarchuk v. Guestlogix Inc.,* 2020 ONSC 4789 (CanLII) but for the plaintiff coming forward there would have been class action and no settlement. According to Justice Perell at paragraph 40:

> "In my opinion, the honorarium request in the immediate case should be granted. But for Mr. Bodnarchuk's willingness to come forward and but for his active interest and participation, this class action would have floundered and there would have been no success at all."

57. A further example of a Plaintiff being acknowledged for the instrumental role she played can be found in *Walmsley v. 2016169 Ontario Inc.,* 2020 ONSC 1416 (CanLII) at para. 29 where Justice Glustein approved an honorarium finding:

> "Walmsey [i.e. the plaintiff] was an active member of the litigation team, involved in strategy as well as fulfilling her responsibilities as representative plaintiff. I find that the action would not have been brought without Walmsley's involvement."

58. While a number of individuals contacted Class Counsel about the Recall, many of them would not even consider serving as Representative Plaintiff. Individuals were concerned about, among other things, publicly admitting to marijuana use or exposing their underlying health conditions that lead them to take medical marijuana in the first place. Ms. Christiansen was the only person who stepped forward and serve as Representative Plaintiff and as the public face of this Claim. Without her efforts and courage, there would have been no Class Action or

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[29] *Bodnarchuk v. Guestlogix Inc.,* 2020 ONSC 4789 (CanLII) at paras. 37-40, *Reddock v. Canada (Attorney General),* 2019 ONSC 7090 (CanLII) at para. 33

Settlement. Ms. Christiansen's efforts are all the more noteworthy because she is a person with a disability and whose medical condition is not improving.[30]

59. As to the fourth criteria identified above, time spent and activities undertaken, Ms. Christiansen spent a considerable amount of time and effort in carrying out her role as Representative Plaintiff. She assisted in the preparation of the Claim. She actively participated in discussions about strategy, information obtained and the steps in the action. She provided information for, reviewed and swore an affidavit in support of certification.

60. Ms. Christiansen stood ready to fly to Toronto to be cross-examined, although the Defendant decided not to cross-examine her. Ms. Christiansen was planning on flying to Toronto to attend the certification hearing in November 2018. When that hearing was adjourned to allow mediation, she travelled from Thunder Bay to Toronto to prepare for and attend the mediation session in Toronto in December 2018. She was actively involved in the negotiations, strategies and positions taken. Ms Christiansen fully intended to travel from Thunder Bay to Toronto to attend this Settlement Approval hearing but, with the current pandemic, the hearing is proceeding by video conference.[31]

61. Ms. Christiansen has shown a commendable level of diligence in her role as Representative Plaintiff over the last 3 and one-half years. Ms. Christiansen is certainly a genuine

[30] Dewar Affidavit at para. 104
[31] Dewar Affidavit at para. 105

and vigorous plaintiff who provided real time, input, and instructions throughout the course of this proceeding.[32]

62. As to personal inconvenience, Ms. Christiansen has, among other things, exposed her personal medical history and other sensitive personal information to the public to carry out her role as Representative Plaintiff. Moreover, Ms. Christiansen publicly admitted to using marijuana which, even in the medical context, is a controversial and sensitive topic. Marijuana is, among other things, still illegal in a number of foreign jurisdictions and Ms. Christiansen's decision to serve as Representative Plaintiff could expose her to a number of potential negative consequences in those jurisdictions.[33]

63. Class Counsel highlight the following extracts from various cases where a representative plaintiff was awarded an honorarium:

(a) *Rosen v. BMO Nesbitt Burns Inc.*, 2016 ONSC 4752 - $10,000 honorarium approved by Justice Belobaba:

> [26] Mr. Rosen assisted in the preparation of the case and contributed to the success of the action. He retained and instructed counsel. He helped with the statement of claim. He was cross-examined on his certification affidavit and in doing so was obliged to disclose personal financial and employment information. Mr. Rosen maintained contact and solicited input from other class members. In a word, he participated in every step of the six-year litigation including settlement discussions, the mediation and the finalization of the settlement agreement.
>
> [27] The amount of the honorarium requested is appropriate and in line with other cases in which honoraria have been granted. The requested honorarium is approved. [emphasis added]

[32] Dewar Affidavit at para. 105, Christiansen Affidavit at para. 13
[33] Dewar Affidavit at para. 104

(b) *Hodge v. Neinstein*, 2019 ONSC 439 (CanLII) – $10,000 honorarium approved by Justice Perell:

> [14] Ms. Hodge has been active participant throughout these proceedings. She attended most hearings at each level of court, reviewed most of the court filings with Class Counsel and attended the two-day mediation. She has been cross-examined at length during the proceedings. Ms. Hodge's participation in the proceeding has involved extensive travel. Over the course of the proceeding, Ms. Hodge made many trips from her home in Brooklin, Ontario to meet with Class Counsel in Toronto. Each round-trip commute was over 135 km and took 3 hours or more.
>
> ...
>
> [27] Class Counsel proposes that Ms. Hodge be paid an honorarium in the amount of $20,000.00. The honorarium would be paid from Class Counsel's fees.
>
> ...
>
> [53] This said, in the immediate case, in my opinion, having regard to the various factors described above, it would be appropriate to award Ms. Hodge an honorarium of $10,000 to reimburse her for her personal expenses and to acknowledge her extraordinary contribution.

(c) *Fulawka v. Bank of Nova Scotia*, 2014 ONSC 4743 - $15,000 honorarium awarded by Justice Belobaba:

> [24] Class counsel also ask that I approve a $15,000 honorarium for the representative plaintiff, Cindy Fulawka. Ms. Fulawka devoted a great deal of time and effort to this litigation and played a key role throughout. If the honorarium is to be paid out of class counsels' share (as here) and is not paid as a "kick back" for lending one's name to a class proceeding (no such suggestion here) then I am prepared to approve this request and I do so without hesitation.

64. In terms of the quantum of the proposed honorarium, the $10,000 requested for the Plaintiff has been characterized by some Courts as "modest." According to Justice Morgan in *Eklund v. Goodlife Fitness Centres Inc.*, 2018 ONSC 4146 (CanLII) at paragraph 49:

> "As indicated earlier, class counsel also seek approval of a modest $10,000 honorarium for Carrie Eklund as representative plaintiff...
>
> Like other representative plaintiffs who have been awarded honoraria, Ms. Eklund appears to have "participated in every step of the...litigation including settlement discussions, the mediation

and the finalization of the settlement agreement": *Rosen, supra,* at para 26. She deserves the honorarium that class counsel seeks on her behalf."

65. Additional examples of Courts approving honoraria of $10,000 (or more) include:

a. *Vester v. Boston Scientific Ltd.*, 2020 ONSC 3564 (CanLII) at paragraph 57 where Justice Perell approved honoraria of $10,000 for each of the two representative plaintiffs in a medical device class action;

b. *Aps v. Flight Centre Travel Group*, 2020 ONSC 6779 (CanLII) at paragraph 49 where Justice Belobaba approved a $10,000 honorarium in an employment class action;

c. *Bodnarchuk v. Guestlogix Inc.,* 2020 ONSC 4789 (CanLII) where Justice Perell approved a $15,000 honorarium in a solitary confinement class action;

d. In *Harper v. American Medical Systems Canada Inc.*, 2019 ONSC 5723 at paragraphs 4 and 57 where Justice Perell approved honoraria of $10,000 for each of the two representative plaintiffs in a medical device class action;

e. *Haikola v. The Personal Insurance Company*, 2019 ONSC 592 (CanLII) at paragraph 111 where Justice Glustein approved a $15,000 honorarium in a privacy class action;

f. *Cannon v Funds for Canada Foundation*, 2017 ONSC 2670 (CanLII) at paragraph 18 where Justice Belobaba approved a $50,000 in a tax shelter class action; and,

g. *Brazeau v. Attorney General (Canada),* 2019 ONSC 4721 (CanLII) at paragraphs 33-35 where Justice Perell approved an honorarium of $15,000 for each of the plaintiffs in a solitary confinement class action.

66. Given all of the foregoing, Class Counsel recommends that an honorarium of $10,000 be approved to Ms. Christiansen to recognize her efforts in this case.

67. In the alternative, and while it is submitted that the $10,000 requested above is a reasonable amount, this Court would have the authority to award a lesser amount if $10,000 is considered inappropriate in the circumstances. In various cases, even where the Court may not

consider that a representative plaintiff has made an extraordinary contribution, the courts appear generally willing to award an honorarium at a relatively modest level to acknowledge the efforts of representative plaintiffs, including for example in the following cases:

a. *Sheridan Chevrolet v Hitachi et al*, 2017 ONSC 2803 (CanLII):

> *[19] The representative plaintiffs in the Automotive Wire Harness Systems action have been actively involved both in that litigation and the auto parts cases as a whole. I agree with class counsel that the payment of a $2500 honorarium to each representative plaintiff in the Automotive Wire Harness Systems action is warranted.*

b. *Quenneville v Volkswagen*, 2017 ONSC 2448 (CanLII):

> *[31] An honorarium in the amount of $49,975, ranging from $725 to $2925 in individual payments to the 31 representative plaintiffs residing in New Brunswick, Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia is also approved as fair and reasonable.*

c. *Farkas v. Sunnybrook & Women's College Health Sciences Centre*, 2009 CanLII 44271 (ON SC), Justice Perell at para. 69:

> *[69] Finally it is proposed that Mr. Farkas receive an honourarium to be deducted from the Counsel Fee. In his affidavit for the settlement approval hearing, he stated:*
>
> > *I understand that class counsel has proposed a modest honourarium for me of $5,000. I was pleasantly surprised when I learned of this and would be grateful if the court approved it. It would recognize the amount of time I have devoted to this action, especially in travelling downtown on several occasions to meet with class counsel and for the time spent in the mediation. While I was happy to be involved in this case, it did cause a certain amount of stress in my life. It would be nice to use the sum to take a small vacation with my wife, to celebrate the action coming to a conclusion.*
>
> *[70] Mr. Farkas has carried out his responsibilities as Representative Plaintiff in a diligent and responsible way and it is appropriate that he receive the suggested honourarium.*

d. *Currie v. Mcdonald's Restaurants of Canada Ltd.,* 2007 CanLII 39608 (ON SC):

> *[35] Finally, I am asked to approve payments of $1,000 in the aggregate to Mr Currie. $500 of this would be paid by McDonald's and the other $500 would be paid by class counsel.* ***It has been repeatedly emphasised in the past that representative plaintiffs will be awarded compensation for their contribution to the litigation only in exceptional circumstances.*** *The general principle is that they share equally in the benefits recovered and are not rewarded to a greater extent than other class members.* ***The amounts requested in this case are, however, small and I view them as constituting a token honorarium rather than as quantum meruit compensation for the considerable time and efforts Mr Currie has devoted to advancing the claims of the class in the litigation. As such, I have no objection to their payment as proposed. [emphasis added]***

e. *Mortillaro v. Unicash Franchising Inc.*, 2011 ONSC 923 (CanLII)

> *[27] Mr. Mortillaro has requested an honorarium of $1,000.00, to be paid out of class counsel's fee, to recognize his efforts in prosecuting this action on behalf of the class. A like payment was approved in Mortillaro v. Cash Money Cheque Cashing Inc., above, although Lax J. echoed the reservations of Cullity J. in McCutcheon v. Cash Store Inc., [2008] O.J. No. 5241 at paras. 12-14 (S.C.J.), about the "risk of engendering expectations that such payments will be approved as a matter of course." I am satisfied that Mr. Mortillaro is a real plaintiff, with a real grievance and with an active involvement in the cause. The proposed payment is not intended to be compensation or a quantum meruit payment but is a token recognition of his efforts.*

68. As noted in some of the cases relied upon in the paragraphs above, the honorarium requested for a representative plaintiff has at times been paid out of the award for class counsel fees. Class Counsel are prepared to have any honorarium approved by this Court paid out of the Counsel Fees approved for them by this Court.

PART IV: ORDER REQUESTED

69. Class Counsel respectfully requests an Order and Directions from this Court that: i) approves the Retainer Agreement; ii) fixes Class Counsels' fees at 30% of the Settlement Fund

plus, disbursements and taxes to be paid from the Settlement Fund in the total amount of $2,374,464.39[34]; iii) fixes the Class Proceedings Fund's 10% levy in an amount to be paid from the Settlement Fund; and iv) awards the Representative Plaintiff an honorarium.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

December 9, 2020

David F. O'Connor

J. Adam Dewar

[34] $2,346,606.05 for fees (inclusive of taxes) and $27,858.34 for disbursements (inclusive of taxes).

TAB A

Schedule "A" – Authorities

1. *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 (CanLII)
2. *Gagne v. Silcorp Ltd.*, 1998 CanLII 1584 (ON CA)
3. *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 2324 (CanLII)
4. *Marcantonio v. TVI Pacific Inc.* [2009] O.J. No. 3409 (SCJ)
5. *Parsons v. Canadian Red Cross Society* [2000] O.J. No. 2374
6. *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd* [2005] O.J. No. 1117
7. *Osmun v. Cadbury Adams Canada Inc* 2010 ONSC 2752 (CanLII)
8. *Baker (Estate) v. Sony BMG Music (Canada) Inc.*, 2011 ONSC 7105 (CanLII)
9. *Helm v. Toronto Hydro-Electric System Limited,* 2012 ONSC 2602 (CanLII)
10. *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 (CanLII)
11. *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670 (CanLII)
12. *O'Brien v. Bard Canada Inc.*, 2016 ONSC 3076
13. *Brown v. Canada (Attorney General)* 2018 ONSC 3429 (CanLII)
14. *Davidson v. Solomon (Estate)*, 2020 ONSC 2898 (CanLII)
15. *Reddock v. Canada (Attorney General)*, 2019 ONSC 7090 (CanLII)
16. *Brazeau v. Attorney General (Canada), 2019 ONSC 4721 (CanLII)*
17. *Park v. Nongshim Co., Ltd.*, 2019 ONSC 1997 (CanLII)
18. *Ronald J. Valliere v. Concordia International Corp.* 2018 ONSC 5881
19. *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537 (CanLII)
20. *Silver v. Imax Corp.*, 2016 ONSC 403 (CanLII)
21. *Rezmuves v. Hohots*, 2020 ONSC 5595 (CanLII)

22. *Vester v. Boston Scientific Ltd.*, 2020 ONSC 3564 (CanLII)

23. *Harper v. American Medical Systems Canada Inc.*, 2019 ONSC 5723 (SCJ)

24. *Condon v. Canada,* 2018 FC 522 (CanLII)

25. *Cass v. WesternOne Inc.*, [2018] O.J. No. 4165 (SCJ)

26. *Ramdath v. George Brown College of Applied Arts and Technology*

27. *Frank v. Caldwell*, [2014] O.J. No. 1028 (SCJ)

28. *Sayers v. Shaw Cablesystems Ltd.*, [2011] O.J. No. 637 (SCJ)

29. *Abdulrahim v. Air France*, 2011 ONSC 512 (CanLII)

30. in *Walmsley v. 2016169 Ontario Inc.*, 2020 ONSC 1416 (CanLII)

31. *Bodnarchuk v. Guestlogix Inc.,* 2020 ONSC 4789 (CanLII)

32. *Rosen v. BMO Nesbitt Burns Inc.*, 2016 ONSC 4752

33. *Hodge v. Neinstein*, 2019 ONSC 439 (CanLII)

34. *Fulawka v. Bank of Nova Scotia*, 2014 ONSC 4743 (CanLII)

35. *Aps v. Flight Centre Travel Group*, 2020 ONSC 6779 (CanLII)

36. In *Harper v. American Medical Systems Canada Inc.*, 2019 ONSC 5723

37. *Sheridan Chevrolet v Hitachi et al*, 2017 ONSC 2803 (CanLII)

38. *Currie v. Mcdonald's Restaurants of Canada Ltd.,* 2007 CanLII 39608 (ON SC)

39. *Mortillaro v. Unicash Franchising Inc.*, 2011 ONSC 923 (CanLII)

ERIN DAWN CHRISTIANSEN

Plaintiff/Moving Party

-and-

METTRUM LTD.

Defendant/Responding Party

Court File No. 820/17

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Oshawa

FACTUM
(Fee Approval & Honorarium)

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