

SETTLEMENT AGREEMENT

Made as of October 15, 2024

Between:

DAPHNA OHAYON

(“Plaintiff”)

-and-

SHOPPERS DRUG MART INC.

(“Shoppers”)

-and-

LOBLAW COMPANIES LIMITED

(“Loblaw”)

(together, the “Parties”)

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RECITALS

- A. WHEREAS, on May 29, 2023, the Plaintiff filed an *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (as amended thereafter, the “**Application for Authorization**”) before the Superior Court of Quebec, bearing Court file no. 500-06-001243-233 as against Shoppers, Loblaw, Dollarama S.E.C., Dollarama Inc., Dollarama GP Inc., and Amazon.com.ca Inc.;
- B. WHEREAS the Application for Authorization asserts claims against Shoppers on behalf of the Class in relation to the prices advertised and charged in Pharmaprix Stores in the province of Québec for products subject to Environmental Handling Fee (“**EHF**”), including without limitation, claims under the *Consumer Protection Act*, CQLR, c. P-40.1 and the regulations adopted thereunder, the *Order in Council Respecting the Policy on Accurate Pricing for Merchants Who Use Optical Scanner Technology*, CQLR c. P-40.1, r. 2 (the “**Accurate Pricing Policy**”), the *Competition Act*, RSC 1985, c. C-34, the *Civil Code of Québec*, and the *Regulation Respecting the Recovery and Reclamation of Products by Enterprises*, CQLR c. Q-2, r. 40.1, the whole as more fully detailed in the Application for Authorization;
- C. WHEREAS, with respect to Loblaw, the Application for Authorization simply asserts that it is Shoppers’ sole shareholder, without disclosing any further cause of action against it;
- D. WHEREAS the Application for Authorization has not been adjudicated and the Parties estimate that at least a further two years could be required to litigate this matter through trial (excluding appeals);
- E. WHEREAS Shoppers and Loblaw deny the allegations made by the Plaintiff in its proceedings, have not conceded or admitted, shall not be deemed to have conceded or admitted, and hereby expressly deny any liability or wrongdoing of any kind regarding the Plaintiff’s allegations in the Application for Authorization or otherwise;
- F. WHEREAS the Parties have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the Class Action and to avoid further expenses, inconveniences and burdens of protracted litigation, the whole subject to approval by the Superior Court of Québec;
- G. WHEREAS the Parties and their respective counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their respective analyses of the facts and law applicable to the Plaintiff’s claims asserted in the Application for Authorization, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, the Parties and their respective counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interest of the Class;
- H. WHEREAS the Plaintiff and Class Counsel 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 Shoppers or Loblaw, or evidence of the truth of any of the Plaintiff’s allegations against Shoppers or Loblaw, and Shoppers, Loblaw and Defense Counsel 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 Plaintiff or the Class, or evidence of the truth or validity of any of Shoppers and Loblaw's defences or arguments against the Plaintiff's claims;

- I. WHEREAS the Parties assert that the Plaintiff is an adequate Class representative for settlement purposes; and
- J. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Superior Court of Québec;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled on the following terms and conditions:

ARTICLE 1- DEFINITIONS

The following terms, as used in this Settlement Agreement and its schedules, including the Recitals, mean:

- (a) ***Application for Authorization*** means the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* dated May 29, 2023, filed by the Plaintiff before the Superior Court of Quebec, bearing Court file no. 500-06-001243-233, as amended thereafter.
- (b) ***Admissible Products*** means any and all types of batteries sold in Pharmaprix Stores, except batteries sold in the same package as another product or item.
- (c) ***Business Practice Change*** has the meaning ascribed to this expression in paragraph 5.2 below.
- (d) ***Class Action*** means all proceedings, exhibits and related materials filed in the matter of Ohayon v. Dollarama S.E.C. et al., bearing number 500-06-001243-233 in the Superior Court of Quebec for the Judicial District of Montreal.
- (e) ***Class Counsel*** means LPC Avocats.
- (f) ***Class Counsel Fees and Disbursements*** means Class Counsel's extrajudicial fees, and is inclusive of all fees, disbursements, costs, interest, and other applicable taxes or charges of Class Counsel, subject to Court approval. It represents an amount of CAD \$90,000 plus applicable GST & QST, plus disbursements of \$11,349.07 (inclusive of taxes), as described more particularly in Article 10 of this Settlement Agreement.
- (g) ***Class Members and Class*** means all natural and legal persons in the province of Québec who purchased a product subject to the Environmental Handling Fee from a Pharmaprix Store during the Class Period.
- (h) ***Class Period*** means the period between December 11, 2019 and June 8, 2023.

- (i) **Closing Judgement** means an order from the Court: (1) approving the Detailed Report of Execution, (2) declaring that the Parties have fulfilled their obligations under the Settlement Approval Judgement and the Settlement Agreement, as well as their obligation to report to the Court, and (3) pronounce the closing of the Class Action.
- (j) **Court** means the Superior Court of Québec.
- (k) **Defence Counsel, Shoppers' Counsel or Loblaw's Counsel** means McCarthy Tétrault LLP.
- (l) **Detailed Report of Execution** means a comprehensive document prepared by Shoppers that outlines the fulfillment of the Settlement Agreement. It includes specifics such as the total monetary value granted in the form of the Discount, the number of transactions on which the Discount was applied, and the period during which the Discount was offered.
- (m) **Discount** means a reduction of 50% off of the regular price of Admissible Products purchased in a Pharmaprix Store within ninety (90) days of the Effective Date, or until the Distribution Fund has been entirely depleted, whichever comes first.
- (n) **Distribution Fund** means the Settlement Amount minus the Class Counsel Fees and Disbursements, which represents the maximum available funds to be distributed in the form of a Discount.
- (o) **Effective Date** means:
 - (i) 10 days after the date upon which the right to appeal the Settlement Approval Judgement expires; or
 - (ii) if any appeal is taken from the Settlement Approval Judgment, then the Effective Date shall be 10 days after the date upon which any such appeal is concluded by way of a Final order.
- (p) **Environmental Handling Fee or EHF** means the costs related to the recovery and reclamation of a product covered under Chapter VI of the *Regulation Respecting the Recovery and Reclamation of Products by Enterprises*, CQLR c. Q-2, r. 40.1, as determined by an organization referred to in section 4 of the said regulation and part of a recovery and reclamation program developed and implemented by such an organization in accordance with the provisions of the said regulation;
- (q) **Final** when used in relation to a Court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (r) **Fonds d'aide** means the Fonds d'aide aux actions collective created pursuant to the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1.

- (s) **Notice Date** means five (5) days after the date of the Court's Pre-Approval Judgement for the Notice of Hearing, Opt-Out and Discontinuance, or any other date set by the Court, by which the Parties shall cause the Notice to be published in accordance with the notice program detailed in paragraph 7.3 below.
- (t) **Notice of Hearing, Opt-Out and Discontinuance** means (as applicable) the French and English notices of the hearing for settlement and discontinuance approval, in the form approved by the Court, to inform the Class of *inter alia*: (1) the intention of the Plaintiff and Class Counsel to discontinue the Application for Authorization with respect to Loblaw; (2) the authorization of the Class Action for settlement purposes as against Shoppers; (3) the Opt-Out Procedure, Opt-Out Deadline, and the deadline to file an objection to the Settlement Agreement; (4) the date of the hearing for the approval of this Settlement Agreement; and (5) the key terms of this Settlement Agreement, which will be substantially in the form of **Schedule B** hereto, or as modified by the Court.
- (u) **Opt-Out Deadline** means the date which is forty-five (45) days from the date on which the Notice of Hearing and Opt-Out is first published.
- (v) **Opt-Out Procedure** means the procedure to be fixed by Order of the Court by which any Class Member who wishes to do so may opt out of the Class Action.
- (w) **Parties**, when capitalized, means the Plaintiff, Loblaw Companies Limited and Shoppers Drug Mart Inc., and **Party** means any one thereof.
- (x) **Pharmaprix Store** means any of the 175 independently owned drug store operating under the Pharmaprix banner, being understood that Pharmaprix is a brand solely owned by Shoppers and licensed for used in the province of Québec.
- (y) **Pre-Approval Judgment** means the proposed order of the Court: (1) authorizing the modification of the Class in line with the definition of the Class and the Class Period in this Settlement Agreement, (2) authorizing the Class Action for settlement purposes only between the Parties; (3) setting the Opt-Out Procedure, the Opt-Out Deadline, and the deadline to file an objection to the Settlement Agreement; and (4) approving the Notice of Hearing, Opt-Out and Discontinuance, which will be substantially in the form of **Schedule A** hereto, or as modified by the Court.
- (z) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, and lawyers' fees (excluding Class Counsel Fees and Disbursements, which are addressed at Article 10 of the present Settlement Agreement), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them, whether directly or indirectly, ever had, could have had, or now have relating to, arising out of, or related to the allegations, facts, circumstances and causes of action made or asserted, or that could have been made or asserted, in the Class Action. Without limiting the generality of the foregoing, and for the avoidance of doubt, the Parties

hereby confirm and acknowledge that the Released Claims include, without limitation, any claim arising out of or related to any allegation that the price or the EHF charged by a Pharmaprix Store for any product subject to EHF exceeded the price or the EHF, as the case may be, that was expressed, indicated, or advertised for the same (on its packaging, a shelf-label, an in-store display or advertisement, or in any other manner whatsoever including on a technological support) or allowed by law.

- (aa) **Releasees** means Shoppers and all Pharmaprix Stores and each of their respective predecessors, successors, parents, subsidiaries, affiliates, divisions, partners, insurers and each of their past and current officers, directors, employees, agents, shareholders and beneficiaries of any kind.
- (bb) **Releasers** means, individually and collectively, the Plaintiff and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees or representatives of any kind (excluding Class Counsel, whose release is addressed at Article 10 of the present Settlement Agreement).
- (cc) **Settlement Approval Judgment** means the anticipated order of the Court: (1) approving the discontinuance of the Application for Authorization as against Loblaw, and (2) approving the terms of this Settlement Agreement.
- (dd) **Settlement** means the settlement provided for in this Settlement Agreement.
- (ee) **Settlement Agreement** means this agreement, including the recitals and Schedules.
- (ff) **Settlement Amount** means the maximum all-inclusive amount of three hundred thousand Canadian Dollars (CAD \$300,000), from which the Class Counsel Fees and Disbursements will be paid and all Discounts will be granted. For further clarity, the Settlement Amount represents the maximum amount that Shoppers will pay in full and final payment of the Settlement, in the form of a collective recovery, except as otherwise specified in this Settlement Agreement.

- 1.1 Other capitalized terms in the Settlement Agreement but not specifically defined in this section shall have the meaning ascribed to them elsewhere in this Agreement, including by reference to capitalized terms indicated in parentheses.

ARTICLE 2- BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement Agreement and shall cooperate to seek and obtain the Court's approval of this Settlement Agreement and all other matters addressed herein.

Shoppers will cooperate to provide information to Class Counsel and the Court that is reasonable and necessary to obtain Court approval of this Settlement Agreement.

2.2 Court Approval Required for Enforceable Agreement

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless approved by the Court.

ARTICLE 3 - OPT-OUT PROCEDURE

3.1 Court Approval of Opt-Out Procedure and Deadline

- (a) Class Counsel shall seek the Court's approval of the following opt-out procedure as part of the Application for Authorization of a Class Action and for Approval of the Notice of Hearing, Opt-Out and Discontinuance outlined in paragraph 4.1 below:
- (i) Class Members seeking to opt out of the Class Action must do so within forty-five (45) days from the date that the Notice of Hearing, Opt-Out and Discontinuance is first published, by sending a complete and validly executed written election to opt out to the Superior Court, or by email to Class Counsel at the address to be provided in the Notice of Hearing, Opt-Out and Discontinuance. Class Counsel shall file any objection received by email into the record. The written election of opt out must be received on or before the Opt-Out Deadline. The written election of opt out must be sent by the Class Member or the Class Member's designee and must include the following information:
- The Court docket number of the Class Action (500-06-001243-233);
 - The Class Member's full name, current address, email address and telephone number; and
 - A statement to the effect that the Class Member wishes to be excluded from the Class Action with regards to Shoppers Drug Mart Inc.
- (b) Class Members who opt out of the Class Action shall not be members of the Class, and shall have no further right to participate in the Class Action.
- (c) Under article 580 of the *Code of Civil Procedure of Québec*, a Class Member eligible to opt out pursuant to this section who does not discontinue an originating application having the same subject matter as the Class Action before the Opt-Out Deadline has expired is deemed to have opted out.

ARTICLE 4 - SETTLEMENT APPROVAL

Subject to the discretion of the Court regarding the approval process, the Parties propose to seek the orders contemplated in this Settlement Agreement as follows.

4.1 Application for Authorization of a Class Action for Settlement Purposes and Approval of the Notice of Hearing, Opt-Out and Discontinuance

- (a) As soon as practicable after this Settlement Agreement is executed, Plaintiff shall bring an application for the Court's approval of an order substantially in the form of

the draft Pre-Approval Judgment (**Schedule A**). Shoppers will consent to this application.

- (b) Shoppers and Loblaw will review and approve all application materials before they are filed.
- (c) Until the application for the Court's approval of an order substantially in the form of the draft Pre-Approval Judgment (**Schedule A**) is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without prior written consent of the Parties, except as required for the purposes of financial reporting, communications with insurers and auditors, and/or 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.

4.2 Application for Approval of the Settlement Agreement, the Discontinuance, and Class Counsel Fees and Disbursements

- (a) As soon as practicable after an order substantially in the form of the Pre-Approval Judgment is made, and the Notice of Hearing, Opt-Out and Discontinuance is published as detailed in paragraph 7.3, the Plaintiff shall bring an application for the Court's issuance of the Settlement Approval Judgment. Shoppers and Loblaw will consent to this application, and the Fonds d'aide will be served with the application, no later than five days before its presentation date.
- (b) Shoppers will take no position on the aspects of such application that concern Class Counsel Fees and Disbursements, other than that they have agreed to pay them in the context of this negotiated Settlement Agreement.
- (c) Shoppers and Loblaw will review and approve all application materials before they are filed.
- (d) If the Plaintiff, Class Counsel, Shoppers, Loblaw or Defence Counsel become aware that a Class Member or other person intends to object to those applications, they will advise the Parties in writing as soon as practicable and in any event no later than two (2) business days before the hearing of the application described at paragraph 4.2(a).

ARTICLE 5 - SETTLEMENT RELIEFS

5.1 Composition of the Settlement Amount

- (a) Shoppers' obligation pursuant to this Settlement Agreement is to make or fund the Distribution Fund, to be distributed in the form of Discounts in Pharmaprix Stores as further described at Article 6 below, along with the Class Counsel Fees and Disbursements, as approved by the Court. However, in no event shall the total value of the Distribution Fund, and Class Counsel Fees and Disbursements payable by Shoppers exceed CAD \$300,000, being understood that the only other amounts that Shoppers shall be obligated to pay above this amount under the terms of this Settlement Agreement are the costs of translating the present Settlement Agreement and its Schedules, disseminating the notices, as described

at paragraph 7.2 below, of managing the Discount and of reporting to the Court, as described in paragraph 6.1(c) below.

- (b) The Discount is the consideration to Class Members for this Settlement.

5.2 Business Practice Changes

- (a) Shoppers, without any admission of liability or wrongdoing of any kind, and as an essential condition for the Plaintiff's acceptance of this Settlement Agreement, confirms the following and has implemented the Business Practices Changes:
 - (i) Shoppers' historical practice has been to request that the total price payable for products subject to EHF (exclusive of applicable taxes) be displayed in Pharmaprix Stores, and that more emphasis be put on the said total price than on the amounts of which it is composed.
 - (ii) At an unknown date, an option of the point-of-sale system used by Shoppers and Pharmaprix Stores to generate and print in-store labels was accidentally and involuntarily turned off, causing the EHF to be printed separately from the price of products subject to such fees on in-store labels.
 - (iii) Shoppers was not aware that the option had been turned off before it was informed of the filing of the Application for Authorization, on May 29, 2023.
 - (iv) In the ordinary course of business, archives of in-store labels are kept for a period of six months. The EHF was printed separately from the price of the products subject to EHF on all of the labels dating back six months when verifications were made on June 12, 2023.
 - (v) On June 7, 2023, Shoppers issued a memorandum to all Pharmaprix Stores' owners and managers informing them that updated shelf-labels and signage displaying the total price payable (exclusive of applicable taxes) for products subject to EHF had been created, and instructing them to replace all in-store labels with this updated version before the end of the day.
 - (vi) As of June 8, 2023, Shoppers received confirmation that all Pharmaprix Stores had completed the replacement of in-store labels.
- (b) The information provided in paragraph 5.2(a) is supported by the sworn declarations by a representative for Shoppers (**Schedule C**).
- (c) The Plaintiff and Class Counsel acknowledge and accept that the Business Practice Changes currently implemented by Shoppers and Pharmaprix Stores are in compliance with the law and that the injunctive relief sought in the Class Action is without object with respect to Shoppers and Pharmaprix Stores, for all legal intents and purposes whatsoever.
- (d) Shoppers undertakes to take reasonable measures to maintain this Business Practice Change in the future, except in the event of legislative changes to the applicable laws and regulations.

5.3 Discontinuance as against Loblaw

- (a) As provided for at paragraph 4.2 of this Settlement Agreement, at the same time as the approval of the Settlement and the Class Counsel Fees and Disbursements, Class Counsel, on the Plaintiff's behalf, will apply to the Court to discontinue the Application for Authorization against Loblaw, which discontinuance will be completed without any payment by Loblaw to the Plaintiff, the Class or Class Counsel. Loblaw will not seek any costs in relation to the discontinuance.
- (b) Class Counsel stipulates that they have no current intention to, and will not, recommence an identical or similar claim against Loblaw in relation to the prices advertised and charged in Pharmaprix Stores in the province of Québec for products subject to EHF.
- (c) If the Discontinuance is approved, Plaintiff will file a Notice of Discontinuance into the Court record on the Plaintiff's behalf on the Effective Date at the latest.

ARTICLE 6 - DISTRIBUTION OF FUNDS

6.1 Distribution of the Discount

- (a) Starting on the Effective Date, the Discount will be applied systematically on all Admissible Products purchased in all Pharmaprix Stores in the province of Quebec.
- (b) The Discount will continue to be applied until the Distribution Fund is completely depleted, or until ninety (90) days following the Effective Date, whichever comes first.
- (c) As soon as practicable after the expiration of the ninety (90) days delay following the Effective Date, Shoppers will issue a Detailed report of execution and will then file an application to obtain a Closing Judgment from the Court.
- (d) Based on knowledge, information and belief, Pharmaprix represents that the period of ninety (90) days following the Effective Date is sufficient to deplete the Distribution Fund. In the unlikely event that the Distribution Fund is not completely depleted after the expiration of the ninety (90) days following the Effective Date, Class Counsel reserves its right to seek direction from the Court.

6.2 No responsibility for External Administration Fees

Shoppers acknowledges that it shall be solely responsible for the notice costs, the internal costs to promote the Discount and to provide its Detailed report of execution. However, Shoppers will not be required to incur any external administration fees in connection with the Distribution of the Discount or the Detailed report of execution. Shoppers agrees to assume the translation costs of this Settlement Agreement. If the Settlement Agreement is not approved by the Court, these costs shall be borne by Shoppers, to the complete exoneration of Plaintiff.

6.3 Fonds d'aide aux actions collectives ("Fonds d'aide")

The Parties agree that this Settlement Agreement provides for collective recovery and that it is subject to the *Act respecting the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1, the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1.r.2 and the *Code of Civil Procedure*, C.Q.L.R., c. C-25.01.

ARTICLE 7 - NOTICE TO CLASS

7.1 Notices Required

The Class shall be given the following notices, subject to approval by the Court:

- (a) Notice of Hearing, Opt-Out and Discontinuance (**Schedule B**);
- (b) Notice of termination of this Settlement Agreement if it is terminated pursuant to this Settlement Agreement, or as otherwise ordered by a Court, in a form to be agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notice of termination of the Settlement Agreement, then in the form ordered by the Court.

7.2 Costs of Disseminating Notices

The costs of disseminating each Notice shall be paid by Shoppers in addition to the Settlement Amount, regardless of whether the Settlement is approved by the Court or the Settlement Agreement is terminated. The Plaintiff, the Class and the Class Counsel are not liable to pay for such costs. However, Shoppers shall not pay any professional fees or other expenses to Class Counsel with regards to the Notice Program described at Article 7.3(a).

7.3 Method of Disseminating Notices

The Notices required under Article 7.1 shall be disseminated pursuant to the following Notice Program:

- (a) No later than the Notice Date, Class Counsel shall:
 - (i) Prominently post the Notice on its website for a minimum period of forty-five (45) days for the Notice of Hearing, Opt-Out and Discontinuance. Once the Settlement is approved, Class Counsel shall post the Settlement Approval Judgment on its website for at least ninety (90) days following the Effective Date.
 - (ii) Issue a press release or an email to the press, in a form to be approved by the Parties, containing a link to the Notice posted on Class Counsel's website, and promoting the virtues of the Settlement.
- (b) No later than the Notice Date, Shoppers shall:
 - (i) Instruct all Pharmaprix Stores to display the short-form of the Notice in a prominent location in their stores such that Class Members and customers

can easily see it for a minimum period of forty-five (45) days for the Notice of Hearing, Opt-Out and Discontinuance;

- (ii) Instruct all Pharmaprix Stores to refer all customer inquiries regarding the Class Action to Class Counsel's website.

ARTICLE 8 - TERMINATION OF SETTLEMENT AGREEMENT

8.1 Right of Termination

- (a) Shoppers and Loblaw shall have the option to terminate this Settlement Agreement in the event that:
 - (i) The Plaintiff or Class Counsel breach any material term of this Settlement Agreement;
 - (ii) The Court declines to approve any material part of the Settlement Agreement (excluding Class Counsel Fees and Disbursements), or requires a material change to the Settlement Agreement as a precondition to approval. For further clarity, the Notice Program, as detailed at paragraph 7.3, is a material part of the Settlement Agreement; or
 - (iii) The Court approves all material parts of the Settlement Agreement (excluding Class Counsel Fees and Disbursements), but the Settlement Approval Judgment does not become Final or is materially altered on appeal.
- (b) The Plaintiff shall have the option to terminate the Settlement Agreement in the event that:
 - (i) Shoppers, Loblaw or Defence Counsel breach any payment terms or material term of this Settlement Agreement;
 - (ii) The Court declines to approve any material part of the Settlement Agreement (excluding Class Counsel Fees and Disbursements), or requires a material change to the Settlement Agreement as a precondition to approval; or
 - (iii) The Court approves all material parts of the Settlement Agreement (excluding Class Counsel Fees and Disbursements), but the Settlement Approval Judgment does not become Final or is materially altered on appeal.
- (c) If Shoppers or Loblaw elect to terminate the Settlement Agreement pursuant to Article 8.1(a), or the Plaintiff elects to terminate the Settlement Agreement pursuant to Article 8.1(b), a written notice of termination shall be provided by the terminating Party to the other Party forthwith, and, in any event, no later than ten (10) business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Article 8.2, and the related Definitions in Article 1, it shall be null and void and have no further force or effect, shall not be binding on the

Parties, and shall not be used as evidence or otherwise in any Released Claims, including but not limited to any trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.

- (d) Any order, ruling or determination made by the Court with respect to the Class Counsel Fees and Disbursements shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

8.2 If Settlement Agreement is Terminated

If this Settlement Agreement is terminated:

- (a) The Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein, and shall retain all rights they had immediately preceding the execution of this Agreement, including Shoppers and Loblaw's right to object to the authorization of the Class Action as a class action;
- (b) Any step taken by Shoppers, Loblaw or the Plaintiff in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Class Action;
- (c) Any order or judgment rendered by the Court pursuant to this Settlement Agreement shall be set aside or vacated. The Parties consent and will cooperate in seeking to have all prior orders or judgments sought from and rendered by the Court, in accordance with this Settlement Agreement, set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and
- (d) All documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are or become publicly available. Within thirty (30) days of such termination having occurred, Class Counsel shall, upon written request, destroy all documents and other materials provided by Shoppers or containing or reflecting information derived from such documents for the purposes of implementing this Settlement. Class Counsel shall provide Defence Counsel with a written certification by Class Counsel of such destruction, upon request.

ARTICLE 9 - RELEASES AND DISMISSALS

9.1 Release of Releasees

Except in the case of the termination of this Settlement Agreement, and conditional upon the approval of this Settlement Agreement by the Court, upon the Effective Date, the Releasers shall immediately, forever and absolutely release the Releasees from the Released Claims. The Plaintiff acknowledges that she may thereafter discover facts in addition to, or different from, the facts which she knows or believes to be true regarding the Released Claims, and it is her intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release by all of the Releasers shall be and shall remain in effect notwithstanding the discovery or existence of new or different facts.

9.2 No Further Claims

The Releasors shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.

ARTICLE 10- CLASS COUNSEL FEES

10.1 Class Counsel Fees and Disbursements

- (a) As part of the application for approval detailed at Article 4.2(a), Class Counsel will seek the Court's approval of Class Counsel Fees and Disbursements in the amount of \$90,000.00 plus GST & QST in fees plus \$11,349.07 (inclusive of taxes) in disbursements, which includes all legal fees, judicial and extrajudicial costs and disbursements of any kind, as well as any reimbursement of payment received from the Fonds d'aide incurred up to and including the date of the Final Settlement Approval Judgement. Shoppers and Loblaw will take no position on this request, other than that Shoppers has agreed to pay this amount.
- (b) No later than fifteen (15) days before the Effective Date, Class Counsel shall provide Shoppers with an invoice for the amount of the Class Counsel Fees and Disbursements approved by the Court, along with the wire transfer and payment information.
- (c) Within ten (10) days of the Effective Date, Shoppers shall pay to Class Counsel the amount of the Class Counsel Fees and Disbursements approved by the Court in the Final Settlement Approval Judgment.

10.2 Class Counsel Release

- (a) Upon full payment to Class Counsel of the Class Counsel Fees and Disbursements approved by the Court pursuant to the order to be rendered by the Court, Class Counsel forever releases the Releasees of and from any and all claims or demands for fees, costs, expenses and/or disbursements, known or unknown, that Class Counsel ever had, could have had, or now has related to the Class Action.
- (b) Furthermore, Class Counsel shall be permanently barred and enjoined from instituting, filing, commencing, maintaining, prosecuting or continuing to prosecute any action or proceeding of any kind related to the Class Action and in which any Released Claim is asserted in whole or in part against any Releasees before any Court, forum, regulatory authority or other tribunal, and from participating directly or indirectly in any such action or proceeding, whether as counsel, counsel of record, mandatary, advisor, individually, as a class member, collectively, representatively, derivatively or in any other capacity whatsoever.

ARTICLE 11 - EFFECT OF SETTLEMENT

11.1 No Admission of Liability

Whether or not this Settlement Agreement is approved or terminated, 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 deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any fault, wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement Agreement is not approved, they will defend the Class Action at trial.

Shoppers and Loblaw reserve their rights and defences with respect to anyone who will validly opt out of the Class Action, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against the Releasees.

11.2 This Agreement Does Not Constitute Evidence

The Parties agree that, whether or not it is approved or terminated, 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 other proceeding, in this or any other jurisdiction, except in a proceeding to approve or enforce this Settlement Agreement or in connection with the other applications contemplated in this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

ARTICLE 12 - MISCELLANEOUS

12.1 Applications for Directions

- (a) The Parties, together or individually, may bring applications to the Court for directions in respect of the implementation and administration of this Settlement Agreement at any time.
- (b) All applications contemplated by this Settlement Agreement shall be on reasonable notice to the Parties.

12.2 Headings, etc.

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

- (b) The terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

12.3 Computation of Time

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

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) Only in the case where the time for doing an act expires on a holiday or a weekend, the act may be done on the next day that is a business day.

12.4 Governing Law

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

12.5 Entire Agreement

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

12.6 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Parties, subject to approval by the Court where required.

12.7 No Waiver

No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

12.8 Binding Effect

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Class Members, the Settling Defendants, the Releasers, and the Releasees once it is approved by a Final Settlement Approval Judgement, except that the Parties are required to perform their obligations under this Settlement Agreement prior to the application for approval of this Settlement Agreement. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasers, once it is approved by Final order of the Court.

12.9 Counterparts

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

12.10 Negotiated Agreement

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

12.11 Language

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 de règlement et tous les documents connexes soient rédigés en anglais*. Nevertheless, a French translation of this Settlement Agreement and the Notice shall be prepared, the cost of which shall be paid by Shoppers.

12.12 Transaction

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*.

12.13 Recitals

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

12.14 Schedules

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** — Draft Pre-Approval Judgment.
- (b) **Schedule B** — Notice of Hearing and Opt-Out.
- (c) **Schedule C** — Sworn Declarations of Grant Wright dated January 15, 2024, and of Loretta Bodden, October 3, 2024, and supporting documents.

12.15 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

12.16 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.17 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

LPC Avocats

276 Saint-Jacques Street, Suite 801
Montreal, QC, H2Y 1N3

Joey Zukran

Tel: 514-379-1572

Fax: 514-221-4441

Email: jzukran@lpclex.com

For Shoppers, Loblaw and Defence Counsel:

McCarthy Tétrault LLP

1000 Gauchetière Street West, suite 2500
Montreal, QC H3B 0A2

Sarah Woods, Laurence Angers-Routhier and Cassiopée Mailloux-Boucher

Telephone: 514-397-4220 (S. Woods)
514-397-4260 (L. Angers-Routhier)
514-397-5682 (C. Mailloux-Boucher)

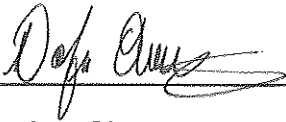
Facsimile: 514-875-6246

Emails: swoods@mccarthy.ca
langersrouthier@mccarthy.ca
cmaillouxboucher@mccarthy.ca

Date of Execution

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

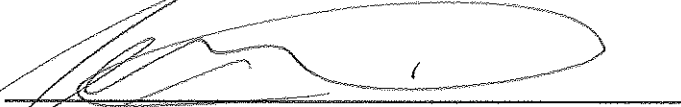
Dated at Montreal, Quebec, Canada, this 16 day of October, 2024



Daphna Ohayon

Plaintiff

Dated at Montreal, Quebec, Canada, this 16 day of October, 2024



LPC AVOCATS

Per: Joey Zukran

Lawyers for the Plaintiff and the Class

Dated at Brampton, Ontario, Canada, this 15th day of October, 2024



SHOPPERS DRUG MART INC.

Per: Jeff Leger

President



SHOPPERS DRUG MART INC.

Per: Adam Grabowski

Senior Vice-president and General Counsel

McCarthy Tétrault LLP

MCCARTHY TÉTRAULT LLP

Per: Sarah Woods

Lawyers for Shoppers and Loblaw

Dated at Brampton, Ontario, Canada, this 15th day of October, 2024



LOBLAW COMPANIES LIMITED

Per: Nick Henn

Chief Legal Officer



MCCARTHY TÉTRAULT LLP

Per: Sarah Woods

Lawyers for Shoppers and Loblaw

SCHEDULE C – SWORN DECLARATION OF LORETTA BODDEN

**SUPERIOR COURT
(Class Action)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-001243-233

DAPHNA OHAYON

Applicant

v.

DOLLARAMA S.E.C.

and

DOLLARAMA INC.

and

DOLLARAMA GP INC.

and

SHOPPERS DRUG MART INC.

and

LOBLAW COMPANIES LIMITED

and

AMAZON.COM.CA, INC.

Defendants

SWORN DECLARATION OF LORETTA BODDEN

I, Loretta Bodden, Senior Director of Store Solutions for Shoppers Drug Mart Inc. ("**SDM**") and Loblaw Companies Limited, having my professional address at 1, President's Choice Circle, city of Brampton, in the province of Ontario, L6Y 5A5, hereby solemnly declare the following:

1. I have been Senior Director of Store Solutions for nine years. In collaboration with a vendor partner, my team is responsible, amongst other things, for the IT application that determines the way that prices are displayed on in-store labels.
2. I am a duly authorized representative of SDM, and I am competent to make this affidavit. I have personal knowledge of the facts set forth herein, and I believe them to be true to the best of my knowledge.
3. This declaration is made in completion to Grant Wright's sworn affidavit dated January 15, 2024, which explained how SDM, doing business as Pharmaprix (collectively referred to as "**Pharmaprix**") implemented changes in their practice. I reiterate the contents of the January 15, 2024 affidavit herein.
4. I have reviewed the records and documents maintained by Pharmaprix in the ordinary course of business, which pertain to the labeling and pricing of products and services.

5. After reviewing the records (including, but not limited to, internal system logs and configuration files) kept by Pharmaprix, I can affirm that the IT flag, which could affect pricing and fee inclusion, was turned off for the last six months before May 29, 2023.
6. Neither I, nor Pharmaprix, were aware that the flag had been turned off before we were informed of the filing of the original version of the 2nd Re-Amended Application, on May 29, 2023.
7. Despite a thorough review of our records, it is not possible to ascertain the exact time and date when the IT flag was initially turned off prior to the mentioned six-month period. The relevant records and data do not provide the necessary information to make such a determination.
8. Due to the limitations in historical data, it is impossible to accurately identify all individuals who made purchases during periods when the IT flag was turned off, and thus to directly compensate these individuals.
9. The total EHF's collected by Pharmaprix between December 11, 2019 and June 8, 2023 (the "**Class Period**") is of \$555,416.71.
10. I confirm that the entire amount of \$555,416.71 I was remitted to the Québec chapter of the Electronic Products Recycling Association and Call2Recycle as required by law. Pharmaprix never retained EHF's it collected from its customers during the Class Period, in whole or in part, Pharmaprix acting solely as a collection agent in this regard, as it does for the GST and the QST or the *consigne*.
11. I hereby affirm that the foregoing is true and correct to the best of my knowledge, information, and belief.

AND I HAVE SIGNED, by technological means, at 1, President's Choice Circle, Brampton, in the province of Ontario, on October 3rd, 2024

Lori Bodden

LORETTA BODDEN

SOLEMNLY DECLARED BEFORE ME, by technological means, in Montréal, in the province of Québec, this 3rd day of October, 2024

Frédérique #243951

Commissioner of Oaths for the Province of Québec