

**CANADIAN ELECTRONIC THROTTLE BODIES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of June 14, 2021

Between

**GAZAREK REALTY HOLDINGS LTD., 5045320 ONTARIO LTD., and
FADY SAMAHA**

(the “**Plaintiffs**”)

and

HITACHI ASTEMO, LTD. and HITACHI ASTEMO INDIANA, INC.

(the “**Settling Defendants**”)

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**CANADIAN ELECTRONIC THROTTLE BODIES CLASS ACTION
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RECITALS

A. WHEREAS the Proceeding was commenced by the Plaintiffs in Ontario and the Plaintiffs claim class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceeding alleges that some or all of the Releasees participated in an unlawful conspiracy with other manufacturers of Electronic Throttle Bodies to rig bids for, and to raise, fix, maintain or stabilize the prices of Electronic Throttle Bodies sold in Canada and elsewhere as early as January 1, 2000 until at least March 1, 2010 contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 and the common law;

C. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding, or in any Other Actions, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceeding and any Other Actions or otherwise;

D. WHEREAS on March 1, 2021, The Pickering Auto Mall Ltd. amalgamated with 2061222 Ontario Ltd. to form 5045320 Ontario Ltd, and Sheridan Chevrolet Cadillac Ltd. amalgamated with Gazarek Realty Holdings Ltd. and Gerald A. Gazarek Holdings Ltd. to form Gazarek Realty Holdings Ltd.;

E. WHEREAS on January 1, 2021, Showa Corporation, Hitachi Automotive Systems, Ltd., Keihin Corporation, and Nissin Kogyo Co., Ltd. concluded a merger to form Hitachi Astemo, Ltd.;

F. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendants;

G. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceeding and any

Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

H. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceeding or as expressly provided in this Settlement Agreement with respect to the Proceeding;

I. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

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

K. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense associated with prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the proposed Settlement Class they seek to represent;

L. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceeding and any Other Actions as against the Releasees;

M. WHEREAS the Parties consent to certification of the Proceeding as a class proceeding and to the Settlement Class and the Common Issue in respect of the Proceeding solely for the purposes of implementing this Settlement Agreement and contingent on approval by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not

derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class they seek to represent and will seek to be appointed as representative plaintiffs in the Proceeding;

O. WHEREAS the Settlement Class Members were permitted an opportunity to opt out of the Proceeding, the deadline to opt out of the Proceeding has passed, and three Persons validly and timely exercised the right to opt out;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that Proceeding be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the Settlement Class they seek to represent, and the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

(1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

(2) ***Automotive Vehicle*** means passenger cars, sport utility vehicles (SUVs), vans, and light trucks (up to 10,000 lbs).

(3) ***Claims Administrator*** means the firm proposed by Class Counsel and appointed by the Court to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.

(4) ***Class Counsel*** means Siskinds LLP and Sotos LLP.

- (5) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.
- (6) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.
- (7) ***Class Period*** means January 1, 2000 to March 20, 2017.
- (8) ***Common Issue*** means: Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Electronic Throttle Bodies in Canada and/or elsewhere during the Class Period?
- (9) ***Counsel for the Settling Defendants*** means Stikeman Elliott LLP.
- (10) ***Court*** means the Ontario Superior Court of Justice.
- (11) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (12) ***Defendants*** means the entities named as defendants in the Proceeding. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.
- (13) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.
- (14) ***Effective Date*** means the date when a Final Order has been received from the Court approving this Settlement Agreement.
- (15) ***Electronic Throttle Bodies*** means a component of an electronic throttle control system in an Automotive Vehicle that controls the volume of air flowing into the engine according to a signal from the engine control unit.
- (16) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs,

successors and assigns of each of the foregoing, and those Persons who validly and timely opt out of the Proceeding in accordance with the order of the Court.

(17) **Final Order** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.

(18) **Other Actions** means actions or proceedings, excluding the Proceeding, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(19) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(20) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(21) **Plaintiffs** means Gazarek Realty Holdings Ltd., 5045320 Ontario Ltd., and Fady Samaha.

(22) **Proceeding** means the action commenced in the Court bearing Court File No. CV-14-506649-00CP.

(23) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Releasees.

(24) **Purchase Price** means the sale price paid by Settlement Class Members for Electronic Throttle Bodies during the Class Period, less any rebates, delivery, or shipping charges, taxes, and any other form of discounts.

(25) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of

any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now has or hereafter can, shall or may have, relating in any way to the purchase, sale, pricing, discounting, manufacturing, marketing, offering, or distributing of Electronic Throttle Bodies, whether purchased directly or indirectly, including as part of an Automotive Vehicle, including any claims for consequential, subsequent or follow-on harm that arises after the Date of Execution in respect of any agreement, combination, conspiracy or conduct that occurred during the Class Period. However, the Released Claims do not include: (i) claims based on negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, breach of warranty, securities or similar claims between the Parties that relate to Electronic Throttle Bodies (unless such claims allege anticompetitive conduct or anticompetitive communications among competitors); (ii) claims brought (whether before or after the Effective Date) outside of Canada relating to purchases of Electronic Throttle Bodies outside of Canada; (iii) claims brought (whether before or after the Effective Date) under laws other than those of Canada relating to purchases of Electronic Throttle Bodies outside of Canada; or (iv) claims concerning any automotive part other than Electronic Throttle Bodies, where such claims do not concern Electronic Throttle Bodies.

(26) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(27) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner,

director, owner of any kind, agent, principal, employee, contractor, attorney heir, executor, administrator, insurer, devisee, assignee, or representative of any kind, other than Persons who validly and timely opt out of the Proceeding in accordance with orders of the Court.

(28) **Settled Defendants** means any Defendant (excluding the Settling Defendants) that executed its own settlement agreement in the Proceeding and whose settlement agreement became effective in accordance with its terms.

(29) **Settlement Agreement** means this agreement, including the recitals and schedules.

(30) **Settlement Amount** means US\$50,000.00.

(31) **Settlement Class** means all Persons in Canada who, during the Class Period, (i) purchased, directly or indirectly, Electronic Throttle Bodies; (ii) purchased or leased, directly or indirectly, a new or used Automotive Vehicle containing Electronic Throttle Bodies; and/or (iii) purchased for import into Canada, a new or used Automotive Vehicle containing Electronic Throttle Bodies. Excluded Persons are excluded from the Settlement Class.

(32) **Settlement Class Member** means a member of a Settlement Class.

(33) **Settling Defendants** means Hitachi Astemo, Ltd. and Hitachi Astemo Indiana, Inc.

(34) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

SECTION 2-- SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendants.

2.2 Motion Seeking Approval of Notice and Certification

- (1) The Plaintiffs shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order approving the notice described in Section 9.1(1) and certifying the Proceeding as a class proceeding as against the Settling Defendants (for settlement purposes only).
- (2) The order approving the notice described in Section 9.1(1) and certifying the Proceeding for settlement purposes shall be substantially in the form attached as Schedule A.

2.3 Motion Seeking Approval of the Settlement Agreement

- (1) The Plaintiffs shall make best efforts to file a motion before the Court for an order approving this Settlement Agreement as soon as practicable after:
 - (a) the order referred to in Section 2.2(1) has been granted; and
 - (b) the notice described in Section 9.1(1) has been published.
- (2) The order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.

2.4 Pre-Motion Confidentiality

- (1) Until the motion required by Section 2.2(1) is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

2.5 Settlement Agreement Effective

- (1) This Settlement Agreement shall only become final on the Effective Date.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within sixty (60) days of the Date of Execution, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP, for deposit into the Trust Account.

(2) Payment of the Settlement Amount shall be made by wire transfer. At least thirty (30) days prior to the Settlement Amount becoming due, Siskinds LLP will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest, costs, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Proceeding, or any Other Actions.

(6) Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.

(7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) Siskinds LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Siskinds LLP or the Claims Administrator, as appropriate, shall be solely

responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Siskinds LLP or the Claims Administrator.

SECTION 4- TERMINATION OF SETTLEMENT AGREEMENT

4.1 Right of Termination

(1) In the event that:

- (a) the Court declines to certify the Proceeding for the purposes of the Settlement Agreement;
- (b) the Court declines to dismiss the Proceeding against the Settling Defendants;
- (c) the Court declines to approve this Settlement Agreement or any material part, or approves this Settlement Agreement in a materially modified form;
- (d) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule B; or
- (e) any order approving this Settlement Agreement made by the Court does not become a Final Order;

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17, within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17, within thirty (30) days after such non-payment, or move before the Court to enforce the terms of this Settlement Agreement.

(3) Except as provided for in Section 4.4, if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(4) Any order, ruling or determination made or rejected by the Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) the Distribution Protocol

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

4.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify the Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Person shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice

to any position that any of the Parties or Releasees may later take on any issue in the Proceeding, or any Other Actions or other litigation.

4.3 Allocation of Settlement Amount Following Termination

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Siskinds LLP shall, within thirty (30) days of the written notice pursuant to Section 4.1(1), return to the Settling Defendants the amount they have paid to Siskinds LLP, plus all accrued interest thereon.

4.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(7), 3.2(3), 4.1(3), 4.2, 4.3, 4.4, 7.1, 7.2, and 9.1(2), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.1(7), 3.2(3), 4.1(3), 4.2, 4.3, 4.4, 7.1, 7.2, and 9.1(2) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 5 – RELEASES AND DISMISSALS

5.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 5.2, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement 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.

(2) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

5.2 Covenant Not to Sue

(1) Upon the Effective Date, and notwithstanding Section 5.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead the Releasors covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

5.3 No Further Claims

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in 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 proceeding, 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, whether pursuant to the *Negligence Act*, RSO 1990, c N 1 or other legislation or at common law or equity in respect of any Released Claim. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

5.4 Dismissal of the Proceeding

(1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendants.

5.5 Dismissal of Other Actions

(1) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent such Other Actions relate to Electronic Throttle Bodies.

(2) Upon the Effective Date, all Other Actions commenced in Ontario by any Settlement Class Member, to the extent such Other Actions relate to Electronic Throttle Bodies, shall be dismissed as against the Releasees, without costs and with prejudice.

5.6 Material Term

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 4.1 of the Settlement Agreement.

SECTION 6 – BAR ORDER AND OTHER CLAIMS

6.1 Bar Order

(1) Class Counsel shall seek a bar order from the Court providing that, to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding or any Other Actions, or otherwise, by any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee against any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section 6.1 (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceeding).

6.2 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasers against any Person other than the Releasees.

6.3 Material Term

(1) The Parties acknowledge that the bar orders and reservations of rights contemplated in this Section 6 shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the bar orders and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 4.1 of the Settlement Agreement.

SECTION 7 – EFFECT OF SETTLEMENT

7.1 No Admission of Liability

(1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further,

whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding, any Other Actions, or any other pleading filed by the Plaintiffs.

7.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

SECTION 8– CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

(1) The Parties agree that the Proceeding shall be certified as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Proceeding and the approval of this Settlement Agreement by the Court.

(2) The Plaintiffs agree that, in the motion for of the Proceeding as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class. The Parties agree that the certification of the Proceeding as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against any Person or party other than the Releasees.

SECTION 9 – NOTICE TO SETTLEMENT CLASS

9.1 Notices Required

(1) The proposed Settlement Class shall be given a single notice of: (i) the certification of the Proceeding as a class proceeding as against the Settling Defendants for settlement purposes; (ii) the hearing at which the Court will be asked to approve the Settlement Agreement; and (iii) if it is brought with the hearing to approve the Settlement Agreement, the hearing to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

9.2 Form and Distribution of Notices

(1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motions brought by Class Counsel.

SECTION 11– DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

11.1 Distribution Protocol

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will bring a motion seeking an order from the Court approving the Distribution Protocol. The motion can be brought before the Effective Date, but the order approving the Distribution Protocol shall be conditional on the Effective Date occurring.

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

11.2 No Responsibility for Administration or Fees

(1) Except as otherwise provided for in this Settlement Agreement, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the administration of the Settlement Agreement or the investment, distribution or administration of monies in the Trust Account including, but not limited to Administration Expenses.

SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

12.1 Responsibility for Fees, Disbursements and Taxes

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

12.2 Responsibility for Costs of Notices and Translation

(1) Siskinds LLP shall pay the costs of the notices required by Section 9 and any costs of translation required by Section 13.11 from the Trust Account, as they become due. Subject to Section 4.3, the Releasees shall not have any responsibility for the costs of the notices or translation.

12.3 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel may seek the Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel

Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

SECTION 13 – MISCELLANEOUS

13.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those applications concerned solely with the implementation and administration of the Distribution Protocol.

13.2 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.3 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

13.4 Ongoing Jurisdiction

(1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Court for such purposes.

13.5 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

13.6 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.7 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court(s) with jurisdiction over the matter to which the amendment relates.

13.8 Binding Effect

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

and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

13.9 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.10 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

13.11 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required to by a Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

13.12 Transaction

(1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

13.13 Recitals

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

13.14 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

13.15 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.16 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, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

13.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be

provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceeding:

Charles M. Wright and Linda Visser
SISKINDS LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8
Tel: 519.672.2121
Fax: 519.672.6065
Email: charles.wright@siskinds.com
linda.visser@siskinds.com

David Sterns and Jean Marc Leclerc
SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1250
Toronto, ON M5G 1Z8
Tel: 416.977.0007
Fax: 416.977.0717
Email: dsterns@sotosllp.com
jleclerc@sotosllp.com

For the Settling Defendants:

Katherine Kay
STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9
Tel: 416.8695507
Fax: 416.947.0866
Email: kkay@stikeman.com

13.18 Date of Execution


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

FADY SAMAHA on his own behalf and on behalf of the Settlement Class that he proposes to represent, by his counsel

Name of Authorized Signatory:

Linda Visser

Signature of Authorized Signatory:

DocuSigned by:

B440C10350FF4CA

Siskinds LLP
Class Counsel

GAZAREK REALTY HOLDINGS LTD. and 5045320 ONTARIO LTD., on their own behalf and on behalf of the Settlement Class that they propose to represent, by their counsel

Name of Authorized Signatory:

David Sterns

Signature of Authorized Signatory:

DocuSigned by:
PP: Linda Visser
B440C10350FF4CA...
Sotos LLP
Class Counsel

HITACHI ASTEMO, LTD. and HITACHI ASTEMO INDIANA, INC. by their counsel

Name of Authorized Signatory:

Katherine L. Kay

Signature of Authorized Signatory:

[Signature] for Stikeman Elliott
Stikeman Elliott LLP
Counsel for the Settling Defendants
UP

SCHEDULE “A”

Court File No. CV-14-506649-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2021

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,
PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBA
CORPORATION, AMERICAN MITSUBA CORPORATION, MITSUBISHI ELECTRIC
CORPORATION, MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA, INC.,
MITSUBISHI ELECTRIC SALES CANADA INC., AISAN INDUSTRY CO. LTD,
FRANKLIN PRECISION INDUSTRY, INC., AISAN CORPORATION OF AMERICA,
KEIHIN CORPORATION and KEIHIN NORTH AMERICA, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

ORDER

**- Electronic Throttle Bodies-
- Keihin Notice Approval and Consent Certification -**

THIS MOTION made by the Plaintiffs for an Order approving the abbreviated, publication, and long-form notices of settlement approval hearings and the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement purposes as against Hitachi Astemo, Ltd. (formerly Keihin Corporation) and Hitachi Astemo Indiana, Inc. (formerly Keihin North America, Inc.) (collectively the “Settling Defendants”) was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement with the Settling Defendants dated as of ●, 2021 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on reading the submissions of counsel for the Plaintiffs and/or Counsel for the Settling Defendants;

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

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the abbreviated, publication, and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the plan of dissemination for the abbreviated, publication, and long-form notices of settlement approval hearing (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “E” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the Proceeding is certified as a class proceeding as against the Settling Defendants for settlement purposes only.

5. **THIS COURT ORDERS** that the “Settlement Class” is certified as follows:

All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, Electronic Throttle Bodies; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle containing Electronic Throttle Bodies; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle containing Electronic Throttle Bodies. Excluded Persons are excluded from the Settlement Class.

6. **THIS COURT ORDERS** that Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd., and Fady Samaha are appointed as the representative plaintiffs for the Settlement Class.

7. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendants, or any of them, conspire to fix, raise, maintain, and/or stabilize the prices of Electronic Throttle Bodies in Canada and/or elsewhere during the Class Period?

The Honourable Justice Belobaba

SCHEDULE "B"

Court File No. CV-14-506649-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE BELOBABA) OF , 2021

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,
PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBA
CORPORATION, AMERICAN MITSUBA CORPORATION, MITSUBISHI ELECTRIC
CORPORATION, MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA, INC.,
MITSUBISHI ELECTRIC SALES CANADA INC., AISAN INDUSTRY CO. LTD,
FRANKLIN PRECISION INDUSTRY, INC., AISAN CORPORATION OF AMERICA,
KEIHIN CORPORATION and KEIHIN NORTH AMERICA, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

ORDER

**- Electronic Throttle Bodies -
- Keihin Settlement Approval -**

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered into with Hitachi Astemo, Ltd. (formerly Keihin Corporation) and Hitachi Astemo Indiana, Inc. (formerly Keihin North America, Inc.) (collectively, the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

AND ON READING the materials filed, including the settlement agreement dated ●, 2021, attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants;

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

AND ON BEING ADVISED that the deadline for opting out of the Proceeding has passed, and three Persons validly exercised the right to opt out;

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

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Proceeding.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in 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 proceeding, 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, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim.
10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class

who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding or any Other Actions, or otherwise, by any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Settled Defendant or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceeding).
13. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

14. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class has or may have in the Proceeding against the named or unnamed co-conspirators who are not Releasees.
15. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
16. **THIS COURT ORDERS** that, Class Counsel shall hold the Settlement Amount (plus any accrued interest) in trust for the benefit of the Settlement Class pending further order of this Court.
17. **THIS COURT ORDERS** that, upon the Effective Date, the Proceeding be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.

The Honourable Justice Belobaba